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Law Reform Commission  
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**the police**  
—  
**a policy paper**

**CRIMINAL LAW SERIES**

**STUDY PAPER**

THE POLICE --  
A POLICY PAPER

A Study Paper

Prepared for the

Law Reform Commission of Canada

by

Alan Grant

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## SUMMARY

This paper contains four parts. The first part deals with the issue of law enforcement policy and argues that the present literature does not evidence a coherent theory of law enforcement which takes account of the important political choices which are made when police forces are organized and staffed. Issues involved in apportioning resources to deal with crime and public demands for police services are then discussed together with the problem of bringing about changes in such arrangements in a democratic society.

The second part deals with present constitutional, organizational and personnel provisions in Canadian public policing. This is done to complement research activities, being undertaken elsewhere in the Police Powers Project, which seeks to identify the arrest, search, seizure and surveillance powers which are necessary to ensure effective law enforcement and to provide safeguards against their abuse. The justification for this part lies in the assertion that no study of police powers (which are usually framed as if they are granted to individuals) can be complete unless equal attention is paid to the organizations by which they are exercised, including, of course, the quality of personnel at their command.

The third part addresses the advantages and disadvantages of current public police arrangements in Canada and follows the same organization as Part II, looking first at constitutional questions and then analysing the functional divisions of police activity and the human resource development policies being pursued across the country.

The fourth part draws upon current public policing arrangements and their perceived advantages and disadvantages and argues for a much higher legislative concern for how police services are organized and staffed and makes explicit recommendations on some of the areas where legislation ought to take an unequivocally directive stand. The concept of a public police "capability-factor" is developed and some of the major criteria which would have to be present to satisfy this condition are identified.

## PART I - DEFINITION OF THE ISSUES

### A. INTRODUCTION

The words "police" and "policy" are not, in themselves, difficult to comprehend. The Oxford English Dictionary states that "police" relates to "the regulation, discipline and control of a community, civil (as opposed to military) administration, enforcement of law, public order". The word "police" also denotes, we are told, "the civil force to which is entrusted the duty of maintaining public order, enforcing regulations for the prevention and punishment of breaches of the law and detecting crime". "Policy", on the other hand, is stated to be "a course of action adopted and pursued by a government..., any course of action adopted as advantageous or expedient". Thus, if we accept these definitions, a policy paper on the police should set itself the goal of outlining a course of action which it would be advantageous or expedient for relevant government departments and others to take in organizing a civilian body to enforce the law, maintain public order and prevent and detect crime. But the police have acquired a number of roles in society beyond crime prevention, peace keeping and law enforcement functions. In particular, they have entered upon a significant general service, referral and helping role in society. Further, many other bodies, in addition to the public police, provide crime prevention and law enforcement services, e.g., statutory bodies, regulatory agencies, certain government departments and the private security industry all make various contributions to the concept of policing in its widest sense.

Thus there is a need to identify the limits of what will be covered in this paper. As a general rule the "police" to whom reference will be made are the public police appointed as peace officers under federal or provincial legislation to provide general policing services in Canada and our consideration will encompass not only crime prevention, law enforcement and public order functions but also the general service, referral and helping role undertaken by such police.



## B. ABSENCE OF A THEORETICAL BASE

The so-called public police function is one about which policy in western-democracy has undergone considerable re-thinking. As little as 150 years ago people were still able to argue that the benefits to be acquired from having a public police force would, in every case, be outweighed by the disadvantages.<sup>1</sup> Now the mainstream opinion would support the police function as one -- but only one -- of the necessary elements in developing an organized society encouraged to go about its daily life in relative peace and good order.<sup>2</sup>

Yet despite this growing acceptance of the concept of policing as one of the key responsibilities of public administration, there is a great absence of theoretical writing about the means used for enforcing the law. Legal theorists spend their energies on the essential prerequisites of a fair and just legal system,<sup>3</sup> substantive lawyers write tomes on the theory of criminal liability<sup>4</sup> and those who purport to write about legal systems generally, often completely ignore the police<sup>5</sup> or treat the subject only as an aspect of criminal procedure, with particular reference to arrest, search and seizure powers.<sup>6</sup> No account is taken in such works, of the police as an institution with politically-determined abilities and handicaps which greatly affect not only how the law is enforced but also the substantive, procedural and administrative shape which the criminal justice system assumes as a consequence. The point, which relates to political discretion, should not be confused with police discretion which is dealt with later.

Where writers have purported to expound upon criminal justice they have either concentrated on the theory of liability or justifications for punishment and have left enforcement theory for other writers or another time<sup>7</sup> or the particular enforcement theory being pursued has tended to concentrate exclusively on the fairness of the procedures adopted by the police in their investigative-detective role.<sup>8</sup> While this is important, it ignores the logically prior question of the organization of enforcement capability. It clearly matters that police investigative procedures should be fair but if the groups of individuals upon whom they operate have been predetermined by the manner in which enforcement agencies are organized, while others are ignored, a large part of the problem remains untouched. A truly encompassing theory of criminal justice would have to take account of

this enforcement-capability factor and ensure that it was present in addition to dealing with remedies for abuse of investigative-detective procedures. Although individual writers in particular areas of law (such as enforcement of combines legislation<sup>9</sup>), have touched upon the question of political commitment to provide effective enforcement, nothing in the present literature addresses this logically prior question in a general manner within a truly comprehensive theory of criminal justice.

One result of this has been that much writing about the police has been at the narrow technical end of the spectrum; police organization and administration seen as a discussion of alternative supervisory schemes emphasizing the authoritarian-hierarchical arrangements of its para-military past; interminable disputes over the efficacy of one or two-man cars, the importance of response-time to successful detection and adjudicating on the merits of beat-police versus car-police, to name only a few random samples of what has been termed "police college criminology" by its detractors.<sup>10</sup>

### C. POLICE DISCRETION

Occupying the void between theoretical and technical writing in the area has been the highly illuminating work on police discretion. Here there exists evidence of analytical work which looks at the role of police discretion as one of the important factors which determine the kind of material upon which the rest of the criminal justice system expends its energies.<sup>11</sup> Since the police, as a general rule, control entrance to the criminal justice system, their decision to allocate resources in a particular direction or to proceed to court with a particular case rather than to deal with it by advice, warning or no action then becomes the major focus of attention.<sup>12</sup> The great insight of this approach was to force the police to reconsider the claim made by many of them that they enforced all of the law all of the time and did not engage in the exercise of discretion which was perceived as undermining "the public image of policy objectivity and impartiality in the enforcement of law".<sup>13</sup>

The insight provided by the theoretical writing which drew attention to the importance of police discretion in any assessment of the administration of criminal justice is, however, limited. It appears to take as axiomatic that the capability to enforce the law is

present and that the important focus for attention therefore, lies in the decision-making process, and the criteria thereby selected, for the allocation of police resources in a particular direction or for deciding in specific cases whether to proceed to court, to offer advice or take no action. This view, however, ignores the fact that the police can only exercise discretion not to enforce the law in areas where they have the ability to do so but actively choose not to do so for particular reasons.

#### D. POLITICAL DISCRETION

Police can hardly be said to be exercising discretion not to enforce the law when the non-enforcement or under-enforcement occurs because the policing vehicle has been so organized at the structural level as to be quite incapable of enforcing particular laws. Then the non-enforcement becomes an act, not of police discretion but of political discretion, i.e., society not only has substantive laws but must also consider the arrangements for enforcing them. A lack of such arrangements in particular areas can result in the shape and content of the substantive law being quite different in practice from that which a study of the law-in-the-books might lead an observer to expect.<sup>14</sup> The question then becomes not "Where, as a matter of discretion, have the police decided to concentrate their efforts?" but rather, "Where, as a matter of political discretion, have the police been given the capability to engage in enforcement efforts?"

Every society will have a percentage of its gross national product of goods and services being diverted into illegal operations. The level which that percentage reaches will be determined by a number of complex, interacting factors of a political, social, cultural and economic nature. One of the variables within the social fabric will be the manner in which the formal criminal justice system is organized. Given that this percentage of illegal activity is present, one of the important political decisions which has to be made is the capability-factor which is to be built into law enforcement activity in whatever form it takes -- public police capability being only one of them. Once this decision has been made, lower-level decisions on resource allocation within the law enforcement agency itself will be heavily circumscribed by the nature of that prior

political decision. Once the capability factor has been built-in the major discretions have already been exercised.<sup>15</sup>

The first problem which emerges, therefore, in addressing a policy paper on the police is that the manner in which we organize our various law enforcement agencies is an essentially political decision -- a view which has not always been openly faced in much western democratic writing and research on the subject.<sup>16</sup>

The first challenge for any system of political economy, attempting to address the problem of law enforcement per se, is to devise an agency or series of agencies capable of applying the law fairly across all groups and individuals in that society irrespective of race and class, and without reference to religious, social, cultural or political allegiance. The point being made here is not that we must create a law enforcement colossus which would seek to eradicate all crime. Such a proposal would neither be financially feasible nor socially desirable.<sup>17</sup> The issue is not the creation of a repressive police system, but one which is capable of addressing the enforcement function without a built-in bias of concentrated resources against any particular group in society. The future will clearly demand more of criminal justice administrators than simply the arrest, prosecution and conviction of offenders.<sup>18</sup> But, to the extent that pure enforcement remains one of the various strategies being pursued, the aim must be to make provision for police action against a fair cross-section of offenders. It is not the size of the enforcement vehicle which will be important but its capability. Since society, to some extent, gets the criminals it organizes its police forces to catch, we must ensure that no bias in enforcement capability is allowed to contribute to gross distortions in the types of individuals and groups against whom criminal action is taken. Those being convicted of crimes in a society should represent a fair cross-section of those committing crimes not -- as is likely to be the present case -- simply reflecting where we deploy our law-enforcement resources. The dichotomy would, of course, disappear once enforcement resources possessed the capability to enforce the law across the broader spectrum of criminal activity.

E. RESOURCE ALLOCATION

1. Apportioning Responsibility for Crime

The second problem to be faced is that of apportioning responsibility for dealing with crime. At present this takes several forms. Although the main role is played by the public police organized at national, provincial and municipal levels, significant roles are played by other agencies (such as provincial securities commissions) and officials attached to government departments (e.g., Unemployment Insurance Commission employees policing benefits frauds at the Federal level and Consumer and Commercial Relations officials policing certain fraudulent business transactions at the Provincial level). In addition, there is a growing role being played by the private security industry both of the "in-house" and the general contracting type of operation.<sup>19</sup> Furthermore, the role of community competence must not be overlooked. Some of the less serious but numerically voluminous incidents, which concern citizens and fall under the umbrella of "criminal conduct", may be amenable to community responses without having to be processed through all or part of the formal criminal justice system.<sup>20</sup>

A major reassessment should be made of the nature of the problems posed by crime in our society and of allotting the obligation to respond to them to the most appropriate group. Just as 1829 provided a watershed in realignment of responsibility for prevention and detection of crime from the private to the public sector, it may well be that the 1980s require a new initiative of an equally dramatic nature.

A major distinction has to be made between violence to the person and offences against property. Most societies which claim to have advanced to any degree of sophistication place considerable emphasis on the sanctity of human life and elevate the safety of the individual from violence-to-the-person to an important position in its priorities. For this reason efforts to prevent violent attacks on the persons of citizens and the detection of such cases where they do occur are likely to remain a perennial concern in law enforcement. Most assaults and fatalities of a non-traffic nature in our society occur, not in public places at all, but in homes and other premises between parties who are already either well known to each other or have other reasons for asso-

ciation quite unconnected with the commission of any crime. As a result, social and cultural habits in a particular society, including the use and abuse of drink and drugs and the availability of firearms, will often be significant factors contributing to the incidence of violence. Another factor will be the various strategies undertaken by the police authorities in responding to the problem. It will not only be in cases of violence between strangers in public places that differential police arrangements for preventive patrols, detective facilities, or alternative responses, might make some difference. On private premises too, police philosophy towards, and strategies for dealing with, domestic disturbances and other such volatile situations will be an important factor in determining the degree to which deaths and injuries occur. It is clear that a major police capability to deal with personal violence in its various forms will be an ongoing requirement, the bulk of which responsibility is likely to fall to the public police.

In the area of non-violent property offences a major distinction can be drawn between white-collar crime<sup>21</sup> by persons in positions of trust in the victimized enterprise and thefts from residential, commercial and industrial premises and elsewhere which is the work of professional thieves or youthful opportunists who are generally otherwise unconnected with the locus of the crime.

Major changes have been occurring both in the types of property which exist to be fraudulently converted by criminal acts and in the categories of persons likely to be involved in such operations. Not least amongst these changes are the expanding categories of valuable property which modern civilization has spawned, much of it inaccessible to the "street criminal" who, even if he had access to it, would lack the skill and expertise to manipulate it in any way -- let alone illegally (e.g., computerized accounting systems). This broadens the focus upon those who are potentially criminals. They were largely identified as "those who will not work" in the early 19th Century<sup>22</sup> but now obviously include those already professionally educated and well-remunerated, who have both access to modern sophisticated forms of property and the experience to manipulate them illegally. Have our law enforcement efforts kept pace with changes in the property being expropriated and the category of persons making the illegal conversions? As in the case of violence to the person it appears that a major role

ought to be expected from the public police in the area of sophisticated white-collar crime.

The existence of categories of sophisticated non-violent crimes which are usually committed against institutions and the public at large must not, however, detract from the serious inconvenience and hardship occasioned by individual non-violent criminal acts against private persons. Indeed it is this class of offence which results in very heavy pressure being placed upon the police to "do something". A queue of unhappy complainants at the police station front desk and mounting entries in the crime book show that the ordinary citizen feels more affected by such direct acts against his house, car and other personal property than by knowing that white-collar crime in its many guises may be contributing to his having to pay more than he ought for that house, car, or similar property and services.

In one sense, the allocation of major responsibility to the police for investigation, detection and prosecution of such minor criminal offences through the criminal courts, itself contributes to the problem. Many minor cases of criminal activity are of a highly local nature attributable to purely opportunistic or youthful offenders. More involvement of the community in preventive work to deal with these problems may well provide a better return than conventional arrest and prosecution strategies. A police force embracing a preventive policing philosophy and identifying people, already active in the community, who can accept responsibility for dealing with local problems, can re-direct some of its own efforts into areas where community competence is lacking. In this way it might be argued that police should undertake major responsibility for serious crimes and that, wherever possible, the community should accept responsibility for more minor matters. Police preoccupation with matters that are well within community competence not only encourages dependency where self-help would be more practical, but also dissipates scarce police resources which might be better used elsewhere.

This creates a dilemma for priority setting in law enforcement. On the one hand there is tangible public pressure for action against those who carry out overt predatory acts against property whether the miscreants are professional thieves or youthful opportunists. On the other hand, since all of the participants in clandestine fraud and corruption conspire to keep their actions

from the public eye and since there is no complainant who feels individually victimized, there is little overt pressure on law enforcement agencies to allocate resources to the prevention or detection of such activity. Furthermore there is the issue of political commitment to create the capability in law enforcement agencies to undertake such activities as a regular procedure. Both overt predatory crime and clandestine fraud and corruption are criminal activities which exact costs upon the social fabric but only the former provides a parade of individually victimized citizens. The result seems to be that in organizing agency-capability at the political level and in allocating resources within the agencies themselves, a general response is always provided to deal with overt predatory crime against individuals. By comparison, only occasional attention is paid to major fraud and corruption which is treated as an atypical phenomenon, often left to the happenstance of discovery by the media, and not regarded as the task of any official body generally to monitor, prevent and detect.<sup>23</sup>

This argument does not call for full enforcement in one area of non-violent property crime and no enforcement in another. It calls for a genuine appraisal of political will and agency resource allocation to deal with both categories and not simply concentrate on the conduct which produces individually identified victims. Clearly the entrée of law enforcement into a general capability to deal with professional-managerial fraud and corruption will create immense difficulties and will involve serious civil liberties issues. But we cannot continue to view with equanimity the present imbalance of enforcement priorities in favour of the overt category of non-violent property crime over clandestine fraud and corruption. The ramifications have to be fully explored and rational choices made in developing a consistent law enforcement policy.<sup>24</sup>

## 2. Apportioning Responsibility for Services

So far we have concentrated upon fair law-enforcement priority-setting as a major concern for politicians and police policy-makers. But one of the well-recognized phenomena of policing systems is that large proportions of their activity are quite unrelated to such matters. Various estimates have been made about the extent of the general service and referral role of the police vis-à-vis other activities and all observers agree that it is considerable. Despite problems of definition



whereby it is difficult or impossible to separate out from a particular activity its several possible effects, it is usually estimated that not less than half, and often as high as eighty per cent, of police action is unconnected with direct efforts at the prevention and detection of crime.<sup>25</sup> As a disciplined, organized body operating with generally good communications on a round-the-clock basis, the police have proved particularly useful to both governments and the public-at-large as a generalized provider of assistance in situations such as natural disasters, domestic and trade disputes, lost and found property, missing persons, dealing with the mentally-ill and a myriad of other tasks undertaken by police when other social agencies, having no 24-hour capability, are unavailable or when no special provision has been made to deal with some problem and it falls to be dealt with by the police as the helper-of-last-resort.<sup>26</sup>

This vast area of police activity clearly calls out for re-appraisal. Is it that the police are trained essentially as the preventers and detectors of crime and are then deployed on many menial tasks for which they are over-qualified and which could be dealt with less expensively by other means? Is it that public expectations of the availability of police response have been allowed to grow to an extent which can no longer be justified or afforded?<sup>27</sup> Or is it that the helping and referral role cannot be so extricated from the prevention and detection roles and that all such contacts with citizens improve police-citizen relations and provide valuable opportunities for police to assess appropriate responses to perceived needs in the community?<sup>28</sup>

Earlier we saw that cases of individual victimization place a heavy demand upon police to respond to allegations of crime. In a similar manner, individual calls for police services of a type unrelated to criminal matters make equally heavy demands. Just as the major question in organizing the response to criminal offences was an assessment of the social harm being inflicted (the filing of a crime complaint by a citizen being only one of the factors to be considered) so too in demands for service, the task is to evaluate the type of calls which ought to be serviced on a priority basis and the types which should be dealt with by alternative strategies. For the police manager to organize his resources so as to be able to respond to every public call for assistance is for him to misuse the facilities at his disposal and to delegate his management prerogatives to whichever

citizens choose to send in a call for police assistance. Obviously the first need is to analyse the totality of calls for service and arrange a set of priorities to be followed in deciding which are to be followed up by sending police to the scene. All ranks in the police and, wherever possible, members of the community, should be consulted in deciding the criteria which justify adopting different police responses to the various situations. The second major need is to communicate that policy to the police service as an operational plan and to the public at large in order to reduce disappointment and misunderstandings over unrealistic expectations of police response-capability.

