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Les Samuelson

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DISCUSSION PAPER

ABORIGINAL POLICING ISSUES: A COMPARISON OF CANADA AND AUSTRALIA

SUBMITTED TO

MINISTRY OF SOLICITOR GENERAL OF CANADA

by

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SUMMARY

This discussion paper compares Canadian and Australian Aboriginal policing issues. Most of the recent debate and publications on Aboriginal peoples and policing have been concerned with on-reserve policing. Urban Aboriginal police relations have, thus, only begun to receive notable attention in terms of new trends, programs and policies. This is necessary as "an increasing majority of Aboriginal offenders is drawn from such urban centres, and the growing urban Aboriginal population presents a special challenge for developing innovative approaches to the prevention of crime" (Justice Canada, Aboriginal Peoples and Justice Administration (1991), p. 39).

One valuable method for broadening knowledge on an issue is to look to other jurisdictions with similar concerns. In terms of analyzing Aboriginal-police relations, Australia has already been cited by many recent Canadian Aboriginal justice commissions on the one issue that lies at the heart of police work. These commissions have all concluded that Canadian police handling of Aboriginal peoples at the police interrogation stage and the admissibility of statements should follow the Australian *Anunga Rules*. A central task of this discussion paper was, therefore, to evaluate the operation of the *Anunga Rules* in Australia as a key part of the comparison between Canadian and Australian Aboriginal-police relations. Where possible, the focus of the discussion is urban Aboriginal-police relations.

As a precursor to evaluating the *Anunga Rules*, Section I provides an overview of the history of police-Aboriginal relations in Canada and Australia. In both countries, legislative acts, agents and policies were employed in a similar historical process of segregation and

legalized paternalistic control at least until the 1940's. This colonialist legacy, and the role of the police as enforcers of government policy, sets the backdrop for the frequently poor state of police-Aboriginal relations that exists today.

Section II presents basic demographic and comparative data on Aboriginal criminal justice system overrepresentation. In Canada there are about twice as many and twice the national percentage of Aboriginal people as in Australia. However, their regional distribution, urban concentration and involvement in the justice system is similar to that of Australian Aboriginals. Significantly, in both countries, two overarching concerns influence much of the debate on Aboriginal involvement in the justice system and Aboriginal-police relations. These two concerns are the 'overpolicing' of 'visible' Aboriginal people in urban areas, in terms of arrest, charging practices and treatment, and the 'underpolicing' of less 'visible' violence against Aboriginal peoples, especially violence against Aboriginal women.

Extensive data is presented in Section III on the 'overpolicing' of Australian Aboriginals within the context of a general historical shift in that country from colonialism to an emergent 'Law and Order'-based program of fairly extensive systemic racism in policing of Aboriginal peoples. The conclusion of this key section, based upon a wealth of data on Australian police-Aboriginal relations, is that there is little evidence that the *Anunga* guidelines have contributed in any notable way to positive change in Australian police handing of Aboriginal peoples. Indeed, since their promulgation in 1976, Aboriginal-police relations have deteriorated very noticeably in Australia and have reached crisis proportions.

In Section IV comparative data are presented on the serious problem of the 'underpolicing' of violence in Aboriginal communities, especially violence against women. As

the data reveals, death by violent means has become an increasing phenomenon and of general concern for Aboriginal peoples in Australia. However, when it comes to chargeable homicide the percentage of Aboriginal female victims goes as high as 79% in the Australian Northern Territories. Data are also presented from Canada on the very high proportion of Aboriginal women who suffer physical abuse, often repeatedly, and yet who are extremely reluctant to seek official agency help. Discussion is provided here of the need to further develop Aboriginal community input into policing of Aboriginal communities and of the possible transference of model programs from rural to urban areas.

Section V concludes that academic research and commission-based publications in Australia and Canada are in agreement both on the problems in Aboriginal-police relations and on possible ways of effecting positive change. Three primary avenues for change are emerging from these two sets of literature. First, the best overall strategy is to continue the development of community-based policing but with much more grassroots Aboriginal community input. Second, police, if they are to be assigned to heavily populated Aboriginal areas, must receive some training in and by the Aboriginal community. Experienced police trusted by the community, and apparently some do exist, should also be more involved in training new police placements in Aboriginal communities and areas. Third, suggestions are made for a much needed strengthening of the *Anunga* guidelines. The *Anunga* guidelines are presented in Appendix 1, and formal police policies across Australia for the handling of Aboriginal suspects are presented in Appendix 2. An extensive computerized data search on Aboriginal justice issues from CINCH, the Australian Criminology Database, is also provided.