#### F. SOCIETAL AND INSTITUTIONAL CHANGE

Identifying two of the major problems as political discretion in the organization of law enforcement capability and agency discretion in internal resource allocation raises fundamental questions about effecting changes in democratic society. We often proudly claim that liberal democracy is the best (or least worst) system of political economy. But, by concentrating our general enforcement capability and resource allocation against overt predatory crime and continuing to regard professional managerial fraud and corruption as a relatively infrequent aberration we make the mistake, common to all systems of political economy, of ensuring benign enforcement of the law against elite groups. This is a problem for all political systems; it matters not the basis of the elitism, whether by birth, education, wealth, membership of "the party" in a one-party state or some other criterion. The protection of liberal democracy from encroachment by a more totalitarian political system will require that attention be paid to many complex economic and social factors but one of them could well be the eradication of the unequal enforcement of the law based on a biased law-enforcement-capability factor.<sup>29</sup> Whether an elite group is likely to design a system of criminal justice capable of policing itself effectively simply out of some evangelical belief in the moral superiority of its position or because to do so would be to preserve a political system judged most able to produce social justice, is the fundamental issue which has to be faced. Our success in producing a criminal justice system which is capable of enforcing the law across all socio-economic boundaries will be one -- but only one -- of the important factors tending to the continuity and vitality of the liberal democratic form of government.<sup>30</sup>

## PART II -- PRESENT SOLUTIONS

### A. INTRODUCTION

Major roles are played by both the federal and the provincial governments in the prevention and detection of crime and in the organization and delivery of police services. Criminal law and the procedure in criminal matters are, by subsection 91(27) British North America Act,<sup>31</sup> within the legislative competence of the federal government, while the administration of justice in the province is an area of provincial legislative competence under subsection 92(14). As a result, substantive criminal offences and many law enforcement powers such as arrest,<sup>32</sup> search and seizure,<sup>33</sup> electronic eavesdropping<sup>34</sup> and similar provisions are to be found in federal statutes while legislation dealing with the organization of police forces is largely to be found in provincial statutes.<sup>35</sup> The division is not, however, a strict one, since, by far the largest police force in Canada, the R.C.M.P., is currently organized and administered under federal legislation<sup>36</sup> and many police powers and duties, such as those relating to police use of firearms, are, in fact, the subject of provincial legislation.<sup>37</sup>

In this section, it will be essential to consider the way in which various enforcement agencies are organized, both legally and functionally. Although a legislative body may simply grant powers to a peace officer,<sup>38</sup> in fact such powers are almost always exercised by that person within the context of a particular organization. As a result of this, it will be necessary to see how that agency is organized and administered in order to appreciate how, if at all, the powers which are granted to its individual members are, in fact, used. Only in this way can the total enforcement phenomenon be understood.

Let us suppose, for example, that 2% of all applications for insurance benefits from the Unemployment Insurance Commission and 2% of all applications for research money from Canada Council are fraudulent. Substantive law makes fraud a crime and various enforcement

provisions exist for its suppression by arrest, prosecution, conviction and punishment. If special provision is made for investigative capability to detect frauds upon the Unemployment Insurance Commission (by employing a group of Commission employees to monitor applications, uncover falsehoods and lay charges) but no such action is taken in respect of frauds upon Canada Council, criminal statistics will indicate that people defraud the Unemployment Insurance Commission. Obviously we ought not to assume from this that no-one defrauds the Canada Council. Even less should we make the assumption that, because the federal legislature has proscribed fraud in a general manner and exempted no special group of perpetrators or victims, it has thereby made provision for equal enforcement of the law in that regard. Thus, in addition to the proscription there has to be a capability-factor built into the "policing" arrangements before equal enforcement becomes possible.

The main thrust of this method of analysis is to consider the organizations which undertake the general policing function and the personnel by whom they are staffed and led. This approach is necessary to complement research activities, being undertaken elsewhere in the Police Powers Project, which seek to identify the arrest, search, seizure and surveillance powers which are necessary to ensure effective law enforcement and to provide safeguards against their abuse. No study of police powers can be complete unless equal attention is paid to the organizations by which, and the individuals by whom, these powers are, in fact, exercised.

#### B. THE CONSTITUTIONAL ORGANIZATION OF PUBLIC POLICING

Since Confederation, the courts do not seem to have seriously questioned the proposition that policing of the provinces falls within the ambit of the "administration of justice" under subsection 92(14) of the British North America Act and is therefore a specific provincial responsibility.<sup>39</sup> In response to this, each province has enacted legislation placing obligations for policing and the maintenance of law and order on local authorities, such as municipalities, and others. These obligations have then been discharged, in certain cases, by the creation of municipal and provincial police forces or, by contracting for the supply of policing services from the provincial police force (if there is one) or from the R.C.M.P. The legislation usually purports to outline the

general powers and duties of the members of such police forces,<sup>40</sup> makes provision for their control and supervision by Police Boards (comprising both elected and appointed members) and Provincial Police Commissions (or their equivalent), the members of which are appointed by the Lieutenant-Governor-in-Council. By these devices it is hoped that a balance can be struck between strict democratic theory requiring civilian control of the police and partisan party-political interference which bedevilled so much of early police history on the North American continent.<sup>41</sup> In some cases, however, municipal police are under the control of a committee of council so that it cannot be said that the model which attempts to strike this balance is a universal one. Superintending the whole structure is the Attorney-General of the Province<sup>42</sup> who is the Minister of the Crown ultimately responsible to the Legislature for policing services in the Province. Under these provisions Canada presently has two provincial police forces (in Ontario and Quebec) and 424 regional and municipal police forces.<sup>43</sup>

These arrangements for the provision of police services by the provinces, however, ignore the extremely important role played in Canadian policing by the R.C.M.P. Originally founded as the North West Mounted Police in 1873, this federal police force appears to draw its constitutional authority from the "peace, order and good government" provision of section 91 of the British North America Act. By 1904 it had become the Royal North West Mounted Police and finally, in 1920, the R.C.M.P.<sup>44</sup> Its original task was to patrol the vast federal territories purchased from the Hudson's Bay Company in 1869 and a combination of historical accident and economic fortune helps to explain its growth to a position today where it is roughly three times the size of the next largest Canadian police forces.<sup>45</sup> The single major factor contributing to this growth is the fact that the R.C.M.P. contracts general policing services to many municipalities and other local authorities and to all of the provinces except in Ontario and Quebec. The remaining R.C.M.P. endeavours include, enforcing federal statutes<sup>46</sup> (other than the Criminal Code) in all of the provinces, policing the Northwest Territories and the Yukon and providing a national security capability.<sup>47</sup>

The Solicitor-General of Canada is responsible to the House of Commons for the actions of the R.C.M.P. Where, however, the R.C.M.P. is present in a province performing police duty on contract to a municipality,

other local authority or to the province itself, it appears that the local R.C.M.P. commander should, in principle, be responsible to the Attorney-General of the Province (or his equivalent) since, in such cases, the R.C.M.P. officers are being employed to discharge policing duties which subsection 92(14) of the British North America Act places upon the province. The contracts do not, however, expressly address this point and the current unsettled situation has recently been criticized in a Royal Commission Report which has suggested that, in the future, such contracts should "clearly set out that the R.C.M.P. commander is responsible to the Attorney-General of the Province".<sup>48</sup>

The R.C.M.P. Act is currently drafted in a general form not unlike that of provincial Police Acts in that it outlines the constitution, organization and disciplinary procedures of the force. In particular the main duties of members of the force (other than the execution of warrants and conveyance of prisoners) are declared to be as follows:

to perform all duties that are assigned to peace officers in relation to the preservation of the peace, prevention of crime, and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody.<sup>49</sup>

This approach would appear to support an allocation of police resources which favours preserving the peace, preventing crime and arresting offenders. Whether this is an accurate statement of how such resources are, in fact, allocated or, more importantly, whether they ought to be so expended will be considered in Part III.

In addition to being the federal department responsible to Parliament for the R.C.M.P., the Ministry of the Solicitor-General plays an important catalyst role in encouraging research into police matters and in funding particular programmes, such as crime prevention initiatives, for all of the police forces in Canada. This Ministry has, in recent years, also organized and assisted in sponsoring conferences to which police representatives and researchers from Canada and abroad have been invited for discussion of such matters as the police role,<sup>50</sup> selection and training,<sup>51</sup> research,<sup>52</sup> police productivity<sup>53</sup> and preventive policing.<sup>54</sup>

The result of these arrangements is that, although policing of the provinces is constitutionally a matter within provincial competence, the largest police force in the country is the federally-organized and financed R.C.M.P. and much of the impetus for police research and innovation in the delivery of police services is coming from the federal Ministry of the Solicitor-General. Further, the largest single category of R.C.M.P. officers is made up of those who are performing contract services to various provinces, municipalities and other similar local authorities throughout Canada (though not in Ontario or Quebec). Whatever the merits of the argument that they are under the constitutional jurisdiction of the Attorney-General of the province in which they are serving, it is clear that de facto and de jure they are also under the operational control of the R.C.M.P. Commissioner in Ottawa who is, in turn, answerable to the Solicitor-General of Canada.<sup>55</sup> Thus, in a country which apparently set out to have the policing function within the provincial sphere of control, we have a situation where the federal government could exercise very considerable influence over public policing policy.

All of the above speaks to the constitutional responsibility of the provincial and federal governments for providing police services in the provinces and territories of Canada. But nothing has yet been said of the constitutional position of the office of constable per se. It is clear that the office of constable pre-dated the 19th Century statutes by which modern police forces were created in England and Wales.<sup>56</sup> As a result it is often claimed that a constable has an "original authority" derived from the common law, in addition to his statutory duties and responsibilities.<sup>57</sup> Whether a constable in Canada today is limited to possessing only the powers and privileges granted to him or her by the statute under which he or she is appointed or whether the independent status recognized at common law still adheres to the office is a moot point. In some cases it appears that an attempt has been made to preserve the common law in addition to any statutory powers, e.g., in Ontario, municipal police members (but not members of the Ontario Provincial Police) are expressly stated to "have generally all the powers and privileges and (to be) liable to all the duties and responsibilities that belong to constables".<sup>58</sup> The R.C.M.P. Act, uses similar language but relates it to "peace officer" rather than "constable" status by declaring that "Every officer ... has the powers, authority, protection and privileges that a peace

officer has by law"59 and "law" in this context could be construed to include both statute and common law. Thus the current statute law in Canada is far from uniform on the powers and privileges of the public police and the constitutional status of the office of constable is far from clear. This point assumes real practical importance on the issue of the amenability of a Chief Constable or Chief of Police to democratic controls. If he holds an original authority derived from the common law does this, to some extent, insulate him from supervision by a Police Board, Attorney-General or Solicitor-General, and not just from interference in individual cases, but on policy matters as well? This topic will be discussed in Part III.

#### C. PUBLIC POLICE ORGANIZATION

The organization of public policing will be discussed under two main topics, viz: the functional division of police activities and human resource development (including recruiting, training, promotion policy and labour relations).

##### 1. Functional Divisions

The functional organization of most Canadian police forces is based on the distinction between operations and administration. In general "operations" relates to the provision of police services directly to the public whether in relation to crime prevention or detection or to the general assistance role discussed earlier in Part I. "Administration", on the other hand, usually relates to the myriad of support services which have to be maintained to enable trained personnel to be available at the time when and the place where they are required by operational imperatives.

Operations will usually be divided into field services and criminal investigation units, although in many urban areas a further division of function to undertake specific responsibilities for traffic regulation, accident prevention and related enforcement activities may be necessary. In rural areas, however, this last activity is usually dealt with as part of the general field services function.

Field services are essentially based on a group of radio-equipped police cars which are assigned to patrol a



particular geographic area. This patrolling function is believed, in traditional police theory, to assist with preserving order in public places and to contribute to the prevention of crime. Police assigned to such patrols are also available to answer calls for assistance from citizens who telephone their requests to the police communications centre usually operated on a 24-hour a day basis from police headquarters. In addition these patrols are available to deal with any incidents which happen to occur in their view and which call for police action. By far the largest part of public police resources is devoted to the maintenance of this system as its front-line operation. Although foot-patrols, community service officers, ethnic squads, juvenile bureau personnel, emergency task forces, detectives, supervisory staff and other specialist units have proliferated to provide additional coverage for limited or particular purposes, there is no doubt that the basic unit of policing in Canada today is represented by this round-the-clock patrolling operation, controlled and despatched from a central communications centre. This control room is, in turn, in contact with similar police operations in surrounding areas and also has access to centralized police records (through the Canadian Police Information Centre (C.P.I.C.)) and to certain public records, e.g., provincial motor vehicle registries.

The criminal investigation function can be subdivided into two main categories. First, there is the "re-active" role. Detective work of this type depends upon a report of crime being made by a citizen and the job of the detective involves going to the scene, interviewing witnesses, taking possession of materials found at the scene or elsewhere from which it may be possible to identify the culprit, checking records to identify possible suspects either by reason of the description of alleged offenders or the method used and, when appropriate, interviewing persons suspected of being participants in the crime. The work also entails processing cases for prosecution in court by preparing confidential instructions for the Crown, making sure that witnesses are available for court, preserving continuity of exhibits, maintaining accurate fingerprint and photographic records and filing necessary reports. Reactive work can be organized to begin when patrol cars have filed an initial report of the crime; alternatively it may be organized around a team concept whereby constant interaction between patrol officers and detectives in a particular zone or district is encouraged. In some forces every

criminal case that is reported by a citizen is referred to detectives for follow-up enquiries. In other forces a decision is made by a supervisor about whether such a reference should be made or not. The criteria upon which such a decision is made are very important and pinpoint an area of crucial policy-making by the supervisor involved. "Re-active" detective work is often carried out within offence-specific squads, especially in the larger urban centres, e.g., homicide squad, hold-up squad, fraud squad.

The second major category of detective work relates to the "pro-active" function. Here, the squad is relieved of responsibility for the investigation of reported crime and is asked to concentrate on the development of information to indicate persons who are believed to be actively engaged in the commission of crime. The task is then to keep them under visual or electronic surveillance and assemble other supporting evidence with a view to making an arrest, either when the planned crime takes place or, if practicable, even before actual victimization occurs, e.g., for conspiracy to rob. Like "re-active" detective work, certain kinds of "pro-active" detective capability are directed towards offence-specific activities. This is particularly the case in the so-called victimless crime fields of drugs and "vice" (e.g., prostitution and gambling offences). In some cases, however, pro-active detective endeavours take on a purely "intelligence" function which is separated out from the work of the detectives who will carry out actual enforcement activities such as executing search warrants, making arrests, preparing confidential instructions for the Crown and giving evidence in court. The work of such an intelligence unit will not be "offence specific" although its objectives may have certain specific types of activity in mind, e.g., organized crime or white-collar crime.

"Re-active" detective work is, by far, the more common activity and is heavily dependent upon citizen co-operation in providing information and identifying possible culprits. Thereafter, a large part of the effort is expended on following routine non-contentious procedures. "Pro-active" detective work, by comparison, employs a much smaller proportion of police investigative resources. While sometimes routine and painstaking in its evidence collection stage, it nevertheless raises acute problems in striking a balance between providing effective law enforcement and safeguarding civil liber-

ties since it is usually involved in the development and use of informants, participation in electronic eavesdropping, deciding upon delicate questions of strategy to obtain evidence but avoid entrapment and making difficult judgment-calls on when the police ought to intervene to prevent danger to innocent victims.

The multiplicity of other tasks undertaken by the police, from supervising large gatherings at sports and similar public entertainments to policing scenes of industrial unrest, such as strikes and lock-outs, does not detract from the fact that the two current mainstays of general police strategy and the two main consumers of resources are "patrol" and the "re-active" detective function. Much of the rest of police activity is centred around placing that patrol and detective capability in position or providing assistance (such as lock-up facilities and referral services) to deal with their product.

## 2. Human Resource Development

Amongst the most important administrative tasks which have to be undertaken in support of the operational arms of the police service are those which relate to attracting talented recruits, training them in the democratic tradition, providing challenging career-development programmes to ensure an adequate supply of supervisory and managerial personnel and making provision for open communications between senior management and the police associations or unions.

### (a) Recruitment and Selection Procedures

Current Canadian police recruitment policies emphasise three main areas of concern, when reviewing a candidate: (1) physical attributes such as age, height, build; (2) educational ability, and (3) background checks to provide information on any criminal record and details of the candidate's associates and work record. On the question of physical attributes the history of the 1970's has been that of a gradual willingness on the part of police to recognize the arbitrary nature of certain age and height restrictions but a much more guarded attitude towards putting any new criteria into actual practice as force recruiting policy. Thus, in 1972, at a conference on The Police Function in our Changing Society<sup>60</sup> sponsored by the Solicitor-General of Canada, a working group drawn from various police forces across Canada proposed

that a lower height requirement would allow for more minority group recruiting. Further, in 1974, The Task Force on Policing in Ontario<sup>61</sup> recommended inter alia that individuals of lesser stature than 5ft. 8 ins. should not be precluded from joining Ontario police forces, that arbitrary age restrictions should be removed provided the candidate had reached the age of majority (18 years) and that poor vision, which could be corrected by the use of glasses, should not be a disqualification for police service. Indeed, the Province of Ontario gave effect to these recommendations by passing regulations<sup>62</sup> which removed the existing age range of 19-36 years, scrapped the minimum height requirement of 5'8" and abolished the minimum weight requirement of 160 lbs., extending the recruiting field to any suitable candidate over the age of 18 years. In practice, however, each police force in the Province sets its own minimum standards above this level so that most forces still recruit within a much narrower band of physical criteria than the provincial minimum standard would allow.<sup>63</sup>

On the question of educational requirements, most police forces in Canada now recruit at a minimum educational level of "grade 12 or the equivalent". Grade 11 will, however, satisfy some forces and the words "or the equivalent" are sometimes given an elastic interpretation if all other factors point to the candidate's suitability. No police force in Canada currently requires a university degree or community college diploma as a prerequisite to recruitment. (But see the next section on Education and Training.)

All police forces take the question of the background check very seriously, not simply to ensure that there is no criminal record and that the candidate's associates and prior work record can be assessed but, it has been suggested by a former senior police officer, to find out his or her real motives for wanting to be a police officer.<sup>64</sup> Those candidates who have successfully negotiated the medical, educational and background checks are interviewed either by a recruiting officer or an interviewing board who are sometimes assisted by a psychologist. A few police forces, the R.C.M.P. and Peel Regional Police in Ontario for example, use psychometric tests as a means of assessing a candidate's suitability for police work. The efficacy of such tests is much debated.<sup>65</sup> Somewhat more controversial is the use of the polygraph in pre-employment screening. This has already occurred in the U.S.A. to some extent, has been used in

Canada by the Calgary Police and has been considered (though not approved) for use in British Columbia provided that appropriate criteria for its use by qualified personnel can be devised.<sup>66</sup>

In addition to questions of physical, mental and emotional attributes, considerable interest has arisen over ethnic minority recruitment and the recruitment of women. Recommendations that the ethnic and cultural composition of a police force should be in rough conformity with that of the community they serve and that male and female officers should be recruited with equal opportunity for advancement, were put forward in 1974.<sup>67</sup> They have been forcibly reiterated on several occasions more recently with particular reference to problems of police-community relations.<sup>68</sup> Efforts in the intervening period of five years have not apparently succeeded in producing the suggested ethnic balance. Although some police forces still have not appointed women, considerable progress in this regard has been made in certain others.<sup>69</sup>

A crucial factor in recruitment and selection criteria is that all police are required to commence employment as constables and from this source, senior police positions must, in time, be filled. As a result, recruitment and selection policy has to have two separate (and not necessarily compatible) goals: (1) to provide a sufficient supply of efficient constables, and (2) to provide a source rich enough in talent to staff every supervisory and senior management position in the years ahead.<sup>70</sup> The advantages and disadvantages of this situation will be discussed in Part III.

#### (b) Education and Training

Police organizations exist in Canada at the federal, provincial and municipal levels and one result of this is that several different police education and training schemes have evolved to supply these disparate needs.<sup>71</sup> Currently there could be said to be four main models of police education and training. The first and most traditional one is based upon the separation of such activities from the post-secondary adult educational mainstream. It generally involves recruiting the vast majority of entrants at the grade 11 or 12 educational level, and providing basic training and in-service courses, in separate and independent premises, e.g., R.C.M.P. Depot Division at Regina, Saskatchewan, Canadian Police College, Ottawa and the Ontario Police College at Aylmer.

The second model is similar to the first except that the actual education and training programmes are carried out on a university or college campus. Academic staff teach such subjects as communications, criminal justice and social service systems, physical fitness and swimming. Police staff teach police organization and administrative procedures and lawyers from the provincial Attorney-General's department undertake lectures in criminal law, evidence and procedure. Judges and counsel also come to the campus to assist in "mock trials" staged as part of the course to prepare police for giving evidence in court, e.g., the Saskatchewan Police College operates in this fashion on the campus of the University of Regina.

The third model involves the idea that many of the people working in the criminal justice system, while having quite separate education and training needs, also have a vested interest in knowing how the system works as a whole. Thus from police at the "front end" of the system through to community corrections officials and custodial personnel, many of the professional participants in the criminal justice system ought to be able to learn from each other, share certain facilities and programmes, and provide a basis for some system-wide education and training policies to be developed in cooperation with colleges, universities, public schools and community based organizations. This is the model currently being used in British Columbia where the Police Academy is only part of an integrated Justice Institute which also provides education and training facilities for sheriffs, probation officers, correctional personnel, court staff and others. This is still a relatively new experiment which commenced in 1978 and is soon to be extended to provide a public education capability.

The fourth, and by far the most ambitious, model involves the attempt fully to integrate police education and training schemes into the adult educational mainstream. In this model, would-be police officers first enrol in a provincially organized and officially endorsed two and one half year community college program studying French, philosophy, mathematics and the humanities. Other studies include crime, criminology, penal law, and aspects of police patrol, investigation and interrogation. Selected candidates then complete their education with a 15 week course at the provincial Police Institute. This model is currently in place only in Quebec. By 1982 it is hoped that all direct recruiting into Quebec police forces of students who have not followed

this regime will be at an end. This system not only encourages the acquisition of several years of post-secondary education prior to entry to the police force but, when fully operational, will require it. This approach, therefore, makes a frontal attack upon a major problem in police recruiting, that of attracting a good cross-section of well-educated recruits at the university and college level.<sup>72</sup> Efforts to recruit more policemen who already possess university degrees and college diplomas before entering the police service have met with some success but the mere fact that there are more policemen than ever before with college degrees does not mean that police are better educated now (relative to the population at large) than they were in former times nor does it mean that they are necessarily more able than their predecessors. Indeed, to continue to recruit largely at the high school level is probably to fail to keep pace with events. Whereas in former times of less readily available educational opportunity, people were attracted to police work who had the ability but not the chance to go on to further education, present arrangements for student grants and loans allow such students to proceed to university. The high school level recruit of today is not therefore drawn from a pool as potentially able as the high-school recruit of former times.<sup>73</sup> This crucial factor has major implications for current promotion policies which will be dealt with in the next section.

The various police training facilities at the municipal, provincial and national level provide a continuum of recruit, in-service, specialist, supervisory and management training which extends from orientation, local by-laws, force policy instruction (e.g., at the municipal level) through recruit and in-service training (at the provincial level) to senior police administration and executive development training (at the Canadian Police College at Ottawa). The provision of this degree of training capacity has been achieved at considerable expense. In addition, various forces are willing to pay all or part of the expenses of serving police officers who attempt to up-grade their formal educational standards by part-time studies in approved courses at colleges and universities. Further, a limited program of full-time university studies undertaken during paid and unpaid leaves of absence is encouraged to varying degrees by different forces. The advantage and disadvantages of these initiatives will be considered in Part III.

(c) Promotion Policies

No senior officer in the R.C.M.P. has command experience in another Canadian police force. In order to be eligible for promotion to the highest ranks one must have held all of the intermediate ranks, starting at Constable. The road to the R.C.M.P. Commissioner's office, therefore, has to start at Depot Division (basic training) in Regina, Saskatchewan. On the other hand, several of the chief officers of municipal police forces in Canada have seen service in the R.C.M.P. The R.C.M.P. has played a very useful role in the past -- to a lesser extent now -- in providing a talent pool from which municipal forces could draw, if they wished, to fill their senior management positions. But this appears to be a one-way process. No senior municipal police chief has ever been appointed to a senior management position in the R.C.M.P. The senior ranks of the country's largest police force are always filled by those who have "come up through the R.C.M.P. system". The fresh viewpoint of someone previously unconnected with the force which municipal police departments obtain by hiring a former R.C.M.P. officer or a senior officer from a different municipal force is an experience the equivalent of which the R.C.M.P. has not received since 1873.

Even the appointment of former R.C.M.P. officers to the municipal police forces is on the wane. The current tendency, with some exceptions, is for career promotions to occur within the same municipal or provincial force. Indeed the current view<sup>74</sup> is that a municipal police force which does not promote one of its own members to a senior vacancy has failed in its personnel development strategy. Thus the general mode of promotion within Canadian police forces is that they occur within the same police force and that R.C.M.P. promotions are never filled by members of other Canadian police forces. The only exceptions to this general rule tend to occur when a municipal force looks for a Chief of Police outside the municipality and the position is filled by an R.C.M.P. member<sup>75</sup> or a municipal policeman from another force.<sup>76</sup> These exceptional cases may involve a province-wide or national advertising campaign and the selection is made by sifting the written applications into a short list. Each of the short-listed candidates is then personally interviewed by the Police Board or Board of Commissioners of Police of the municipality concerned.

Promotions occurring entirely within a particular police force can be based on a points system used to



weigh different aspects of the various candidates' claims for recognition, including age, length of service, written examination results, work record, supervisory assessments and performance before the promotion selection board. Written examinations play no role in promotions above Inspector.

Factors currently militating against changing the concept of purely intra-force promotions include problems of portability of pensions, collective agreements placing restrictions on the offer of promotions outside a particular force and resistance-to-change by long established and historically respected traditions in particular police forces (e.g., R.C.M.P.)

A recent innovation in promotion policy in Canada has been the setting up of an Assessment Centre at the provincial level to assist municipal police forces in selecting the most suitable candidate in performing certain exercises such as chairing meetings, planning strategies to deal with simulated police problems and similar role-playing situations. By this means a genuine comparison can be drawn based on controlled circumstances and an opportunity is thereby given to candidates to engage in the kinds of activities which their new rank will entail rather than (as is still too often the case) being selected for skills in the previous rank which are either no longer applicable or of considerably reduced significance.

No Canadian police force currently permits lateral entry of non-police candidates (irrespective of their qualifications) into supervisory or leadership positions. These are regarded as available only to serving police officers. This policy effectively enforces the rule that every senior police officer has to start at the constable level. Further, no Canadian police force currently requires that police promotion candidates hold a university degree as a prerequisite to appointment to any particular rank, such as Inspector and above. Some senior police officers have, in fact, acquired degrees but most do not. It is not unusual, therefore, for a Canadian Chief of Police to be in command of thousands of personnel and be responsible for a multi-million dollar annual budget and yet be the possessor of no formal education beyond Grade 10 or 11. This problem is exacerbated by metropolitanization and regionalization: the Chiefs of several relatively small police forces can find themselves catapulted into forming the total senior executive of a large police organization when each has only administrative experience in a small police force.

(d) Labour Relations

Enterprises are engaged in the provision of goods and services by using land (including buildings and equipment), labour and capital in as efficient a manner as possible in order to achieve the goals of the organization. In the police force these fundamentals of enterprise are particularly skewed in the direction of its labour content since 90% of all expenditures are on the salaries of personnel. It is therefore extremely important that efficient use should be made of available personnel and that union-management relations receive extremely careful handling.

There is little doubt that historically personnel-handling by senior police management was often authoritarian in the extreme. Job security of constables was non-existent, they served "during pleasure" and many injustices were done. This, to some extent, reflected general conditions in other employment situations and led, in part, to the growth of unionization as one means of securing better working conditions for employed persons. But unionization came comparatively late to policing and many police officers, who are currently serving, have bitter personal experience of the unhappy lot of the unprotected and unorganized police constables of former times who were no match for senior officers wielding complete authority.

Although, relative to some other occupations, unionization may have come late to the police service, it is clearly a potent force on the current scene. It has had larger effects than merely securing reasonable remuneration for the membership. More significantly, it represents a serious incursion into areas which were regarded as the last bastion of management prerogative, viz., the operational deployment of police personnel. Thus labour arbitrators (with the support of the courts) have enforced "two-constable" patrol cars upon some unwilling police authorities and collective agreements sometimes make balanced shifts mandatory so that, over a 24-hour period, there is potential for the same number of police to be on duty notwithstanding the very real peaks and troughs in public demand for police services during that period.

These two examples show the difficulty of the problem being faced. On the one hand there is the danger element. No one would wish a police officer to be exposed to unnecessary danger and it is conceded that two constables may provide more protection. But much of

police duty is routine and management would obviously prefer to use discretion in deciding where and when two-constable cars are appropriate rather than be faced with having to make blanket provision of this type (for example during evening and night shifts) across the whole jurisdiction. On the balanced shift question no-one would want the same constables to be employed on constant evening or night work, but a solution to this problem can surely be found without having as many police on duty at 3 a.m. as at 3 p.m.

These and other restrictions, which can prevent the availability of promotions being offered to police members serving in other Canadian police forces, pose a serious opposition to fundamental reform in Canadian policing. Even the R.C.M.P., which has no unions as such, and which provides instead for representatives of the non-commissioned ranks to speak to senior management on such matters as conditions of service, is not necessarily in a better position to make changes. The history and traditions of the force, so essential to its sense of order and continuity, can, in some respects, act against the demands of changed times and circumstances and tend to thwart innovation. This said, however, it should be noted that it is extremely difficult to make broad statements about the R.C.M.P. which remain universally accurate since the force contains such a variety of policing styles in different provinces and on certain municipal contracts. Indeed, some of the most innovative personnel deployment schemes in Canadian policing have taken place in the R.C.M.P.<sup>78</sup>

One of the major problems in Canadian policing in these cases where the membership is represented by a union is that, compared with some industries, there is no long-established tradition of negotiating with unions. As a result some senior management personnel tend to adopt a very negative stance, waiting for the union to make its demands and only then deciding which of them can be conceded as a minimum to avoid grievance procedures before arbitrators or provincial labour relations officials, or to prevent the police from taking industrial action. But senior management have legitimate demands to make too and, if negotiations with unions are to be of a genuine "give-and-take" nature, senior police officers must have a clear idea of the specific objectives they are pursuing in allocating the physical, financial and personnel resources under their command.

Where industrial action by police results in a "work-to-rule" or a "study session" inconvenience to the public can, of course, result. But the greatest problem is the possibility of a police strike in those provinces where the police have this right. At this time Canada presents a patch-work quilt of different situations in this regard. The R.C.M.P. and the police in Ontario, for example, do not have the right to strike. Municipal police in Nova Scotia and New Brunswick, on the other hand, do have this right and have exercised it recently resulting in different decisions being made by provincial authorities about whether or not to call in the R.C.M.P. which, in each case, acts as the provincial police force.<sup>79</sup>

Clearly a major policy decision is required at both federal and provincial levels on this question. Is there a class of essential-service worker, such as the police, from whom the right to strike has to be withheld? If it is withheld, what arrangements have to be made to ensure that the reasonable requests of this group for decent remuneration and conditions of service are met when their demands can not be enforced by the ultimate industrial action of withdrawal of labour? If the right to strike is granted, what is to be done about making provision for public policing services when existing arrangements can be rendered totally ineffective in large areas of the country by strike action by the police? These questions will be considered in Part III.

### PART III -- ADVANTAGES AND DISADVANTAGES OF CURRENT ARRANGEMENTS

#### A. INTRODUCTION

In this Part, the various organizational and personnel matters which were outlined in Part II will be considered, in turn, and their relative advantages and disadvantages canvassed.

The police provide an essential public service and most surveys which have been carried out in Canada show that public opinion about the police is often at a satisfactory and sometimes at a highly satisfactory level.<sup>80</sup> These findings show that, at the consumer level -- and certainly relative to other institutions in our society -- the police are doing rather well. But this must not lead to complacency. Although there are many advantages to the present arrangements for the provision of police services in Canada this must not blind us to places where improvements can and ought to be made. As society changes, the police must change too.<sup>81</sup> Even some of our most cherished police institutions may have to be changed, and perhaps changed drastically, in order to attain the goals which they were created to achieve, e.g., it is obvious that the prevention of 20th Century crime could not be accomplished by a 19th Century policing model.

#### B. CONSTITUTIONAL ARRANGEMENTS FOR PUBLIC POLICING

The major advantage of the current arrangements is that both the federal and the provincial governments have a major input into the administration of criminal justice. In this way Canada has the advantage of a trans-Canada system of substantive and procedural criminal law which each Province can then administer in the way most suited to its own particular needs by maintaining control over the ordinary police function. Thus Canada avoids the many problems involved when each constituent part of a federal entity has its own separate code of substantive criminal law and procedure (as in the U.S.A. and Australia) yet retains the ability to respond to regional

differences of attitude towards crime and associated social problems.

But this balance is more evident in theory than in practice. As is clear from Part II, despite the constitutional scheme which appears to have intended that the provinces possess the "policing" power, all but two of them (Ontario and Quebec) are, in fact, policed on contract, by the R.C.M.P., the federal force. In addition, many other municipalities and other local areas outside Ontario and Quebec are policed by the R.C.M.P., by means of similar contracts.

Only historical and economic accident explains this anomalous position. All of the provinces have had provincial police forces of their own at some stage in Canada's history. British Columbia had its own police force in 1858 (i.e., 13 years before it entered Confederation) and the B.C. Provincial Police maintained a proud independent existence from 1871 to 1950.<sup>82</sup> Alberta had a provincial force from 1917 to 1932, Saskatchewan from 1917 to 1928,<sup>83</sup> Manitoba from 1870 to 1932, New Brunswick from 1927 to 1932, Nova Scotia from 1928 to 1932 and Prince Edward Island from 1930 to 1932. Newfoundland had a pre-Confederation force in 1935. This became the Provincial Police on entry to Confederation in 1949 but the R.C.M.P. has policed all but the St. John's area of the province since 1950. Indeed, had it not been for the Great Depression of the 1930's and the economic recession of the early 1950's -- which help, in part, to explain the demise of all of the provincial police forces outside Ontario and Quebec -- it could well be that the shape of Canadian public policing arrangements would look radically different from the picture which currently prevails.

Would it be advantageous if Canadian policing were currently typified by strong provincial and municipal forces in each of the provinces, with policing by the R.C.M.P. thereby restricted to the enforcement of non-Criminal Code federal statutes, patrolling the Yukon and the Northwest Territories and providing a national security capability?

The advantages of this would include bringing de facto Canadian policing arrangements into line with the de jure constitutional position. As a direct result, the role of the Provincial Attorney-General (or his equivalent), as the chief elected representative with ultimate

responsibility for policing services in the provinces, would be much more clearly evident than it is at present. This would be so because, no matter how clear a provincial Attorney-General's constitutional responsibility may be to control the R.C.M.P. when they are present in a province on contract, the police so employed are still subject to the R.C.M.P. Act and Regulations and thus to the operational control of senior officers at R.C.M.P. Headquarters in Ottawa. This can, in a case where provincial and federal interests do not coincide, severely lessen the control of the Provincial Attorneys-General and place individual R.C.M.P. officers in the difficult position of having to march to the tune of two different drums.<sup>84</sup>

It is not only Provincial Attorneys-General who can find the R.C.M.P. a challenging agency upon which to exert proper influence. As a new federal ministry conceived in 1965-66 the Ministry of the Solicitor-General had to struggle to legitimize a policy role dominant to that of the R.C.M.P. and the other agencies under its control.<sup>85</sup> This would be particularly so in the case of the R.C.M.P., with 100 years of history and tradition, confronting a newcomer to the federal bureaucracy. The awesome task of the Ministry of the Solicitor-General can be compared to its English equivalent, the Home Office, which was already one of the principal central government departments before the advent of modern policing in 1829. The Canadian system is thus the precise opposite of that prevailing in England. There, prestige and experience lies with the agency representing democratic control whereas here, prestige and experience lie with the police organization. This clearly has serious implications going to the roots of liberal democratic philosophy -- that the police ought to be subject to effective public accountability.

The major disadvantages in changing the current situation include the fact that the R.C.M.P. is a world-famous organization with an exceedingly proud tradition of service which has amply earned its phenomenal growth rate by providing efficient policing and, therefore, ought not to be restructured. That other historical and economic events have contributed to its present size does not detract from the fact that it is a growth industry because it has met the challenges of the market place in police services. In short, provinces and municipalities have chosen to contract for a product of known quality rather than take ultimate responsibility for organizing,

equipping and maintaining their own police forces. (The complexities of the provincial and municipal policing contracts for R.C.M.P. services are such that it is difficult to know whether, at present, they are priced in such a way that the purchasers receive a hidden federal subsidy for provincial policing. The "market-place" argument is not, therefore, without difficulty.)

Another disadvantage to changing the status quo is that much of the capability for policing sophisticated, non-violent property crimes of the type which our present policing arrangements tend to under-enforce (because of structural biases in our delivery systems) lies with the R.C.M.P. Commercial-crime capability in the R.C.M.P. dwarfs to insignificance that of other Canadian police forces, with only the O.P.P. and the S.Q. coming close, although some advances have been made in recent years in this area by certain large urban forces such as Metropolitan Toronto and Montreal Urban Community police.

A further disadvantage to changing present arrangements is that, with the R.C.M.P. being non-unionized, they provide a ready, alternative source for the supply of general policing services to local authorities outside Ontario and Quebec when a municipal police strike is called or threatened either by the police association or by some national union which has been recognized as the bargaining agent for the police (e.g., C.U.P.E. in Eastern Canada).

The arguments, therefore, go both ways, but even if those in favour of change were to be the more objectively compelling, it is clear that the strong public feeling of national pride in the R.C.M.P. will make it very difficult to attempt any radical re-structuring of the force.<sup>86</sup> Strict constitutional conformity is hardly likely to provide the sort of political base from which to interfere with such a national institution. But it may well be that one of the most effective ways of re-shaping policing arrangements at the macro-level in Canada would be for each province outside Ontario and Quebec to recreate its provincial police force. Just as the B.C. Provincial Police was merged into the R.C.M.P., so the reverse process could occur and R.C.M.P. members serving as the provincial force would have the option of becoming the founding members in the new Provincial Police Force in that province.