INTRODUCTION

Urban Policing and the Need for Comparative Data

Much discussion has taken place, particularly since the Donald Marshall Jr. Inquiry, on the serious concerns which exist in the overrepresentation and handling of Aboriginal peoples in the Canadian justice system. We have had the report of the Manitoba Aboriginal Justice Inquiry (1991); the Justice On Trial (1991) report on the Canadian criminal justice system and its impact on the Indian and Métis people of Alberta; the two reports of the Saskatchewan Indian/Métis Justice Review Committees (1992); the Law Reform Commission of Canada report, Aboriginal Peoples and Criminal Justice System (1991); and the Justice Canada discussion paper, Aboriginal Peoples and Justice Administration (1991).

Consistent with these initiatives, on June 27, 1991, the Minister of Indian Affairs and Northern Development and the Solicitor General of Canada, announced a new federal Indian policing policy (now known as the First Nations Policing Policy). This timely focus on policing as a central component in current discussions of Aboriginal peoples and the justice system is not surprising. As the report of the Saskatchewan Indian Justice Review Committee noted, "policing is the most common point of contact between the Aboriginal community and the criminal justice system" (p. 20). The report further notes that policing is a crucial focal point for "any alienation, cultural insensitivity or systemic racism which Aboriginal people might encounter in their dealings with the criminal justice system".

Perhaps as a consequence of past and recent major legal claim negotiations culminating in the recent Canadian unity debates on enshrining Aboriginal inherent right to self-government

in the Constitution, almost the entire focus of the recently announced First Nations Policing Policy, and much of the debate in the previously listed reports on Aboriginal peoples and policing, has been with policing in Aboriginal communities, or on-reserve policing. However, as the Saskatchewan Indian Justice Review Committee report stated, a full 46% of registered Indians in Saskatchewan reside off-reserve, often in urban areas (p. 5). Similar large urban populations of status and non-status Indians and Métis exist in other provinces. Concomitant with these data, the concern exists that at least some policing:

> will be very different for Aboriginal people in isolated and rural communities which may lack a social service infrastructure, and for Aboriginal people in larger urban centres which may lack a strong identifiable community. In fact an increasing majority of aboriginal offenders is drawn from such urban centres, and the growing urban aboriginal population presents a special challenge for developing innovative approaches to the prevention of crime. (Justice Canada, Aboriginal Peoples and Justice Administration (1991), p. 39)

Essentially the same view has been reiterated by the Law Reform Commission report, Aboriginal Peoples and the Criminal Justice System. This report notes that some detail is missing. But, in general, the thrust of on-reserve or Aboriginal community policing has been consistent with the development of Aboriginal band sovereignty and Aboriginal-run components of the criminal justice system, especially policing. The same policies cannot readily be transposed to urban areas, especially those that are primarily non-Aboriginal but which have relatively large Aboriginal populations, such as Winnipeg, Regina and Moose Jaw. Therefore, it is not surprising that the Alberta Task Force report on Indian and Métis people concluded that, while an increasing concern, "the Task Force finds it difficult to assess urban Aboriginal-police relationships with any authority" (p. 33).

It is obvious that research is needed on urban Aboriginal-police relations. One important method of gathering much needed information on social issues, such as urban policing, is to look to other jurisdictions with similar concerns. As the 1990 discussion paper A Vision of the Future of Policing in Canada: Police - Challenge 2000, by the Ministry of the Solicitor General of Canada, clearly recognized, such comparative research can be invaluable in informing Canadian policing policy and program development. It noted that our access to research done in the U.S., largely during the 1970s, paved the way for the questioning of assumptions that underlay the several decades-old move to paramilitary professionalised policing, and the corresponding current shift in the U.S. and Canada to community policing (p. 34).

In terms of the present concern with analyzing urban police-Aboriginal relations, Australia has already been much cited by many recent Canadian studies on Aboriginal-police relations on the one issue that lies at the heart of police work. Reflecting earlier findings of the Donald Marshall Jr. Inquiry, these Aboriginal justice inquiries and studies have all concluded that Canadian police handling of Aboriginal peoples at the police interrogation stage and the admissibility of statements should follow what they term the *Anunga Rules* (see Appendix 1). Focusing particularly on culture conflict, one report stated of Aboriginal people that:

> Their statements appear to be particularly open to being misunderstood by police interrogators and, as a result, may convey inaccurate information when read out in court. Their vulnerability arises from the legal system's inability to break down the barriers to effective communication between Aboriginal people and legal personnel, and to differences of language, etiquette, concepts of time and distance, and so on. This matter has been considered in a number of courts, but perhaps the fullest explanation was given in an Australian Court (Manitoba Aboriginal Justice Inquiry, The Justice System and Aboriginal People, p. 605).