Generally the provincial police forces in Ontario and Quebec have shown that they are able to produce competent policing services of a sufficient size and diversity not only to provide general law enforcement and peace-keeping to smaller communities who do not have their own police forces but also to provide the sophisticated detective capability required for taking action against white-collar and organized crime.<sup>87</sup> No doubt the more populous provinces could follow suit,<sup>88</sup> but there comes a point where a province may be too small to provide a large enough police force to furnish the full range of preventive, investigative and service capability, e.g., P.E.I.<sup>89</sup>

If Canada contains provinces which may be too small to support thoroughly independent provincial police forces with a full panoply of support services and a sophisticated range of investigative capability, the more so is it true that many so-called municipal police forces exist which are clearly below optimal size. Thus, as recently as 1974, the Task Force on Policing in Ontario reported<sup>90</sup> that the 179 municipalities in the province then providing policing by means of separate, locally operated forces, no less than 103 of them had fewer than 10 personnel. Considerable activity since then has reduced the number of small police forces but has not eradicated them completely. Indeed the one-constable municipal force and those with less than a dozen members can be found right across Canada.<sup>91</sup>

It is extremely hard to justify such policing arrangements in modern times. It is often claimed that the local policeman responsible for the whole town or village exemplifies local control over the police function and provides a personal service, the continuity of which is lost when a larger force contracts to police the same place. But no small force provides a full range of police services and it is bound to seek assistance from larger surrounding forces when circumstances call for anything much more than a purely watchman function since the resources of the very smallest unit are overstretched by more sophisticated demands. Further, any bias which the patrol and detective functions as currently organized, emphasize by concentrating on overt predatory crime-control rather than clandestine fraud and corruption, is exaggerated by the ultra-small police operation since the capability-factor referred to in Part I is, by definition, absent. Thus, against the claims of local autonomy and long tradition for the retention of very small but separate municipal police forces, there

lies an argument that in no real sense are they independent. In a very real sense, however, they fail to provide adequate policing over a range of services which are part of the stock-in-trade of the properly organized, optimally sized police force.

It could, therefore, be said that a major structural weakness in the over-all design of Canadian public policing is that while its largest police force may be too large, its smallest police forces are definitely far too small.

We now turn to the general manner in which Police Acts (by whatever name called) are drafted in Canada. As a general rule they employ a very broad framework which seeks to establish the force<sup>92</sup> or permit its establishment by certain local authorities,<sup>93</sup> outlines the duties and responsibilities of the police,<sup>94</sup> and makes provision for the disciplinary control of its members.<sup>95</sup>

This approach derives from earlier times when the job of law enforcement was much simpler than is currently the case. Its advantage lay in emphasizing local autonomy in crime control and the task of the legislature was seen as simply ensuring that there was some police presence in the various parts of the province. The major disadvantage with this approach, in the modern context, is that to require small municipalities to be responsible for law enforcement encourages the proliferation of non-viable police organizations which, although they are able to cope with basic patrol, service and similar "watchman" functions, have no capability to provide a full range of police services and thus are unable to enforce the law across all socio-economic boundaries in its community. In short, each provincial legislature should turn its mind to the minimum size of police force which can satisfy this capability requirement and not permit forces smaller than this to continue in, or be brought into, existence. To provide a legislative framework which does not discourage (and even encourages) extremely small police operations is to exercise political discretion in such a way as to severely circumscribe the law enforcement capability which exists in the jurisdiction affected.

In defining the scope of police duties, much of the legislation adopts a "full enforcement" philosophy either directly or tacitly, i.e., police are directed to prevent crime, keep the peace and enforce the law in global terms

without any priority-setting occurring at the legislative stage. In fact, this results in "selective enforcement" of the law by the police since to enforce all of the law all of the time would be impossible. But upon what criteria are these "selective enforcement" decisions made? The legislature never turns its mind to the problem, yet neither does it delegate the power to draft such law-enforcement policies to ensure that decisions of this kind are not capriciously made.<sup>96</sup> If the legislature does not have the expertise to define enforcement policies within the body of the statute it could delegate the authority to do so to the group which ought to have the expertise, i.e., the Chief of Police and his senior executives.<sup>97</sup> The question of whether this expertise currently exists in Canadian policing will be discussed in the section dealing with promotion policy (post). Certainly if senior police management are regarded as full-blown professionals in the field of police administration, a legislature should not hesitate to delegate to them the policy-making function of identifying appropriate criteria for engaging in selective law enforcement.

This raises, of course, the question of whether senior police management should be the recipients of such policy-making powers. If this role is occupied by the Chief of Police, what is the function of the Police Board (or its equivalent)? Is a Chief of Police subject to policy direction from his Police Board? We saw in Part II that the constitutional status of the office of constable (and thus of the Chief Constable or Police Chief) in Canada is not clear. What is certain is that a Police Board cannot interfere with police handling of individual prosecutions.<sup>98</sup> Because of this, Chiefs of Police sometimes claim the same "complete immunity from external influence necessary in the enforcement of the law in particular cases" to apply to general enforcement policy as well.<sup>99</sup>

There is no advantage to be gained by the present uncertainty. It is difficult, however, to decide upon which side certainty should be resolved. If the Chief of Police has the power then he is effectively free from control by his Police Board. If the Police Board has the power, then the dangers of narrow party-political influence colouring policy direction to the Chief of Police may be present. If, however, we are satisfied that improper political interference with police independence has been solved by the Police Board concept and the supervisory role played by Provincial Police Commissions,

then there would be nothing wrong, in theory, with granting to the Police Board the right to lay down general principles of prosecution policy and enforcement priorities which would be generally known and thus the subject of attention from the media and the public. Again, however, one is confronted with the problem of small, part-time police authorities who would have neither the resources nor the expertise to shoulder this function and this is another reason why they ought to be disbanded and replaced by properly-staffed bodies having policy-making potential.

All of this would be in sharp contrast to the current state of police policy-making on enforcement priorities, most of which is either unwritten or unformulated.<sup>100</sup> General prohibitions against criminal conduct and general provision for police services to enforce them fail to ensure effective law enforcement. Modern police statutes require more definition to ensure that the law enforcement vehicle contains the necessary capability factor and that law enforcement policy-making be made by politically accountable bodies and be both public and explicit.

## C. PUBLIC POLICE ORGANIZATION

### 1. Functional Divisions

The major advantage of current resource allocation in public policing, with its emphasis on patrol and "re-active" detective deployment, is that it directs the bulk of activity at places where individual citizens make demands for police services. The patrol function is essentially there to service public calls for assistance and the re-active detective function is there to respond to cases of individual victimization, whether it involves offences against the person or offences against property. There can be little doubt that this policy plays a large part in fostering the public attitude that, relative to other institutions, the police perform their task in the "satisfactory" or "highly satisfactory" manner which the surveys, referred to in the introduction to Part II, indeed show.

The concept of policing in the democratic tradition is heavily dependent upon the police maintaining public co-operation. The number of police officers relative to the population at large, which might vary from 1:1000 in

rural areas to 1:400 in the largest urban centres, is such that a more coercive regime, operating without public support, would not be a feasible proposition. A determination to continue to police from a basis of public co-operation together with the extremely costly nature of substantially enriching the police : population ratio, probably combine to ensure that the present provision of police personnel is unlikely to be greatly expanded, at least while the population is stable or increasing only slightly. This provides a challenge to find more efficient and effective ways in which to deploy existing police personnel.

It will, therefore, be necessary to consider both the patrol and the re-active detective function from an efficiency and effectiveness standpoint since neither of them can be supported solely on the basis that they may well contribute to good police-public relations, important though that factor is and will continue to be.

The patrol function, as appeared from Part II, is claimed in traditional police theory, to prevent crime, maintain public order and contribute to a feeling of public well-being by deterring would-be criminals and, by police presence, reassuring law-abiding citizens. It is only in very recent years that an attempt has been made to put these claims to empirical test.<sup>101</sup> Social scientists, working with the full co-operation of police authorities in the U.S.A., have not been able to verify that the police patrol function does, in fact, produce all or any of the specific benefits which its proponents claim for it. The studies are not, however, without their detractors<sup>102</sup> and further efforts are in progress to verify experimentally that, for example, the presence or absence of patrol capability has a measurable effect upon reported crimes.<sup>103</sup>

What is not in dispute here is that some police presence within a particular jurisdiction is effective relative to none at all. (This phenomenon is often made clear during police strikes.) But the problem lies in showing a direct correlation between more police and less crime. Hence the dilemma.

Do increases in crime and disorder call for increases in police personnel? Do increases in police personnel uncover more of the "dark figure" of offences which would go otherwise unreported and thus appear to contribute to increases in crime? One could, of course,

pursue this argument to a reductio ad absurdum, i.e., if we had no police to record crime our society would be "officially" crime-free. Yet the idea does contain a kernel of truth which should not be ignored by police policy-makers; that raw increases in police strength deployed in the same way as the dictates of current deployment-strategy require, is likely to be the least enterprising management solution since more of the same will be uncovered but the capability-factor will remain constant.

The challenge surely is to find alternative ways to deploy personnel to increase the range of police capability. Once more one runs into the optimal size argument. If a police-force only has a patrol capability it is not providing effective police services. Even those forces which have expanded their facilities into "pro-active" detective work, including intelligence and surveillance capability, must also ensure that their patrol resources are not being misused.<sup>104</sup> Suppose, for example, that a particular multiple unit residential building in a police area is responsible for a disproportionate number of calls for police service or reports of crime compared with a similar unit elsewhere in the same jurisdiction. Alternatively it could be that one particular shopping plaza presents similar problems compared with another. In either event, traditional patrol strategy would deal with each call for service or report of crime on a case-by-case basis and the major police management concerns would be with response-time for patrol personnel to arrive at the scene, speedy disposition of the matter and a premium placed on returning the patrol car to readiness to receive its next call.

An alternative deployment-strategy would, however, identify examples of similar residential and commercial premises with disparate crime and service-call ratios and assign personnel to ascertain if any of the factors (e.g., the quality of on-side management) which were reducing calls for police service in the "peaceful" situations are transferable to the locations which are generating disproportionate demands upon police. In this way, structural changes can be effected which prevent problems arising. If this is not done, the patrol function comprises a thoroughly re-active operation which never tackles root causes but simply applies "band-aid" remedies.

In short then, patrol activity which emphasizes quick response and speedy return to readiness for the next call without this analytical component to identify causes and encourage preventive remedies is a serious misuse of the expensive complex of resources represented by the communications centre, patrolling vehicles and the personnel who tend them.

The "re-active" detective function has also received attention from social scientists.<sup>105</sup> This is very fortunate because, although no policeman believes that the life of a real detective remotely approximates that of his counterpart in books, plays or television, even within the police service itself, the job retains a certain mystique which helps to explain its relative immunity from radical reappraisal. Much of re-active detective work is routine. There are many victims of crime to be interviewed, many scenes to be visited and many indices to be searched and fed with new information. One major U.S. study<sup>106</sup> purported to show that a large proportion of such activities are, in fact, expended on cases which, experience shows, will not be solved. This obviously raises a substantial resource-allocation question. Are there identifiable factors about a case which will indicate when it would be fruitful to pass it on to detectives? Should every case be followed up? Is assignment to the detective branch a matter of intuitive judgment by a supervisor that cannot be broken down into simplistic categories? These and similar questions about how detectives "solve" cases and how well they document evidentiary facts for the prosecutor, have been subjects of controversy between police and researchers in much the same way that the efficacy of random patrol proved to be. Social science observers watching the detective in action often cannot discover a direct correlation between what the detective claims to do and how he actually carries out his tasks. These findings are, of course, hotly disputed by many police administrators who claim that the studies fail to do justice to the skills of the detectives.

One thing is clear, much detective time is spent in investigating cases that are not, in fact, solved. This is not to say, however, that all of the time spent on these endeavours is wasted. Incalculable benefits in police-public relations may be obtained by an officer attending at the scene of a crime, taking down details, expressing sympathy, showing concern and, where appropriate, offering assistance. But is this a sufficient

return for the resources being expended? Is much of this an expensive public relations exercise? Would it be better to invest some of the resources used up in this way by extending Criminal Injuries Compensation Schemes to cover losses other than personal injuries? In this way a householder whose house had been broken into would not have an expensive (but inconclusive) police investigation but would be eligible for the replacement of some or all of his loss. A householder asked to choose, on the one hand, a cursory investigation by the patrol division with no follow-up investigation by detectives but some compensation for his loss, or on the other, a minute and painstaking (but abortive) investigation and no compensation whatever, might well choose the former. But what about deterrence? Would such a scheme not only encourage burglary but also induce false claims for compensation by householders and infuriate the private insurance industry on the grounds of public-sector encroachment on private enterprise?

Clearly it is not simply a case of adding up the total of property stolen and obtained by fraud within a particular jurisdiction and seeing if the cost of police services in that area is greater. Obviously, in all cases, police costs will be higher. The question is not whether to institute comprehensive criminal injury compensation schemes or to provide police services. A mature system will require both. But the delivery of police services has to have some regard to the relative benefits of particular detection strategies. At present, insufficient attention is being paid to deploying "reactive" detective services in as economical a fashion as possible. It obviously does not require an experienced detective to make inquiries, file basic reports and interview victims in routine, small-value property thefts. Yet in many, though not all police forces, this procedure is followed. It is one thing to pay attention to good police-public relations and quite another to pour expensive resources into activities which, experience shows, will produce little or no result. Such a procedure has the added disadvantage (rather akin to that represented by sending a patrol car to every caller who requests it without regard to the nature of the problem) of fostering entirely unreal public expectations of police response-capability.

It would be far better to engage in a public education programme which encourages interchanges between police and public on what is reasonable for the public



to expect of the police and vice-versa. Over generous follow-up inquiries into minor cases, which only makes it harder to re-allocate resources into the job of distinguishing the criteria which will indicate those matters which ought to be vigorously pursued, does not produce better clear-up rates for reported crime.

The present system can too often be based on providing public reassurance that every case, no matter how small, will receive attention on the understandable ground that no case is "small" to the victimized individual. But the price of this response is that to try to do something in every case is to fail to organize priorities and maximize action where, experience shows, success is most likely. In the end the public is not well served by a system which does not make it clear from the outset that, unfortunate though it may be, in certain cases no further police action will normally follow once the initial report of a crime has been received and filed. An honest and polite statement of this situation with a clear explanation of why police resources are being allocated in pursuit of other priorities would not only contribute to better public knowledge of the limits of police abilities but also engender a healthier police-public climate. Nothing is to be gained by misrepresenting the priority which police will be assigning to a case. An empty assurance that "everything that possibly can be done is being done" and "our inquiries are proceeding in an active manner" where nothing but the filing of the initial report is, in fact, occurring, is not preferable to the honest statement of what is truly happening. Re-allocation of resources cannot occur in a climate of inflated public expectation of what the police are able to do and this problem has to be squarely addressed by the police and public alike.

The second major category of detective work, the "pro-active" function, has the advantage that it frees at least some detectives from the extremely time-consuming and often unrewarding routine of interviewing victims and visiting scenes of crime, by attempting, instead, to find out who is committing offences by "targetting" on likely suspects, who there is reason to believe are actively involved in committing crimes. Thus, whereas the "re-active" detective squad starts with a known victim and works towards a possible perpetrator, the "pro-active" detective squad starts with a possible perpetrator and often works towards a known victim. The functions are not, however, mutually exclusive. Once arrests are made

following "pro-active" surveillance, it often transpires that the persons arrested have been responsible for other, already reported, crimes upon which re-active detective squads are making inquiries with a view to ascertaining the perpetrators.

Pro-active detective work, despite the difficult questions of propriety and legality raised by "target" selection, use of informants, electronic surveillance and similar matters, can be very much in the public interest, e.g., if a group of men are preparing to commit a violent bank robbery it is much to be preferred if police can, by prior surveillance, make arrests at an appropriate moment for conspiracy to rob, and having dangerous weapons in a public place, than to allow the robbery to proceed to execution with all of the dangers inherent therein for death or injuries occurring to bank staff and members of the public. Other crimes (such as the complex, white-collar fraud and corruption situations and organized crime activities such as extortion) are often incapable of being investigated at all without the use of pro-active detective measures to collect incriminating evidence against the principals.

The dilemma for our society is that, in order to produce a policing system which is able to enforce the law across all socio-economic boundaries -- which it has been argued will be one of the factors which, if achieved, will contribute to the vitality of the democratic system of government -- it is essential to engage in pro-active detective measures which are themselves fraught with difficulties and problems for individual liberties and concepts of fundamental freedom. Thus, in order to contribute to the preservation of the system of government which we claim is best at ensuring individual civil liberties, we almost certainly have to accord to our law enforcement authorities some of the powers which have the greatest potential for intrusion upon privacy and individual freedom. There is no doubt that such a position may be unpalatable to many but a system which absolutely excludes such powers from the armoury of its enforcement agents will help to ensure that only the unsophisticated criminal is amenable to justice. The challenge is not whether to grant such powers (or refrain from making such actions unlawful) but to ascertain the appropriate safeguards for preventing abuse of pro-active detective functions. The identification and enforcement of such safeguards is an important task for the Police Powers Project to pursue but of equal importance will be

the quality of the people who, as police officers, are asked to carry out the detective endeavours thereby approved. The delicate balance sought to be struck in this field between effective law enforcement and the preservation of individual liberties will require clear legal definition. But, in addition, front-line, supervisory and senior police management personnel will have to exercise mature judgment and display a thorough commitment to fairness and justice according to classic democratic principles in order to make the system work at its best.<sup>107</sup> Thus the expansion of public police capability in such operations as white-collar crime will make many demands upon police human resource development policies and to the advantages and disadvantages of our current provision in that regard, we now turn.

## 2. Human Resource Development

### (a) Recruitment and Selection Procedures

It is not really possible to assess the relative advantages and disadvantages of current Canadian police recruitment and selection procedures in isolation. Obviously some of the training and promotion policies and aspects of collective agreements discussed in the next sections will have an impact on recruitment and selection procedures. Although some overlapping will be unavoidable, an attempt will be made to separate each issue as far as possible.

Current practice clearly places the highest premium upon police officers, irrespective of the role they will ultimately be asked to play, commencing their police career by obtaining street-duty experience. The advantages claimed for this approach include that, in this way, police will have a good grounding in what it is like to be in the front line. This initiation process is regarded as emphasizing practical, common sense values over theoretical and conceptual skills. It also ensures that senior officers, having earlier experienced the delivery of police services from this perspective, will be sympathetic to the fact that the imperatives of street duty do not always coincide with the fashioning of ideal solutions. The rigours of shift-work and altered duties and the demands of overtime necessitated by emergency situations and court appearances also tend to weed out those who are not thoroughly committed to pursuing police work as a vocation. Because initial service (perhaps for several years at the outset) is performed in uniformed

street-duty or patrol, there has been an understandable emphasis on physical fitness and stature, senior officers often arguing that the physically powerful constable does not evoke the challenges to his authority experienced by smaller colleagues and this, in itself, contributes to reducing tensions at a potentially violent encounter.

It appears, therefore, that when police are in the market for recruits and are selecting between different applicants, this "peace-keeping" role is very firmly planted in the minds of those charged with the task of recruiting. Hence the importance of "physical criteria" in all recruiting and selection policies. Constables selected for their suitability as "peace-keepers" also tend to meet the criteria for law enforcement as it applies to overt, predatory crimes (e.g., robbery, house-breaking, thefts of and from motor vehicles) since most of them occur on or near the street or involve carrying property through it. The disadvantage of this approach, however, is that new forms of property and new forms of crime such as fraudulent manipulations of computerized accounting systems and bid-rigging by public works contractors with the connivance of corrupt public officials -- together with the false accounting practices by which such activities are financed and disguised -- call for investigators with quite different qualities. To insist that every police recruit first satisfy certain above-average physical requirements and only then seek potential fraud investigators from that group is illogical. Clearly police need a wider variety of talented recruits than at times past and should not pursue recruitment policies which sift-out otherwise able candidates unnecessarily. Unrealistic physical criteria also make it difficult to supply ethnic balance to police forces where the preponderant society is physically larger than many of its more recent immigrant groups. On both grounds, it is therefore essential that recruit-selection, biased exclusively in favour of physically well-endowed candidates, should be altered. If this cannot be done without a re-appraisal of the concept that every constable must commence police duty on street-patrol so much the better. More flexibility in deployment is an essential prerequisite to varying the recruiting stereotype.

The minimum educational level for police recruiting in Canada, being generally set at the grade 12 level, ensures that a relatively large pool of labour is able to be drawn upon for initial consideration. What is more

important, however, is the relative balance of educational ability being recruited into the police force. Because, under present arrangements, every supervisory and senior rank has to be filled from a group which originally joined up as constables, it is increasingly important that the educational mix of the recruits include a fair proportion of well educated and formally qualified people. Possession by some of them of a university degree will not suffice. There ought to be a small proportion of the very brightest students holding excellent degrees seeking admission to our police forces. The law enforcement function is too important to be left, as in previous times, to those without formal qualifications. For the necessary capability-factor to be built-up it will be essential to recruit a proportion of the best talent available. To do so, recruiting and selection policy may have to include incentives such as the possibility of accelerated promotion (subject to satisfactory performance) or direct entry into criminal investigation or other specialist branches. It does not appear that anything less will attract the kind of people who would otherwise be destined for professional careers in other disciplines (e.g., law, medicine, architecture, engineering).

The major disadvantage of our present recruiting and selection policies is that a proportion of the students from the academic front-rank in our universities are just not attracted to police duty as currently organized. Perhaps this will not change until there is a clear political commitment to increasing the capability-factor of our police forces. Certainly the attainment of the increased capability-factor will not be possible without this type of talent being recruited to our police forces on a regular basis. It will not be provided by specialist recruiting of non-police civilian personnel. The need is for the raw material to be available from which the most senior police personnel, as fully-rounded public-policy administrators, can be developed.

(b) Education and Training

As becomes clear from the section on recruit selection, the education of our police has traditionally been coupled with training because of the policy of generally recruiting at the pre-university or college stage. As a result, in addition to considerations of professional skills-training in job-related subjects, a concern has also been evident, in some police forces, to up-grade

the formal educational qualifications or personnel after they have been hired. The main thrust of such efforts has been in paying all or part of the course fees incurred by police pursuing part-time educational programmes approved for this purpose by individual police authorities. Most of these courses are at community colleges although some are in fully-accredited universities. Only the R.C.M.P. has made a practice of selecting a number of its personnel to attend regular university courses on full-pay though a number of other forces have done so on occasion, but it is more usual for them to arrange unpaid leaves of absence for their staff who then perform ordinary duties during the summer vacation.

The great advantage of these activities is that it encourages police officers to pursue formal educational goals in addition to, and often in furtherance of, their police careers. Because of the need to staff all supervisory and management ranks from the group recruited as constables, it is clear that these initiatives ought to be encouraged and, indeed, expanded. Even if a new recruitment policy were to attract a suitable proportion of candidates who already held good quality university degrees prior to entry to the police service, a policy of encouraging further formal education for those already serving would still be justified. The nature of the police career can only be enhanced by increased education and the quality of service to the public cannot suffer from it.<sup>108</sup> Of course, an over-qualified force with no functional use for its talented personnel might lead to frustrations and a fall in the quality of service provided to the public but, whatever difficulties such an event might some day engender, they are not the current ones which face Canadian police forces and the rigours which the job entails together with the unselfishness for which it calls make it unlikely that the police will be inundated with an over-supply of such talent in the foreseeable future.

Indeed, no major police force in the country should be without a scheme which allows some of its personnel to be in regular, paid attendance at full-time educational endeavours in universities. Such an educational policy should be a fundamental part of each large police department's human resource development strategy. Where local budgetary restrictions in smaller forces would otherwise prevent such endeavours, then provincial and, if possible, federal financial support should be made available to reimburse the municipality concerned. Similar

policies instituted and funded by the Home Office in England have been spectacularly successful in producing an impressive list of first-class honours graduates out of existing police personnel who now hold many of the senior posts in the police service there.<sup>109</sup> If Canada is to continue recruiting at current levels and insist that each police officer commence at the constable stage, adoption of a similar scheme in this country would seem to be essential in order to produce the police leaders of the future.

The current methods of encouraging part-time and full-time study in adult educational settings are not without considerable difficulties. Police officers have sometimes been denied even unpaid leaves of absence in order to pursue degree courses highly relevant to their career development. It is sometimes claimed that this has to be done because of problems involved in safeguarding pension rights. This is surely an example of where provincial or federal financing could be found to make pension contributions, if this is necessary, during an officer's unpaid leave of absence where, for any reason, a municipality claims to be unable or unwilling to do so.<sup>110</sup> Further, the quality of some of the courses offered in community colleges in justice-related subjects is often extremely uneven. One of the principal reasons for this is that, except in Quebec and British Columbia (see Pt. II, *supra*), there are few officially integrated schemes in operation where professionals in the justice area are actively co-operating with professionals in the field of education to produce officially endorsed justice-education programmes. Discussion here is not concerned with the provision of vocational police training "on campus" as in Alberta, Saskatchewan and the Maritimes (where Holland College in P.E.I. provides this function), but with the availability of regular adult educational programmes which would be of interest to, and have a mind-broadening effect upon, serving police officers. Another and more fundamental difficulty with educational schemes for serving police officers is that it is not at all clear that higher education, after or during many years of police socialization, can ever be as beneficial in acquiring a broad and liberal outlook as the receipt of substantial post-secondary educational exposure prior to entry to the police service. In short, no improvements in making such educational opportunities available to serving officers should prevent the pursuit of a clearly articulated policy of attracting a propor-

tion of already-qualified, first-class honours graduated into police work. In the absence of conclusive research on their respective merits neither route to up-grading police educational standards should be ignored.

Vocational training for Canada's police displays such a variety of alternative delivery systems that its major advantage clearly is the diversity and energy which is currently being displayed in this field. Technical competence must be a high priority in police work and the many efforts which have been made, particularly in the last decade, have produced a healthy climate for comparison. Unfortunately no research is currently being conducted into the comparative advantages of the four delivery models described in Part II. This would seem to be a major priority in Canadian policing. A comparative study of a matched group of recruits entering the alternative systems and following them longitudinally into the first five years of service would be of inestimable value in planning not only the vocational training strategy for the future but also in supplying indicators for recruitment, selection and supervisory-level, promotion policies. Only by such major evaluative research activities, will the finance and ingenuity which have been invested in the present arrangements be exploited to the full. A joint federal-provincial project on this subject should be commenced without delay.

One thing should, however, be clear. It is very doubtful if vocational police training programmes, no matter how sophisticated, can ever supply the purely educational content of police human resource development strategy and ought not to be freighted with the obligation of doing so. Many of the coping mechanisms and behavioural norms of people employed in police work have been variously described by researchers and police writers themselves to include the façade of aggression, masculine toughness and cynicism,<sup>111</sup> and an admiration for rapid, decisive action rather than prolonged exploration of a complex situation.<sup>112</sup> The task of providing alternative reality foci to challenge those found on the job and encourage adaptation to change where appropriate, would be more effectively undertaken by an educational milieu outside that of the additional reinforcement which typifies much traditional police training -- even that which occurs at the highest policy-making level.<sup>113</sup> For this reason, money invested in in-service training will very properly complement but never replace the need for a proportion of top quality graduates being attracted into, and retained in, Canadian policing.



(c) Promotion Policies

Present practices in this regard have several advantages. An intra-force, vertical promotion system from constable to Chief Constable emphasises local-force autonomy in developing its own personnel strategies, promotes continuity in command expectations and allows for each promotion to create a further vacancy in each of the categories below that in which the original one occurred.<sup>114</sup> In municipal forces it also tends to ensure continuity of local knowledge and community relationships, whereas, in provincial forces and the R.C.M.P., this will not likely be a determining factor because it is usual to accompany promotions with a transfer to a different geographical location. Further, where the system is sanctioned by long practice and tradition, some of the esprit de corps in the force may well be bound up in the idea that "only insiders need apply" and pride in the force is an important consideration.

There is, however, a price to be paid for such advantages. In addition to concepts of tradition, continuity and control, a police force operating in a changing society must also take account of vitality and potential for growth, adaptation and reform. By promoting to the head of a large organization someone who, within that particular milieu, has held every rank from the bottom up, one runs the risk that this person will be least likely to criticize the system which so adeptly identified such talented leadership. This is more a factor in human nature than anything specifically related to police work. But police work, unlike other public and private enterprises, provides more opportunities for its operation. The "mandarins" in the civil service do not commence work in the clerical grades, officers in the armed services do not work their way up from privates and the President of General Motors does not start out on the production line but every Chief of Police starts as a constable.<sup>115</sup> This approach is as old as the "new police" concept itself. As long ago as 1829 it was the clear policy of Sir Robert Peel to recruit men "who had not the rank, habits or station of gentlemen" and all promotions were to be made from the ranks.<sup>116</sup> Obviously since then the aim has been to recruit much more broadly but the policy of "promotion from the ranks" has remained.

There are two separate issues involved here, that of intra-force promotions and that of promotion from the ranks. On the question of intra-force promotions the major disadvantage is that persons so promoted do not have any wider experience base from which to draw than the confines of their own police force. There are many strategies that can be adopted to deal with an identical situation. Experience elsewhere, where different methods have been used, causes a newcomer to be more questioning of entrenched habits and procedures in the new situation. Exchanges of views about such matters on training courses, where members of different forces meet together, do not operate as effectively as progenitors of change as when an executive is faced with a concrete problem requiring a sound practical solution. By encouraging the leadership talent to obtain wide experience in a succession of different police forces, parochialism can be discouraged and fixed administrative responses avoided. It is particularly important to encourage in senior police officers the widest possible experience under several different organizational systems, especially if there is to be no lateral entry of non-police personnel to supervisory or command positions. One method of encouraging the broadest possible police experience in Canada would be to require that a percentage of promotions be advertised provincially or nationally to permit the available talent to compete openly for the positions. Provincial legislation could achieve this in respect of municipal and provincial forces and federal legislation could require this of the R.C.M.P. There need be no compulsion to hire an "outsider", the requirement need only be to look at the available candidates. In practice this would often result in inter-force promotions occurring but would not mandate them. In order to be more directive, a policy could be introduced to require that every new appointment to Chief Constable or Chief of Police be restricted to police officers who had experience in more than one force. This would encourage ambitious police officers to seek a wider exposure in several police forces and to acquaint themselves with actual executive experience under differing organizational situations. Financial provision would have to be made to ensure portability of pensions. This would do much to cross-fertilize available talent in different Canadian police forces, break down artificial barriers and, in the long run, increase provincial and national co-operation. The question of what should happen where such initiatives transgress the provisions of existing collective agreements, is discussed in the next section.

Justification for the "all promotions from the ranks" policy usually identify as factors the importance of the original authority of the constable, his possession of wide discretion in how he does his job and the need for senior police officers to have learned, first-hand, the difficulties, temptations and frustrations of the front-line constable's task in order for them to discharge their command duties properly. The first two, especially, are said to distinguish the constable from the private soldier, the clerk and the assembly line worker. Original authority and wide discretion means that, even at the lowest rank, a constable is in one sense a leader already -- i.e., a leader in the community. This leadership could be said to be relevant to the development of the best constables into police supervisors and ultimately police managers. Thus there is no dichotomy in the progression from constable to Chief Constable, whereas there is a clear difference between the authority and discretion of the soldier, the clerk and the assembly line worker compared to that of the officer, the senior civil servant and the corporate President respectively. Even if this were not accepted there is little doubt that "promotion from the ranks" has, with few exceptions,<sup>117</sup> been part of the history of police since the inception of modern police forces, that police union opposition to changes would be intense and that existing collective agreements enforce the status quo. As a result, the politics of the possible militate against change, even if the argument is not rationally sustainable.

In two important ways promotion policies can impinge on matters discussed earlier in this Part. In ensuring that recruiting policies attract a genuine ethnic balance to reflect the community being served and in affirming commitment to high standards of formal education in our police, promotion policies can play a significant role. Clearly the avenues to promotion must be open to all police officers irrespective of sex, race, colour or creed. There ought not to be benign discrimination promoting an officer simply because of his status as a member of some ethnic minority but neither should it be the case that only the lowest ranks are available to such groups.<sup>118</sup> The same must be said of women, who are very much a rarity in supervisory and senior police ranks.<sup>119</sup> Legislation should call for annual public reports on such matters. On the question of educational standards the time is surely overdue for building in a graduated system of minimum educational requirements as one of the necessary criteria for new promotions, e.g.,

enrolment in an appropriate adult post-secondary educational diploma or degree course for promotion to sergeant; possession of such a degree or diploma for promotion to Inspector and a minimum of a full three-year university degree for Chief Constables and their deputies. The appropriate legislation could have lead-time built into it to give affected parties reasonable notice and a fair opportunity to be able to meet the new criteria. In these ways promotion policies become an integral part of the total police human resource development package and act to reinforce other aspects of it.

Finally, we return to the question of requiring every senior police officer to commence his career as a street-duty constable. One real cost of this approach is that prolonged early experience of this type tends to reinforce a preponderant "world-view" on the nature of a crime as essentially "street crime". Although later experience may draw attention to white-collar and organized crime as important issues, they do not always occupy their appropriate share of attention. Many police officers with experience of handling long and complicated cases involving the ostensibly respectable-white-collar, fraudsman, corrupter and corruptee or the more notorious figure from organized crime, know that it is often very difficult to obtain from otherwise intelligent and committed senior officers a genuine appreciation that the resources being expended are really worthwhile. Senior officers often show impatience for the quick results and satisfying arrest statistics so familiar in "street crime" terms. There is often a genuine lack of understanding of an appropriate frame of reference by which to evaluate law enforcement efforts at the "sophisticated end" of the crime spectrum. Alternative routes to promotion, some though not all, avoiding the street-duty viewpoint, would help to produce the essential variety which broader priority setting in resource allocation requires.

#### (d) Labour Relations

The major advantage of the entrée of organized collective bargaining into Canadian police work, outside of the R.C.M.P., has been the surprising degree to which it has contributed towards calling into question the former authoritarian, para-military nature of police employer-employee relationships and its replacement, at least in part, by bilateral, democratic ones.<sup>120</sup> Even in the R.C.M.P. where no formal bargaining agent-bargaining unit system of labour relations exists, recent changes in

grievance procedures emphasize the rights of members to seek remedies for perceived wrongs and to be free from any form of penalty or prejudice for having done so.<sup>121</sup> Associated with these changes are the advantages that, particularly in large police forces, the police association or union provides another channel of communication in order to keep senior management abreast of the personnel-related problems that may be growing up in the force. Grievance arbitration and conciliation services<sup>122</sup> can help to clarify the issues to aid in dispute resolution and prevent a relatively small matter from growing out of all proportion until interruption or interference with police services to the public results.

The major problems which face the present system are the right to strike and executive authority in personnel deployment and promotion policies. These areas call for a reappraisal of the relationship between express legislative control of the police function and the machinery of collective bargaining. Unless there is political will to deal with these questions, much of the activity in crime prevention and detection, public order keeping and the supply of efficient police services can be rendered ineffectual.

The right to strike is one which the labour movement has worked long and hard to have recognized. Its use is the ultimate weapon to enforce the demand for an increase in the price of labour. Just as a landlord may, at the end of a lease, charge a higher rate for a new lease on his land or building and just as a bank may charge a higher interest rate for its loans, so may an employee charge a higher rate for his work. The landlord "goes on strike" by not allowing the tenant to remain in possession unless he is willing to pay the higher rent, the bank "goes on strike" by not allowing its borrowers a loan except at the higher rate and the workman "goes on strike" by not allowing the employer to have labour unless he is willing to pay the new wage. Of course we do not usually refer to the first two situations as "strike", neither do we refer to the third example as the workers raising their prices. But in all these cases, including that of merchants raising commodity prices, we have similar situations no matter what conventions of history and language disguise the true nature of the situation.

If market forces are left to their own devices we can assume that the law of supply and demand will regulate such activities and settle the appropriate costs

of land, goods, capital and labour. Few modern states, however, leave every aspect of such fluctuations to raw, market forces. State intervention in all such matters is part and parcel of the credo of communist governments but even in the democracies there is a colossal amount of state involvement in the market place from regulatory control of whole industries to supervision of the market place to prevent perceived abuses by monopolistic or other interests which adversely affect the orderly production, supply and consumption of goods and services.

On occasion, it might be appropriate, in the public interest, to legislate on such things as land-use planning, rent controls, prices and incomes policies and foreign ownership of investments, and it cannot be that the supply of labour (alone of the elements involved in industrial, commercial and social enterprises), should be totally exempted from legislative intervention. Although, as a general rule, one may commence from a free-market position, circumstances can justify intervention. Since no element of enterprise is exempted in toto from potential interference by legislation it is not unfair to contend that although, generally, a right to strike should be accorded members of the workforce, exceptions may be made withholding this right from certain occupational groups.

Many factors combine to produce a cohesive social system, the criminal law and those charged with its enforcement being only one of the bonding agents and the one at the outer edge of the complex of social, cultural, religious and similar factors which comprise an organized state. But, though at the outer edge of the system, the law and its enforcement guarantee the opportunity for the others to play their parts. Law enforcement is an essential service not because, without the other factors, it could sustain a state. Obviously it could not, because, without social and cultural cohesion there would be nothing to hold even the members of the law enforcement agency together as an operational unit let alone anything else. Law enforcement is an essential service because, without it, the other less coercive social and cultural factors could not blossom. Law enforcement capability is, therefore, a necessary but not a sufficient condition to the existence of a modern state.

In making a policy decision on the right to strike, a strong case can, therefore, be made for withholding this right from all of the public police forces and energies should be expended upon producing alternatives

to the strike weapon as a means of enforcing police demands for reasonable pay and fair conditions of service. Clearly some system of compulsory arbitration after negotiations have reached an impasse, would appear to be the most likely means of dealing with this problem. This is the current solution in Ontario but it was not achieved without heated debate and considerable rancour about the role of the Provincial Police Commission in such a scheme.<sup>123</sup> The lesson for the rest of Canada appears to be that it is unwise to have the Provincial Police Commission as the arbiter in such cases and the current scheme uses single, independent, part-time arbitrators chosen for this task by the Police Arbitration Commission. This system works reasonably well and, because the arbitrators are usually engaged in the general labour-management field in addition to their police arbitrations, they are gathering a "feel" for employment conditions in a cross-section of employments and in particular regions which assists them to do justice not only as between different municipal police forces but also as between other occupations. By such means the Police Commission is extricated from the difficult role of being, perhaps, seen to "take sides" between municipalities and police associations and a comparative element is injected to assist with judging what is fair remuneration or decent working conditions.

The problem of personnel deployment is harder to solve. Here one is not dealing with a general legislative prohibition on the right to strike together with the setting up of appropriate compulsory arbitration arrangements but with a more delicate balance of requiring certain minimum factors legislatively and leaving other areas for collective bargaining. One way of achieving this would be for Police Acts to distinguish clearly between those areas which were regarded as in the public interest and which allowed considerable management prerogatives and those areas which were permitted to be the subject of arbitration. Obviously the difficulty would be in identifying the criteria which would be outside the ambit of collective bargaining.

At present the type of wording in provincial legislation which allows for elastic interpretation, permits the "making of an agreement in writing defining, determining and providing for ... working conditions of the members of the police force ... except such working conditions as are governed by a regulation made by the Lieutenant-Governor-in-Council under this Act"<sup>124</sup> (emphasis added). Obviously "working conditions" is a

very wide expression and is only confined by express regulations made under the Act.<sup>125</sup> In fact such regulations have been passed only in respect of the form in which arbitrations are to be drafted,<sup>126</sup> equipment,<sup>127</sup> discipline,<sup>128</sup> territorial responsibilities for policing<sup>129</sup> and standardized ranks, badges and insignia.<sup>130</sup> As a result, a great deal of activity is available for negotiation, arbitration and award under the rubric "working conditions".

One of the problems can be succinctly stated. Should an arbitrator have jurisdiction to dictate to a police authority the manner in which police services are delivered in a particular municipality (e.g., by decreeing whether car or foot patrols should be deployed or even how many constables should be assigned to a patrol car) or is he confined to a narrower concept of "working conditions" which would entail (in addition to such things as pay, pensions, sick leave credit gratuities and grievance procedures), such circumstances of the working environment as relate to an employee's health and comfort, e.g., the provision of decent washing, changing and eating facilities, reasonable hours of work and the whole host of matters which cluster around the concept of "health and comfort"?

Arbitral opinion on the point is not unanimous. In one case<sup>131</sup> it was held that an arbitrator has no jurisdiction to try to maximize the efficiency of patrolling or to attempt to improve police services to the community. As a result, a police association request that there be two men on duty at the same time, was turned down. In other cases, however, and with the apparent approval of the courts, arbitrators have taken jurisdiction over the question of ordering that two officers be assigned to patrol cars and regularly weigh evidence brought by municipalities and police associations in support of instituting or rescinding such arrangements, the onus of proof resting with the party seeking the change.<sup>132</sup>

It is difficult to understand how arbitrators operating under the same legislative guidelines can have no jurisdiction to interfere with the question of whether one or two constables should be on duty but have jurisdiction to say whether one or two constables should be on duty in a patrol car. One can readily appreciate that experience of relative conditions in industry and commerce will provide arbitrators with invaluable experience



in ruling on the provision of police working conditions which relate to matters of health and comfort. But how can this possibly provide them with better experience than senior police executives on how police services are to be delivered in a community? Surely it is not unreasonable to conclude that the vast benefits which the labour relations movement has brought into police work may be undermined by permitting arbitrators to stray beyond the ambit of their undoubted expertise. It may well be that the arbitration system has been such a success that insufficient thought has been given to detailing the limits of its usefulness. This task has to be faced by the legislature to ensure that executive expertise in the police is not supplanted by a creeping jurisdiction of the arbitrators. The expression "working conditions" has, therefore, to be confined within the general field outlined above, leaving senior police executives to advise the police authority on the appropriate way in which to provide effective and efficient police services, subject of course to compliance with the provision of a safe and humane work environment.

Another problem area of a similar nature is that of promotion policy. It is now clear, in the Ontario system at least, that a promotional system is a matter of working conditions and can be negotiated between the parties.<sup>133</sup> This is another situation where the need is for a delicate balance to be struck between legislative direction and negotiation in the collective bargaining system. If the capability-factor of the police is to be raised it may not be appropriate totally to subject the public interest to the bargaining positions of police authorities and police associations. No one would suggest, for example, that a citizen-complaints-against-the-police system should be so dealt with, the reason being that there are more interests at stake in such matters than those of the police authority and the police association. Indeed, their interests, in such matters, could combine to defeat the general public interest.<sup>134</sup> In a similar, though not identical, vein every aspect of promotion policy in the police should not be left to collective bargaining since there is a vital public interest to be protected in ensuring that leadership of Canada's police forces is in the hands of sophisticated exponents of public administration theory and practice.

One method of defining the appropriate sharing of authority between legislative regulation and collective bargaining would be for the "necessary" conditions for

promotion (e.g., minimum formal education levels, obligation to advertise vacancies, requirement that a Chief of Police have served in more than one police force) to be the subject of Police (Promotion) Regulations and additional conditions (e.g., seniority questions and legitimate local concerns) to be left to the parties to negotiate by collective bargaining. The crucial goal of setting new standards for attaining police leadership status in the future would demand no less. Legislatures have to take a more intrusive stand in this area. Current minimum requirements for the position of Chief of Police are derisory in their educational content, e.g.:

"No chief of police ... shall be appointed ... unless he ... produces satisfactory proof of having successfully completed at least two years secondary school education or its equivalent".<sup>135</sup>

When one considers that the regulations dealing with this matter were reviewed as recently as 1974 and this standard was found appropriate, the magnitude of the task which awaits undertaking becomes clear. Legislatures must occupy more of the field, not to the exclusion of the collective bargaining machinery, but sufficiently to indicate a sincere political commitment to increasing the police-capability factor.

In re-drawing the lines of where express legislative control should exist and where the arbitration function is appropriate, it need not be that the legislative process ought always to be more intrusive. It could well be that the whole area of internal police discipline, where no citizen complaint is involved, could be removed from the current straitjacket of extreme legislative control.<sup>136</sup> For example, rather than legislation dealing with police discipline code offences, to be tried under a complex and highly formalized procedure as at present, a police supervisor could simply issue the appropriate fine or suspension when the alleged misbehaviour is witnessed (e.g., sleeping on duty, being absent without good excuse from an assigned patrol). The police officer concerned could then grieve the matter before provincial labour relations board officials (if he felt that the supervisor's actions were improper) as would occur in other employment situations. In this way, police conditions of service would be normalized into the mainstream of regulation of the work force and police complaints of unfair, separate treatment for police compared to the ordinary citizen, might thereby be reduced.<sup>137</sup>

## PART IV -- PREPARING THE POLICE FOR THE FUTURE

### A. INTRODUCTION

In this Part we return to the distinction drawn between political discretion and police discretion as it was developed in Part I. It will be used as a means of apportioning obligations to provide for Canada's future policing needs. Political discretion will be used to indicate those places where the federal parliament (in respect of the R.C.M.P.) and the provincial legislatures (in respect of municipal, regional and provincial police forces) have the opportunity if they wish to take it (hence its discretionary nature), to restate the goals of policing in Canada and to put into place the organizations by which, and the personnel by whom, these goals may be achieved. Police discretion will be used to indicate those places where individual police forces, under the supervision of police boards and provincial police commissions, have the opportunity if they wish to take it (hence its discretionary nature), to organize the resources allocated to them, so as to ensure maximum public understanding of the police role and to provide improved public services.

The discussion in Part II and III will be the sources drawn upon to indicate where action is necessary to overcome any disadvantages arising out of present Canadian policing arrangements.

The main thrust of this Part is to indicate that a much more active role has now to be played at the legislative stage than was thought appropriate in the past in order to ensure effective police services. It is not enough to proscribe conduct by making criminal laws and then make general provision for a police presence to enforce it. More attention has to be paid at the legislative (and therefore the political) level to the nature of police organizations and the individuals who staff, supervise and lead them.

## B. POLITICAL DISCRETION

### a) The Capability-factor and the Optimum Size of a Police Force

It is important to note that our present legislative arrangements for the provision of policing services in Canada have resulted in a situation whereby we have police forces ranging in personnel from 1 to 18,000. Whatever the political decision to be made about the future of the R.C.M.P., including whether it would be feasible or advisable to return to a system of independent provincial police forces with a correspondingly reduced role for the federal force, it is clear that something has to be done about the vast numbers of extremely small police forces in this country.

If the democratic ideal is to be made a reality, the police must be able to enforce the law across all socio-economic boundaries. In order to do this they have to possess a capability-factor which includes,

- (1) a patrol function, together with an evaluation mechanism for analysing calls for service and providing the means to organize community resources with a view to effecting preventive solutions to local problems of concern to police and citizens alike;
- (2) a reactive detective function, together with an evaluative mechanism for analysing reports of crime and organizing priorities which direct detective resources into areas where solutions are most likely;
- (3) a pro-active detective function with capability to deal with major crimes, including white-collar and organized crime.

In order to field this kind of capability, much larger police units are needed than are currently in evidence in many of the municipalities, towns and villages of Canada. Only by a comprehensive programme of regionalization of police resources can such a full range of police services be provided in the future. Provincial governments should as a matter of urgency, and independently of local government reform, consider the rationalization of police resources into units which provide the minimum capability-factor. This question could be most

effectively addressed at the same time that consideration is given to the R.C.M.P.'s continuing to operate as the provincial police force in eight of Canada's provinces. But even if R.C.M.P. organization is to continue largely in its present form, the question of rationalizing other police resources in the country into viable units able to sustain a minimum capability-factor, ought to be pursued as a matter of deliberate policy in any event.

(b) Selective Enforcement and the Constitutional Position of the Chief of Police

Parliament and the legislatures should make it clear that a Chief of Police, while not subject to direction on how to deal with individual cases, is, nevertheless, subject to policy direction by the appropriate police governing authority to whom should be delegated the right and obligation to publish written policies for the delivery of police services, including law enforcement priorities, applicable to local needs. The legislature would lay down the essential general principles, e.g., that law enforcement should occur across all socio-economic boundaries and without regard for colour, race, class or creed and that police forces shall be organized to ensure they possess the minimum capability-factor outlined above. Within that general policy, local police governing bodies would make rules outlining the way in which the law would be enforced which would meet particular local needs but not be inconsistent with general law enforcement policy. Such open handling of a subject at present shrouded in mystery would engender public debate on appropriate resource allocation and ensure accountability. For this purpose it would be necessary to ensure that police governing authorities, which should continue to comprise a mixture of elected and appointed members, had the necessary resources to play a policy-making role.

(c) Human Resource Development

(i) Recruitment and selection

There should be express legislative provision directed at encouraging police recruitment policies to attract people of both sexes and different ethnic backgrounds into police work, e.g., by mandating advertising campaigns and calling for details of the force personnel structure to be included in annual public reports. In addition, there should be a legislative requirement that

a proportion of the force should hold university degrees as one criterion towards achieving the minimum capability-factor. This could start at 10% with a target date set for compliance when the issue could be reviewed, the date extended or the percentage increased. Commencing salaries could be tied to educational qualifications and provisions could be made for a province to reimburse a police governing body to the extent that its salary budget was increased by recruiting members with educational qualifications above those of the provincial minimum level. Alternatively payment of provincial subsidies to municipal and regional policing could be made dependent on forces achieving certain aspects of the capability-factor by particular dates. The sanction for failing to raise standards would result in increased costs falling on local property-tax payers and public agitation to improve the capability-factor.

(ii) Education and training

There should be express legislation introducing schemes for improving formal education in the police service. This should include financial provision for full-time university study on a province-wide competition basis, and also for maintaining pension payments on behalf of such students whose seniority ought not to be interrupted by taking advantage of such educational opportunities.

There should be express legislative provision for the provincial Ministry responsible for education to cooperate with officials in the justice field, not only to provide educational programmes relative to law enforcement in the colleges and universities but especially for co-ordinating such public education materials for schools and evening institutes. Public education in law enforcement priority-setting and in local policies for the delivery of police services would be an important part of changing expectations in this field.

(iii) Promotion policies

There should be express legislative statements requiring that police promotions be advertised and that senior police executives obtain experience in more than one force. There should also be financial provision made for police pensions to be "portable" anywhere in Canada by making funds available to reimburse pension schemes adversely affected by inter-force transfers. A legis-

lative scheme of college and university educational requirements for new police promotions to Sergeant, Inspector, and Police Chief should be drawn up. In particular, no new Chief of Police should be a non-graduate, once the "lead-time" for introducing the scheme had expired, and the persons affected had received an opportunity to reach the required standard.

(iv) Labour relations

There should be no right to strike in any public police force in Canada. Systems of compulsory arbitration should be legislated. Whenever possible, approved lists of single arbitrators, having experience in both police and non-police collective bargaining, should be maintained to make binding awards in matters which fail to reach agreement after negotiations and conciliation. Provincial Police Commissions should not play a role in compiling the arbitration panel or selecting particular arbitrators but there would appear to be no objection to this function being performed by the Labour Relations Board.

Consideration should be given to introducing legislation which would reduce the extent to which labour arbitrators have any jurisdiction in police-deployment matters and police promotional issues. Their ambit should be restricted to matters concerned with the "health and comfort" of the police work-force, leaving senior police management more flexibility in deciding the means by which police services are to be delivered. The increased role for legislative requirements on promotion (see above) would also reduce -- but not eliminate -- the role of arbitration on police promotion issues. In another area, however, that of internal discipline unconnected with citizen complaints, it may be possible to increase the ambit of the arbitrator's authority and release senior police officers from the onerous task of sitting as adjudicators in formal police discipline hearings under current legislation.

C. POLICE DISCRETION

(a) Preventive Policing Philosophy

It is not enough for a police force simply to react to public calls for service and reports of crime. A modern police force must see such responses as simply the beginning of the task. An important evaluative function

has to be built into analysing this raw data and seeking preventive remedies using either existing community resources or contributing to having them put into place. Police resources used to prevent trouble arising in the future are resources well spent. Simply attending at the scene of trouble and reporting the facts does nothing to change the milieu in which the problems are arising. Sometimes police will be able to assist directly, or on other occasions they will be able to refer people to services which already exist, but the real challenge is to do something creative when neither of these options is open. At the heart of the preventive policing philosophy is the idea that the police cannot keep the peace or prevent and detect crime on their own. The task lies in mobilizing communities to deal with their own problems to the limit of their competence. The long, slow process of public re-education about what the police can do has to commence with the recognition that the emphasis on rapid response to calls for police assistance has led to public expectations which cannot and ought not now to be fulfilled. Communities produce many problems that the police alone cannot solve, but fewer problems that communities themselves (with police help) cannot solve. When community competence takes over an appropriate task, the police can re-direct some of their energies into areas which are beyond community competence and which may, in the past, have received less than their due share of consideration, in part because of energies being mis-directed elsewhere.

(b) Use of detective resources

(i) The Re-active function

Just as the preventive policing philosophy recognizes that there are real limits to police abilities to cope with societal problems, so a reconsideration of the re-active detective function has to be realistic about what is feasible in dealing with reported crime. Every police detective organization should be reappraised to see if resources are being used where they are most likely to be effective. If this were done in a thorough manner it would probably be revealed that, at least part of the work currently undertaken by detectives -- insofar as it is routine -- could be undertaken either by uniform patrol officers or even by civilian employees. All initial taking of reports of crimes, searching of records, feeding of new information into indices and typing of results of investigations should not be under-



taken by detectives. Only in cases where it is essential that a complainant be interviewed by an experienced detective (e.g., a rape case) or where suspects have to be questioned should detective resources be used. Increasing the scope of the work undertaken by the patrolman at a crime scene and increasing the use of civilian staff where possible, makes the job of both patrolman and the detective a more interesting and rewarding one. Just as maximizing community competence to deal with community problems releases patrol capability to take over where community competence ends, so increasing patrol and civilian input into re-active detective endeavours releases detective capability to take an increasing interest in pro-active operations where it is clear that neither community competence nor patrol and re-active detective competence is relevant to the crime under investigation (e.g., an allegation that a senior municipal planning official was taking bribes from developers in connection with applications to re-zone land or to alter the permitted-user of existing buildings).

A major reorganization of detective resources should occur to ensure that available detective personnel are not only employed on the investigation of reported crimes but are also engaged on pro-active measures not dependent on individualized victimization. To these problems we now turn.

#### (ii) The Pro-active function

This is the area of detective endeavours which requires to be increased most. It is the area, under our current arrangements, which occupies only a very small percentage of overall resources in our largest forces and is not represented at all in the resource allocation of all small and many medium-sized police forces.

What is at stake here is the recognition that there is more to crime than an individually victimized person -- important though it will always be to assist the victims of crime -- and that is why pro-active functions will never replace patrol and re-active detective operations but only complement them. A great deal of criminal activity never involves individualized human victims (e.g., a fraud on a government department financed through higher income taxation) or even if it does involve a specific victim every possible step will have been taken by the principals to ensure that the crime

does not come to light (e.g., a fraud on a private or public corporation financed through higher prices or increased property taxes).

This is the area, par excellence, for pro-active detective work. In such cases it is useless to await a victim's complaint. Modern property is held in such attenuated forms that sometimes the actual loser has no possible way of ever discovering his loss or, more sinister yet, his representative may have a vested interest in not revealing it, e.g., take the case where a company's stock is heavily overvalued on the stock exchange, the public not knowing that assets on the corporate books are, because of certain fraudulent transactions, valueless. In such a case, pressure can exist on the company's officers (who may or may not be involved in the fraud) to maintain this state of public ignorance, perhaps until matters can be remedied by good trading fortunes or made more difficult to unravel. Of course, there are other monitoring devices in society to deal with such matters, such as external audits and security commission supervision but the fact remains that public police ability to deal with such fraudulent behaviour ought also to be present to assure the public that a modern police force, with an appropriate capability-factor, is one of the important guarantors of the state's interest in justice and fairness.

If it is appropriate that the police should cultivate informants to tell them who is breaking into wholesale warehouses and stealing large quantities of goods, how can it be inappropriate for police to be cultivating informants who know who is fraudulently manipulating a computer-accounting system or who is promoting or maintaining worthless stocks? Our present police organization always aims at collecting the former type of information but seldom the latter. Of course such information can be false and it may well be that an unscrupulous businessman could try to damage an honest competitor by starting malicious rumours. But these are not reasons for doing nothing, only good reasons for building in the necessary legal safeguards on how such police activities are organized and supervised, and how abuses are to be sanctioned. Even more so are they reasons why the quality of personnel attracted to our police forces has to be of the highest professional and intellectual calibre in order to deal with the daunting problems of policing a society in the future where cash will be in ever decreasing use and the integrity of commercial

transactions, in both the public and the private sector, will be one of the essential concerns of effective law enforcement.

#### D. CONCLUSION

In preparing the police for the future there has to be the clearest realization that society has to do more than simply pass criminal laws and provide for police organizations to enforce them. To ensure that those laws are able to be enforced and that, when enforced, this will occur in a fair and just manner across all socio-economic boundaries and without regard to colour, class or creed, it is necessary to make important political choices in devising police organizations and in determining the people by whom they will be staffed, supervised and led.

These political discretions have to be exercised first and, depending upon what is decided, so the range of subsequent police discretions is confined.

In exercising these political discretions it is essential to require that a capability-factor be built into police organizations so that they are able to enforce the law against the full cross-section of possible offenders and that, when enforcement choices are made, they should be both public and explicit, and be promulgated by the appropriate police governing authority which is itself subject to democratic control.

Neither can legislatures delegate the major criteria for recruiting, training and promoting the police nor for organizing its crucial personnel relations. Many of the necessary, but not sufficient, criteria for ensuring police efficiency in these respects will have to be the subject of express legislative direction.

The police, themselves, also have to allocate the resources granted to them so as to service public demands but this should be undertaken by means of a preventive policing philosophy which overtly encourages community competence as a first priority. In addition, crime detection resources have not only to serve public demands for the investigation of cases of individual victimization but must also be able to deal with criminal offences where victimization is more diffuse and police action cannot be predicated on a complaint from an individually victimized member of the public.

ENDNOTES

1. W. Von Humboldt: The Sphere and Duties of Government (English Edn. 1854, p. 112):

"if it were possible to make an accurate calculation of the evils which police regulations occasion, and of those which they prevent, the number of the former would . . . in all cases exceed that of the latter."

Quoted in Radzinowicz, L.: Ideology and Crime (1966) Heinemann Educational Books, London, p. 14.

2. Robert G. Caldwell: Criminology (Ronald Press, N.Y. 1956, p. 255)

"No public agency is of greater importance to the community than the police . . . the increasing complexity of our society, with its urbanization, industrialization, technological improvement and mobility, has brought greater need of law and efficient police protection."

Quoted in Kelly, W. H.: The Police in Crime and Its Treatment in Canada (2nd Edn.) (1976) Macmillan of Canada (W. T. McGrath Ed.), p. 136.

3. E.g., Rawls, J.: A Theory of Justice (1971) Harvard University Press, and Dworkin, R.: Taking Rights Seriously (1977) Duckworth, London.

4. E.g., Canada: Mewett & Manning, Criminal Law (1978), Butterworths,

U.K.: Williams, G., Criminal Law: The General Part. (1961), Stevens and Sons,

U.S.: Hall, J.: General Principles of Criminal Law. (2nd Edn.) (1960) Bobbs Merrill,

to name only three well-known examples.

5. E.g., Gall, G. L.: The Canadian Legal System (1977), Carswell.
6. E.g., Jackson, R. M.: The Machinery of Justice in England (6th Edn.) (1972) Cambridge University Press.
7. E.g., Gross, H.: A Theory of Criminal Justice (1979), Oxford University Press, New York (xvi).

"A volume embracing all the concerns of a truly comprehensive theory of criminal justice would extend into two great regions not explored here. It would take up bounds beyond which the law ought not to go in establishing criminal liability for conduct . . . The same all-embracing work would also have to deal with the problems of justice that are created by procedures of law enforcement including matters of fairness both in and out of court . . . ."

8. Gorecki, Jan: A Theory of Criminal Justice (1979), University of Columbia Press.  
  
Cohen, S.: Due Process of Law (1977) Carswell Co. Ltd.
9. Goss, C. and Reasons, C. E.: Corporate Crime in Canada (1978) Prentice-Hall of Canada.
10. Critical Criminology (Taylor, Walton, Young, Eds.) (1975) Routledge and Kegan Paul (London), pp. 21, 22. Criminologists of this persuasion classify research and writing on crime into three broad categories which they call "conservative", "liberal", and "radical". For them the "conservative approach is largely descriptive of existing social arrangements, the "liberal" approach is more concerned with change and is willing to say what ought to be done and the "radical" approach scorns anything short of a restructuring of the social and political underpinnings of society -- their preferred design being one solidly based on Marxist principles.

11. The classic work in the field of discretion generally is Davis, K. C.: Discretionary Justice: A Preliminary Inquiry (1969) Louisiana State University Press, Chapters VI and VII of which have particular reference to law enforcement of the type likely to involve the police. The leading article, despite its age, is still probably Goldstein, J.: Police Discretion Not to Invoke the Criminal Process: Low Visibility Decisions in the Administration of Justice, 69 Yale Law Journal, pp. 543-589 (1960). The discussion of police discretion in Canada (e.g., Grosman, B.: Police Command: Decisions and Discretion (1975) Macmillan of Canada, Ch. 5, and the Report of the Task Force on Policing in Ontario (Solicitor-General, 1974)), falls generally within the mainstream of ideas on police discretion which can be traced back to Goldstein and Davis.
12. Davis, K. C.: Police Discretion (1975), West Publishing Col., concentrates on the latter aspect, i.e., the police rule-making function in adopting policies for appropriate cases in which to intervene or not (the examples used involve (inter alia) such cases as the simple possession of small quantities of marijuana and the drinking of liquor in public parks).
13. Grosman, B.: Police Command: Decisions and Discretion (1975), Macmillan of Canada, p. 84.
14. "The investigatory apparatus of every society plays a key role in the enforcement of its laws. Without an adequate investigatory apparatus, there is no prosecution, no trial, no imprisonment. The police apparatus plays a key role . . . . It may be said that without such an apparatus laws become meaningless." Bequai, A.: Computer Crime (1978), Lexington Books, p. 56.
15. Grant, A.: The Criminal Justice System -- Where Are We Going? A paper presented to the 11th Annual Crime in Industry Seminar, Ontario Institute for Studies in Education, Toronto, 6th September, 1979.
16. Canada: Task Force on Policing in Ontario (Solicitor-General), 1974).

U.S.: President's Commission on Law Enforcement and Administration of Justice, Task Force Report.

The Police (1967) U.S. Gov't. Printing Office.

U.K.: Royal Commission on the Police (1962) Cmnd. 1728.

Australia: The Law Reform Commission, Report No. 2 Interim -- Criminal Investigation (1975), ALRC. 2.

17. "No western Society can afford the conquest of crime. In economic terms, it would cost too much and philosophically it would be intolerable". Robert Evans, Jr., in Report to the Economic Council of Canada, 1973.
18. "Sooner or later we must acknowledge as outmoded and out of date the crime control ideology that merely asks criminal justice administrators to detect, arrest, convict and punish criminals." Cressey, D.: Criminal Organization (1972) Heinemann Educational Books, p. 101. This plea, which is at least as old as, Sutherland, E. H.: The Professional Thief (1973), University of Chicago Press, p. 229 is as valid today as it was then, but practical and acceptable alternatives still seem to elude us.
19. See, e.g., The Legal Regulation and Control of Private Policing in Canada (1975), Stenning and Cornish (Centre of Criminology, University of Toronto); Private Security and Law Enforcement in Canada (1977) Shearing and Stenning (Solicitor-General (Canada)); Make or Buy, A Question of Minimum Standards for Security Guards (1977), Shearing and Farnell, (Solicitor-General (Canada)); Private Policing: An Examination of In-House Security Operations (1977). Jeffries (Centre of Criminology, University of Toronto); Policing for Profit: A Study of Contract Security in Ontario (1978), Shearing and Farnell (Centre of Criminology, University of Toronto).
20. See, generally, Hogarth, J.: Alternative to the Adversary System in Some Civil Liberties Issues of the 70's, Carswell, 1975 (W. Tarnopolsky, Ed.), p. 163; Law Reform Commission of Canada: Diversion, Working Paper No. 7 (1975) Studies in Diversion (The East York Project) (1974). Some interesting ideas in re-evaluating the concept of community competence to deal with certain problems currently dealt with legalistically through the courts have

come from the police themselves in Canada -- notably Supt. R. H. Heywood R.C.M.P. See, e.g., Perspectives in Crime Prevention 68 Canadian Police Chief, p. 25 (1979).

21. The expression is used in the sense intended by Sutherland, E. H.: White-Collar Crime (1961 Ed. -- preface by D. R. Cressey -- 1st published 1949), viz., the behaviour concerned must be in violation of criminal law; it must be by a person of upper socio-economic status and it must occur in the course of occupational activities.
22. Mayhew, H.: Criminal Prisons of London (1862), Griffin, Bohn & Co., London, p. 89.

"The habitual criminals . . . are a distinct body of people . . .

Those who object to labour for the food they consume appear to be part and parcel of every State -- an essential element of the social fabric."

23. Classic liberal scepticism of policing as a concept has been largely overcome in respect of "street crime" but appears to continue to a very great extent in respect of the criminal activity of the managerial-professional groups. Thus, the Royal Commission on Standards of Conduct in Public Life (1976) Cmnd. 6542 H.M.S.O., while making many recommendations for improved investigation and detection strategies for dealing with fraud and corruption in the U.K., came out against the police taking on the task of general surveillance of public bodies and other organizations. This even though every case which had come to light had been the work of the media and others. They had not been instigated from any official source. (Report, p. 117 at 119 -- addendum by Mrs. Ward-Jackson.) It appears that wrongdoing by corrupt officials can be left to the happenstance of discovery by the media. No official investigatory or surveillance capability is required. How can this be justified when so much of our public and private law enforcement resource is constantly directed at petty non-violent property offences -- most of it in the "nuisance" category committed by youthful opportunists?



24. Grant, A.: Obstacles in Maximizing Police Productivity 2 Police Studies: The International Review of Police Development (1979), 18, at 21.
25. E.g., National Advisory Commission on Criminal Justice Standards and Goals Report: The Police (1973). Washington, D.C., p. 19.

It has been estimated that from one-half to three-fourths of police time is spent providing non-enforcement services. Because the delivery of those services constitutes a significant part of the . . . agency's police role, appropriate quality control measures should be developed to determine agency effectiveness in responding to total community needs and expectations.

e.g., Task Force on Policing in Ontario (1974)  
Solicitor-General, Ontario p. 12:

Police officers spend relatively little of their time involved with crime or criminal activity. Estimates vary, but perhaps as much as 80% of an officer's duty is taken up assisting citizens, maintaining order, ensuring the smooth flow of traffic and pedestrians and routine patrol.

26. Radzinowicz and King: The Growth of Crime: The International Experience (1977) Hamish Hamilton (1979) Penguin Books, p. 182.

The police have picked up many jobs simply by being available. Public and governments alike simply know they are on the streets, or in their stations, all around the clock and call upon them accordingly. In many countries it goes further than that. The more the police are involved in day-to-day administration the wider their information and control.

27. National Advisory Commission on Criminal Justice Standards and Goals Report: The Police (1973), p. 19.

Many police agencies have surveyed their communities to determine what the community needs and expects of the police. [In Menlow

Park, California] one question was "How can we improve our service to you?" The overwhelming response was: -- "Increase patrol service".

28. Radzinowicz and King, op. cit., fn. 26; p. 183.

Why not transfer all these time-consuming jobs to traffic wardens, as in New Zealand, to tax collectors, health or social services, and leave the police to concentrate on their more specific tasks? Several answers have been advanced. First these seemingly borderline duties are much more closely tied up with the prevention and detection of crime than might appear at first sight . . . We may provide shelters, consultants, hospital beds, hostels, social workers, drying-out centres. The chances are that it will still be the police who have to get the people to them in the first instance and that in doing so they will be helping to maintain the peace and prevent offences . . . So perhaps it is a matter of recognizing rather than rejecting these social service elements in the role of the police and of making more place for them in training, organization and liaison.

29. Radzinowicz and King: op. cit., fn. 26, p. 127.

There is the problem of under-enforcement of the law against the respectable and well-to-do . . . The police have little access to their strongholds, few officers [are] trained to find their way through the labyrinth of frauds, scant resources [are available] for the length of investigation needed to penetrate to the heart of conspiracies. More successful enforcement of the law in these privileged circles could lessen the brooding sense of injustice felt by many people, the feeling that the police are respecters of persons applying one law for the rich and another for the poor.

Radzinowicz and King fail, however, to note that one of the reasons for this lies in political discretion in organizing the enforcement-capability factor, i.e., their view remains imprisoned within the conventional "police discretion" argument.

30. Our ability to deal with domestic "subversion", threats of insurrection and terrorism are clearly of the greatest direct importance to the continuation of the liberal, democratic form of government in this country. This whole area is currently being investigated (inter alia) by the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police (Chairman: Mr. Justice D. C. McDonald) appointed under Order-in-Council 1977-1911 on July 6, 1977. Among the questions upon which the McDonald Commission is likely to deliberate will be whether responsibility for combating "subversion" should remain with the RCMP Security Service or be dealt with by a separate non-police body. Pending the Report of the Commission, which is not expected until 1980-81, this topic will not be included in our consideration of police policy (although it clearly falls within the "wider aspect" of the policing concept as defined in the introduction to this section) since any views here expressed would obviously be completely out-dated by that Report.
31. Imp. Stat. 1867, 30 & 31 Vict., c. 3.
32. Criminal Code, R.S.C. 1970, c. C-34 (hereafter "Code"), ss. 449, 450.
33. Ibid., s. 443 et seq.
34. Ibid., ss. 178.1 to 178.23.
35. E.g., Police Act, R.S.O. 1970, c. 351, Police Act, S.B.C. 1974, c. 64. Similar provisions exist in each province.
36. Royal Canadian Mounted Police Act, R.S.C. 1970, c. R-9, and Regulations made thereunder.
37. E.g., R.R. No. 679, made under Police Act, R.S.O. 1970, c. 351.
38. E.g., Code, s. 450(1)
- A peace officer may arrest without warrant  
. . .
- Code, s. 443(1)
- A justice . . . may . . . issue a warrant  
. . . authorizing a person named therein or a  
peace officer to search . . .

Code, s. 178.12

An application for an [electronic eaves-dropping] authorization . . . shall be accompanied by an affidavit which may be sworn on the information and belief of a peace officer or other public officer . . . .

39. See, e.g., Re Public Inquiries Act (1919) 33 C.C.C. 119, 48 D.L.R. 237 [1919] 3 W.W.R. 115 (B.C.C.A.), where this proposition appears to be taken as axiomatic. A general description of police organization in Canada appears in Grant, A.: The Police: Organization, Personnel and Problems in The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms (Macdonald and Humphrey, Eds.), Butterworths, (1979) pp. 405-424.

40. See, e.g., Police Act, R.S.O. 1970, c. 351, s. 55:

The members of [municipal] police forces, . . . are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and laying informations before the proper tribunal, and prosecuting and aiding in the prosecution of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables.

Slightly different duties are laid down for members of the Ontario Provincial Police by s. 46. In particular, absent a special agreement, the provincial force is not charged with municipal by-law enforcement.

41. See, e.g., Bent, A. E.: The Politics of Law Enforcement (Lexington, Mass., D.C. Heath Col., 1974).

42. In Ontario this responsibility falls to the Solicitor-General. In Quebec and Newfoundland the equivalent official is referred to as the Minister of Justice.

43. For this purpose the Newfoundland Constabulary is being classified as a municipal police force since its operations are restricted to policing the St. John's area, the rest of the province being policed by the R.C.M.P. Other municipal or regional police forces exist in the following provinces to the extent shown: British Columbia, 12; Alberta, 11; Saskatchewan, 6; Manitoba, 19; Ontario, 128; Quebec, 192; Prince Edward Island, 14; New Brunswick, 26; Nova Scotia, 25. These numbers are, however, slightly deceiving in that they include many very small departments, some with only a single constable (e.g., 12 of Manitoba's 19 municipal police forces are single-constable operations).
44. Kelly, Wm. and Nora: The Royal Canadian Mounted Police: A Century of History (Edmonton, Hurtig 1973). See also Policing in Canada (Toronto, Macmillan, 1976), pp. 1-27 for a short treatment of the history of Canadian policing.
45. The R.C.M.P. has about 18,000 personnel compared to its nearest rivals in size, Montreal Urban Community Police and Metropolitan Toronto, each with around 6,000 personnel. The series of historical and economic incidents which help to explain this phenomenal growth rate are related in Grant, A.: The Police: Organization, Personnel and Problems, op. cit., fn. 39, pp. 406-7.
46. In particular they will be employed in enforcing the Narcotic Control Act, R.S.C. 1970, c. N-1, Food and Drugs Act, R.S.C. 1970, c. F-27, Customs Act, R.S.C. 1970, c. C-40, Excise Act, R.S.C. 1970, c. E-12 and the Immigration Act, R.S.C. c. I-2. There are, however, many other federal statutes of a less well-known character which fall to the R.C.M.P. to enforce, e.g., Migratory Birds Convention Act, R.S.C. c. M-12.
47. See Part I, fn. 30.
48. Report of the Royal Commission on Allegations of Unlawful Activities in the Police Investigation of Royal American Shows Inc. (25th June, 1978, per Mr. Justice Laycraft, Alta. Supreme Court).

49. R.C.M.P. Act, R.S.C. 1970, c. R-9, s. 18(2). This format closely approximates that used in s. 46 of the Police Act R.S.O. 1970, c. 351, to describe the duties of the Ontario Provincial Police.
50. Solicitor-General, Canada: The Police Function in our Changing Society, Proceedings of Conference "A", "The Role of the Policeman", Lake Couchiching, Ontario (1971).
51. Solicitor General, Canada: The Police Function in our Changing Society, Proceedings of Conference "B" "The Selection and Training of the Policeman", Banff, Alberta (1972).
52. Solicitor-General, Canada: The Police Function in our Changing Society, Proceedings of Conference "C" "Research and Communication", Montebello, Quebec, (1973).
53. Solicitor-General, Canada: Report of the Proceedings: Workshop on Police Productivity and Performance, Ottawa (1978).
54. Solicitor-General, Canada: Report on the National Symposium on Preventive Policing, Quebec, (1979).
55. R.C.M.P. Act, R.S.C. 1970, c. R-9, s. 5.
56. Royal Commission on the Police (Final Report) Cmnd. 1728 (1962), p. 29.
57. Ibid., pp. 11 and 22. The independence of the constable in England and Wales is claimed on two main grounds: (1) that he swears an oath of allegiance to the Crown; (2) early case law development had denied that he was a servant of either the Crown or the local police authority, e.g., Fisher v. Oldham Corp., [1930] 2 K.B. 364. On the first point it should be noted that some police in Canada still swear an oath of allegiance to the Crown, e.g., all municipal and provincial police in Ontario, see Police Act, R.S.O. 1970, c. 351, s. 64(1), whereas certain other police do not, e.g., all R.C.M.P. members, see R.C.M.P. Act, R.S.C. 1970, c. R-9, s. 15(1). On the point about police not being servants of their police authority, the major practical effect of this, at common law, was to prevent the local police

authority from being liable for damages in tort actions against constables. Provision for the payment of such damages is now often a matter of express litigation, e.g., Police Act, R.S.O. 1970, c. 351, s. 24.

58. Police Act, R.S.O. 1970, c. 351, s. 55. N.B. s. 46(1) which deals with the duties of members of the O.P.P. does not include these words.
59. R.S.C. 1970, c. R-9, s. 17(3). See, generally, Cohen, S.: Due Process of Law, Carswell & Co., (1977), pp. 40-51. See also the Police Act, S.B.C. 1974, c. 64, ss. 15(1) and 30(1) whereby it is much clearer that powers and privileges beyond statute law are held by provincial and municipal constables respectively.
60. Proceedings of Conference "B" -- The Selection and Training of the Policeman (Solicitor-General, Canada) Banff, Alta. November 27-29, 1972, pp. 24-25.
61. Op. cit., Part I, fn. 16.
62. Reg. Ont. 970-1974.
63. E.g., Metropolitan Toronto Police Force uses 21 years as a minimum age for becoming a constable and maintains the 5 ft. 8 in., 160 lb. physical stature requirements formally abandoned by the Province. In other words, the Province encouraged police forces to drop arbitrary physical standards but did not oblige them to conform to the new criteria.
64. Kelly, Wm. and Nora: Policing in Canada, op. cit., fn. 44, p. 108.
65. The problem goes something like this. We cannot tell who will make a good police officer until we know what his role is. There is no clear definition of the police role in society and the role, itself, is changing with events. Many of the tests used were not created with the police job in mind, e.g., Minnesota Multiphasic Personality Inventory (MMPI), the California Psychological Inventory (CPI) and the Strong Campbell Interest Inventory. Despite these difficulties a 1972 study of 493 law enforcement agencies in the U.S.A.

indicated that 55% were using some form of psychological testing in their recruit selection process -- Police Personnel Practices in State and Local Governments (International Association of Chiefs of Police, Washington, U.S.A.) -- quoted in the Report of the B.C. Police Commission Committee on Recruitment and Selection Standards (1976), p. 44.

66. See generally, The Use of the Polygraph in Pre-employment Screening Processes The Police Chief (1974) July, and The Objections to Polygraph Screening of Police Applicants. The Police Chief (1972), June. See also Report of B.C. Police Commission Committee, op. cit., fn. 65 at p. 33.
67. Task Force on Policing in Ontario, (1974, Solicitor-General Ont.), p. 86.
68. Verdict of the Coroner's Jury in the case of Andrew Wesley (Buddy) Evans, October 3, 1979, Toronto, Ontario.  
Recommendation 20:

"That the [Metropolitan Toronto] Police Commission request budget sufficient to enable them to engage outside professional help in recruitment of personnel for the force; and this should include placing emphasis on the recruitment from ethnic and minority groups."

The Report to the Civic Authorities of Metropolitan Toronto and its Citizens by Cardinal Emmett Carter, October 29, 1979, makes the same point at p. 23 where he says ". . . it is of the utmost importance for us to have officers from each major ethnic group in our community . . .".

69. Notably R.C.M.P., O.P.P., Metropolitan Toronto, Vancouver, to name only a few.
70. Realization of this factor led the Royal Commission on the Police (U.K.) 1962 Cmnd. 1728, pp. 92-96, to make far-reaching suggestions for implementing new ways of providing the police leaders of the future because the policies then in force were failing to achieve the second of the two goals.



71. For articles in Police recruit and police management training in Canada, see Grant, A.: Some Reflections on Police Education and Training in Canada (1976), 18 Crim. Law Quarterly, pp. 218-234 and Towards a Model for Police Management Training (1977), 19 Crim. Law Quarterly, pp. 291-302. See also: Grosman, B.: Police Command, op. cit., Part I, fn. 13, Ch. 4 and Kelly, W. and N.: Policing in Canada, op. cit., fn. 44, Ch. 8.
72. The analysis of Canadian police education and training programmes into the four models described in the text is done in an attempt to reduce lengthy factual descriptions of the different arrangements made in each province and nationally for training police officers. Such descriptions can be found in the annual Reports of the Police Educators Conference Board of Canada which meets at a different site each year, sponsored by the Solicitor-General (Canada). This initiative commenced in Calgary in 1974 and was followed up in 1975 (Regina), 1976 (Montreal), 1977 (Winnipeg), 1978 (Toronto), and 1979 (Prince Edward Island).
73. Dr. John Tobias, formerly of the National Police College, Bramshill, (U.K.), has shown this phenomenon to be at work in England. I understand that informal studies show a similar phenomenon in Canada but these have not been published. The English material appears in The Police Journal 1972 (Oct.-Dec.), 1973 (April-June), 1974 (Oct.-Dec.).
74. Report of the Symposium on Preventive Policing -- Mt. St. Marie, Quebec (1979), Solicitor-General (Canada), p. 48:

I agree with the statement that resorting to lateral entry in the sworn hierarchy of police departments, indicates some kind of failure in your own system to develop your own people. That may be a problem in smaller departments because they don't have the capacity to do this. There may be more of an inclination to recruitment from outside in small departments for this reason. But in this area of lateral entry we will meet head on with the unions and police associations. The only thing they really have is the privilege of seniority. This is very dear to

their hearts. I think we are going to have to go through a lot of pain before we can convince police associations that lateral entry is an acceptable feature.

75. E.g., The Chief Constables of Victoria, B.C. and Edmonton, Alta. were former R.C.M.P. members.
76. E.g., The Chief Constable of Oak Bay, B.C., was formerly an inspector in the Vancouver Police Department.
77. The B.C. Police Commission has experimented with this concept with considerable success and offered the services of an Assessment Centre to the twelve municipal police forces in the province. The F.B.I. were the first police force in North America fully to develop this concept which arose out of extreme dissatisfaction with the promotion-board interview which, though traditional and still much in evidence, is highly impressionistic and probably quite useless as a predictor of a candidate's performance in the new position.
78. Many of the most innovative ideas in Canada on re-evaluating police personnel deployment, with particular reference to increasing community involvement in dealing with local problems, have come from Superintendent R. N. Heywood of the R.C.M.P. See his Keynote Address, Symposium on Preventive Policing (Solicitor-General, Canada -- February 1979, Mt. St. Marie, Que.). His strategies were largely worked out when acting as a municipal police chief, under contract, in North Vancouver and in Surrey, British Columbia.
79. In Bathurst, New Brunswick, the R.C.M.P. were not called in, in New Glasgow, Nova Scotia, they were.
80. E.g., E. C. Courtis and I. Dussuyer, Attitudes to Crime and the Police in Toronto, Univ. of Toronto, Centre of Criminology, 1970, p. 94; Jose M. Rico et Guy Tardif; La Société face au Crime, Annexe 2, Montreal: La Commission d'Enquête sur l'Administration de la Justice en matière criminelle et pénale, 1968, p. 73; Daniel J. Koenig: British Columbians' Attitude and Experiences Relevant to the Police, Law and Crime, Justice Development Commission, B.C. October 25, 1974.

81. "The environment in which police must function is continually changing. Some of the change may be absorbed by existing police organization. However, police departments must change as well."

The Management of Change; Management Workshops,  
B.C. Police Commission, 1977.

82. Clark, C.: Tales of the British Columbia Provincial Police (Sidney, B.C.: Gray's Publishing Ltd., 1971).
83. Anderson, F.: Saskatchewan's Provincial Police (Calgary, Frontier Publishing Ltd., 1972).
84. This can create problems when, for example, an R.C.M.P. officer co-operates with a Provincial judicial enquiry and, after providing intelligence to this body, is then disciplined by his own force for revealing information which (in the view of his own force), it was his duty not to reveal. It has been suggested that some problems of this nature arose as a result of the Royal Commission on Allegations of Unlawful Activities in the Police Investigation of Royal American Shows Inc. (Report dated June 25, 1978, per Laycraft, J.).
85. R. French and A. Beliveau, "The R.C.M.P. and the Management of National Security" (1979) Institute for Research on Public Policy, p. 15.

It should be remembered that, relative to national population, the R.C.M.P. is a giant police organization. In the U.K., for example, with a population of around 60 million, the largest police force is the London Metropolitan Police which is 20,000 strong. In the U.S.A., with a population of over 250 million, the largest police force is the New York Police Department which is around 30,000 strong. Yet Canada, with less than 25 million people, boasts an 18,000 strong police force in the R.C.M.P. Of course, Canada has a large land mass and that will account for some of the distortion, but relative to over-all police strength within a particular jurisdiction, the R.C.M.P. also shows up as an extremely large operation. Of all the public police in Canada about one-third of them are R.C.M.P., whereas the largest police force in the

U.K. represents only one-sixth of the total police strength and the largest police force in the U.S.A. represents less than one-tenth of the total police strength.

86. Even at the height of allegations of misconduct by the R.C.M.P. which form the background to the McDonald Commission (see Part I, fn. 30), public support for the force, as evidenced by letters to the editor in the press, consistently favoured the R.C.M.P. by a wide margin, probably in the neighbourhood of 9:1.
87. The O.P.P. Anti-Rackets Branch has in 1979 been increased to 35, and has been engaged in a number of complex enquiries which have resulted in successful conclusions, either alone or as part of a Task Force with R.C.M.P. Commercial Crime, and Metro Toronto Police Fraud Squad.
88. There are over 4,000 R.C.M.P. members on duty in B.C. so that a B.C. Provincial Police would be a very viable entity both as a purveyor of general police services and providing a capacity for investigating white-collar crime and organized crime.
89. E.g., P.E.I. may well be better served by the R.C.M.P. since, from its own resources, it would never be able to afford the type of support services which the equivalent provision by "L" Division of the R.C.M.P. currently ensures. The Report on Policing: Province of Prince Edward Island, 1974 (The Grosman Report), p. 7 shows that the Division, at that time, numbered 103 uniformed members, plus civilians. Even allowing for growth since, a provincial police force of 110 to 120 members would be of questionable viability as a truly independent unit.
90. P. 42.
91. E.g., Central Saanich, B.C. has 10 members, 12 of Manitoba's 19 municipal forces are single-constable operations, and the towns of Borden and Kensington and the villages of O'Leary and St. Eleonors, in P.E.I., each have one-constable municipal police forces. (Grosman Report, op. cit., fn. 89, p. 12.)

92. E.g., Police Act, R.S.O. 1970, c. 351. Part IV deals with the constitution of the Ontario Provincial Police; R.C.M.P. Act R.S.C. 1970, c. R-9, s. 3 deals with the continued existence of "a police force for Canada".

93. E.g., Police Act, R.S.O. 1970, c. 351, s. 2(1).

"Every city and town is responsible for the policing of and maintenance of law and order in the municipality and for providing and maintaining an adequate police force in accordance with the police needs of the municipality."

Police Act, S.B.C. 1974, c. 64, s. 17(1).

". . . it is the duty of every municipality having a population of more than five thousand persons to provide, in accordance with this Act and the regulations, policing for the purposes of adequately enforcing municipal by-laws, the criminal law, and the laws of the Province, and of generally maintaining law and order, within the municipality."

94. E.g., R.C.M.P. Act R.S.C. 1970, c. R-9, 18(a); Police Act, R.S.O. 1970, c. 351, ss. 55 and 46(1); Police Act S.B.C. 1974, c. 64, ss. 13(2) and 27(2).

95. E.g., R.C.M.P. Act, op. cit., Part II; Police Act, R.S.O., op. cit., Regulation 680; Police Act, S.B.C. op. cit., Regulation 330/75.

96. "The awakening of legislative bodies to the need for basic reform" of this type was pioneered by K. C. Davis in "Discretionary Justice", op. cit., Pt. I, fn. 11, at pp. 223-4.

"Our system of statutes reflecting the pretensions of the community and enforcement reflecting the realities of community practices is an atrocious system, for it is a major source of injustice. An officer should not have uncontrolled discretionary power to invoke a statute against one violator out of a hundred, without explaining why, without check by a supervisor and without judicial review even if his action is wholly capricious."

97. See Davis, K. C.: Police Discretion, op. cit., Pt. I, fn. 12, pp. 2-3:
- "When we have asked why an officer enforces something, the answer is that he has to. When we ask why an officer does not enforce something, the answer is 'We can't enforce everything'. Those are the two fundamentals according to what we are told. Rarely does an officer, high or low, try to put the two answers together."
98. C. Marshall, Police and Government (1965) Methuen, London, p. 112, and Royal Commission on the Police (1962) Cmnd. 1728 pp. 30-32.
99. Ibid.
100. French & Béliveau, op. cit., fn. 85, supra, p. 51.
101. E.g., George L. Kelling et al: The Kansas City Preventive Patrol Experiment: A Summary Report (Washington, D.C., Police Foundation, 1974).
102. See e.g., Police Chief, June 1975, pp. 20-45 for a spirited defence of the patrol function.
103. The Police Foundation, Washington, D.C., U.S.A. has been one of the foremost funding sources for such endeavours and continues to be so.
104. These examples of alternative personnel deployment, embodying a preventive policing philosophy, are derived from the actual police management experience of Superintendent R. N. Heywood R.C.M.P. Further details of the approach can be found in his article "Perspectives of Crime Prevention", 68 Canadian Police Chief No. 3, pp. 25-29 (July, 1979).
105. Greenwood, P. W. et al.; The Criminal Investigation Process, (Chicago, Ill., Rand Corp., 1975).
106. Ibid.
107. "The problem of police in a democratic society is not merely a matter of obtaining newer police cars, a higher order of technical equipment or of recruiting men who have

to their credit more years of education. What must occur is a significant alteration in the ideology of police, so that police 'professionalism' rests on the values of a democratic legal order rather than on technical proficiency."

Jerome Skolnick: Justice Without Trial: Law Enforcement in Democratic Society (Wiley & Sons, New York, 1966), p. 239 (emphasis added).

108. "This is a constantly recurring theme in the literature on the police, including the various national studies and especially the management studies of individual police agencies."

Herman Goldstein, Policing a Free Society (1977) Ballinger Publishing Col., Cambridge, Mass.

While it is undoubtedly correct that this theme does and should recur in the literature, up-grading of police personnel education and training without an accompanying improvement in the capability-factor of police forces, will fail to achieve the potential for change which improved educational standards would otherwise promise.

109. For details, see Grant, A.: Some Reflections on Police Education and Training in Canada (1976) 18 Crim. Law Quarterly, pp. 218-234 at 224. The Annual Reports of H. M. Chief Inspector of Constabulary proudly list the graduates who have acquitted themselves so well in Oxford, Cambridge, London and other major universities under this scheme.
110. Recently a staff-sergeant with 23 years service in a major Canadian municipal police force was refused, on such grounds, an unpaid leave of absence to read law in a leading law school. Since he was determined to take up the mature-student place offered to him he accordingly resigned from the force. The loss of talent of this calibre cannot be afforded by any police force let alone one where none of the senior management has any post-secondary education, as is quite often the case, in Canada.
111. Arthur Niederhoffer: Behind the Shield: The Police in Urban Society (1967), Doubleday, New York, is the classic study on police cynicism.

Mr. Niederhoffer is a former New York Police Department officer with doctoral degree qualifications.

112. Jennifer Hilton, Psychology and Police Work, in The Police We Deserve (Alderson and Stead, Eds.) Wolfe Publishing (1973), p. 100. Ms. Hilton is a serving police officer in London, U.K., with post-graduate degree qualifications in Psychology.
113. A fascinating study comparing the attitudes of senior R.C.M.P. officers dependent upon whether they had received in-service training to the highest level (Executive Development Course, Canadian Police College, Ottawa) or had successfully completed full-time degrees in universities appears to A. Franklin Dalley, "Education and Police Attitudes" 1973, M.A. Thesis, Dept. of Criminology, U. of Ottawa (unpublished). It appears to underline the understandable limits of even very advanced in-service training as a general educational vehicle.
114. This is so because the person who is promoted creates a vacancy in his former position which is filled by someone who, in turn, creates a vacancy at his level and so on. Thus, when a Chief Constable retires, a vacancy normally occurs at every level in the promotion ladder. If a Chief Constable were to be appointed from a different force, none of these promotions would occur. This factor is always mentioned by those who oppose inter-force transfers.
115. In addition to starting out as a constable most will have held every rank between constable and Chief. In very small forces there may not be many steps involved and in many one-constable forces that constable is called the Chief of Police. In a recent case where a constable without police command experience was appointed Chief (after years as a Police Association representative) a public inquiry into his (and others') conduct resulted in his removal after a hearing into his competence by the Provincial Police Commission. See, Report of the Inquiry into Police Practices in the Waterloo Regional Police Force (20th November, 1978) Ontario Police Commission. The dismissal was subsequently set aside by the courts and the final outcome



cannot be predicted. This was a very special case on its own facts and does not have general implications for police promotion policies.

116. Thomas A. Critchley: "The Idea of Policing in Britain: Success or Failure?" in The Police We Deserve op. cit., fn. 112, p. 31.
117. Lord Trenchard, the Commissioner of Police of the Metropolis in London, England, pioneered the most ambitious excursion into reversing Peel's policy in the 1930's when he formed an officer-cadre in the London Metropolitan Police by appointing non-police candidates to the rank of Junior Station Inspector following successful completion of a six-month residential course at Hendon Police College. The scheme was suspended when all recruiting was stopped by the outbreak of War in 1939 and it was not revived in 1945 when hostilities ceased.

Nevertheless, many of the "Hendon" officers went on, in due course, to fill most of the highest ranks in the English police. See, Thomas A. Critchley: A History of Police in England and Wales, (2nd Edn.) 1972 Patterson Smith, pp. 203-209.

118. "Without making any accusations of unfairness one cannot help but wonder at the fact that there are over 100 black officers on the [Metropolitan Toronto Police] Force . . . and yet no one is above the rank of sergeant . . . This may be because of simple and objective norms which are being fairly applied but it still surprises me."

Gerald Emmett Cardinal Carter -- Report to the Civic Authorities of Metropolitan Toronto and its Citizens (October 29, 1979), p. 24.

119. "We talk about minority representation on police forces and of the fact that police departments should be representative of the community they serve. Half of the human population is female and yet there is not a single woman police officer here. When is that going to change?"

Professor Alan Grant: Report on the National Symposium for Preventive Policing (Solicitor-General, Canada, 1979), p. 43.

120. Harry W. Arthurs, The Formal Public Sector Model: Collective Bargaining by Police Forces in Ontario in Collective Bargaining by Public Employees in Canada: Five Models, (1971) Institute of Labour and Industrial Relations, The University of Michigan -- Wayne State University, p. 78.
121. The Report of the Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure Within the Royal Canadian Mounted Police (1976), p. 195.
122. E.g., The Ontario Police Arbitration Commission not only administers the arbitration process between municipalities and their police forces throughout Ontario but also provides conciliation services to the parties. While many disputes, nevertheless, proceed to arbitration, the conciliation services have, undoubtedly, assisted the parties in narrowing the issues and enabled them to better appreciate the other party's position.
123. See H. W. Arthur, op. cit., fn. 120 (supra), pp. 89-92.
124. See, e.g., Police Act, R.S.O. 1970, c. 351, s. 29(2) as am. 1972, c. 103, s. 2.
125. Ibid., s. 72, as am. 1972, c. 1, s. 97(2).
126. R.R. Ont. Reg. 678.
127. R.R. Ont. Reg. 679.
128. R.R. Ont. Reg. 680.
129. R.R. Ont. Reg. 681.
130. Ont. Reg. 780/73.
131. Re: Board of Commissioners of the Police for the Municipality of the Town of Kingsville and the Kingsville Police Association (McLaren) July 29, 1977. Ministry of the Solicitor-General -- Annual Report 1977, p. 54.
132. Re: Board of Commissioners of Police for the City of Thunder Bay and the Thunder Bay Police Association (Barton) May 31, 1977; The Sault Ste.

Marie Police Commission and the Sault Ste. Marie Police Association (Barton) December 15, 1977; The Board of Commissioners of Police for the City of North Bay and The North Bay Police Association (Swan) February 18, 1977. Ministry of the Solicitor-General -- Annual Report, 1977, p. 54.

133. Re: The Sudbury Regional Board of Commissioners of Police and The Sudbury Regional Police Association (Samuels), June 14, 1977. Ministry of the Solicitor-General -- Annual Report, 1977, p. 53.
134. E.g., immediately before the B.C. Police Act, S.B.C. 1974, c. 64, and Police (Discipline) Regulations Reg. B.C. 330/75 came into effect there was a proposal by a municipal police association to its police board that complaints against police be in writing, in future, sworn before a Justice of the Peace and the declarant subjected to a poly-graph test. The proposal was not proceeded with when the field was effectively occupied by a quite different scheme. See the Police (Discipline) Regulations. Amendments to the Police Act no longer required that such matters be "subject to the Labour Code of British Columbia" Police (Amendment) Act, S.B.C. 1975, c. 46.
135. R.R. Ont. 680, s. 32, as am. O. Reg. 970/74, s. 1.
136. E.g., R.C.M.P. Act, R.S.C. 1970, c. R-9, Part II, as amended R.R.O. 680 made under Police Act, R.S.O. 1970, c. 351, and Police Act, S.B.C. 1974, c. 64, s. 56(a) and Reg. B.C. 330/1975.
137. When the B.C. Police (Discipline) Regulations were being drafted in 1974/75 this suggestion was made by the then Chairman of the B.C. Labour Relations Board and was strongly supported by one Assistant Chief Constable and some non-commissioned police officers. The vast majority, however, favoured the more detailed Discipline Code system. The minority view was not without interest, however, and it could well be that a system which placed internal police discipline (but not public complaint cases) within the mainstream of labour relations law would be a very effective means of reducing the police tendency towards para-militarism, e.g., the Discipline Code methodology is clearly based on very early versions of armed service discipline

procedures which, ironically, the services have largely abandoned themselves except in very serious matters akin to criminal law enforcement. This point is also made to some extent, in The Report of the Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police (1976) (His Honour Judge René J. Marin, Chairman) although it proposes a different solution.