This report concluded, as did the Alberta Justice on Trial report, that:

> The *Anunga Rules* have now become almost universally applied throughout Australia in one form or another and have become part of the training manuals for police departments in that country. Much controversy arose, particularly from police authorities, when this decision was made, but the [formal] existence of the rules was strongly endorsed by the Australian Law Reform Commission in their report on the recognition of Aboriginal customary law in 1986. It is interesting that in Australia, where the treatment of Aboriginal people by police authorities has been the focus of international research and comment, and where the over-representation of Aboriginal people in the justice system probably exceeds the level in Canada, such an approach to the reception of statements by Aboriginal accused has been judicially mandated. We believe that it would be appropriate for Manitoba courts to adopt and apply the *Anunga Rules*, keeping in mind the differences between Canada and Australia (Manitoba Aboriginal Justice Inquiry, The Justice System and Aboriginal People, p. 607).

As any analyst of the criminal justice system knows, and as has been repeatedly pointed out by reports on Aboriginal people and criminal justice reform, it is much easier to propose solutions than to implement them. For example, many of the currently proposed changes in the area of Aboriginal people and the justice system, such as those in the 1991 Law Reform Commission report (p. 85), were proposed in the mid 1970s, such as in the 1975 National Conference on Native Peoples held in Edmonton.

Unfortunately, but not surprisingly, the same is true in Australia of the criminal justice system in general, especially in policing. Numerous recent Australian reports on Aboriginal-police relations have, essentially, all concurred with the Criminal Justice Commission of Queensland. The commision, recently founded in the wake of the Fitzgerald Inquiry into police corruption and abuse in Queensland, stated that, "the challenge for police departments in Australia is to accept that there is a basis for Aboriginal resentment and suspicion about police conduct and to consider the Aboriginal perspective when devising appropriate police strategies" (p. 60).

Based on these findings concerning Aboriginal-police relations in Australia, it is difficult to see how Canada can move forward in the area of urban police-Aboriginal relations by emulating Australia without relatively extensive research on the problems of police-Aboriginal relations in that country. In particular, we must examine recent Australian attempts to do more than formally propose the *Anunga Rules*, which are in fact, if one looks at the case of *R. v. Anunga* and others, only guidelines, not rigid rules for police conduct. Overall, we must situate this specific research within a general comparative framework which maximizes our ability to learn from other jurisdictions, in this case Australia. This would provide valuable data on how to establish Aboriginal policing policy and practice that is professional, culturally sensitive and has community involvement. For, according to the backgrounder to the Indian Policing Policy statement released in June 1991, these are the overriding central tenets that should inform Aboriginal-police relations in Canada, both on-reserve and urban.

Before moving into this analysis, three interrelated cautions must be made about research on Aboriginal justice issues, especially in comparative research such as this. Brodeur et al. summarize these concerns well in their final report on Justice For the Cree (1991). This community-based research was concerned with establishing workable alternatives to the current Canadian system of criminal justice in small, rural James Bay Cree communities. However, the points raised are still relevant for discussions of Aboriginal people and the criminal justice system in urban areas.

First, they note that much existing research in this area seems trapped in a common perception that Aboriginal groups in Canada have similar characteristics, problems and potential solutions. These perceptions, they note, "have been reinforced in research efforts which often

identify the nature of the problem in terms of broad generalizations about culture conflict, over-representation in correctional institutions and various forms of discrimination" (p. 3). Likewise, the search for 'solutions', including examining other countries such as the U.S. and Australia, has not escaped a 'broad brush' approach. An uncritical 'broad brush' approach can be particularly problematic when one seeks to repeat successful pilot projects in other communities, regions and countries.

Second, we must avoid falling into the trap, as much research does, of believing that a more appropriate and effective justice system will solve all the problems of Aboriginal communities. It is important to identify and deal with the problems that Aboriginal people face in non-Aboriginal systems of justice. However, in terms of solutions to problems, there may be problems that Aboriginal control over justice can resolve, and there may be others that are much more difficult to deal with. Finally, we must be sensitive to change over time in the nature of problems to be addressed and in solutions to them (p. 3).

In this discussion paper, I will compare published academic research and government documents on police-Aboriginal relations in Canada and Australia. I will focus, in particular, on what Canada can learn from Australia in the area of urban police-Aboriginal relations. Specifically, the paper will provide the following:

- a general historical comparison of police-Aboriginal relations in Canada and Australia
- comparative data on the overrepresentation of Aboriginal peoples in the justice system, especially at the level of policing, in general, as well as for young offenders and women

- Australian data on the extent of problems in the police handling and questioning of Aboriginal suspects, especially on the actual implementation of the *Anunga Rules*
- comparative data on recently implemented and proposed ways to maximize police adherence to formal policing policies, especially with Aboriginal input into the policing of their communities.

The paper will conclude with a summary of how Canadian urban police-Aboriginal relations can positively progress by examining Australian experiences and research on police-Aboriginal relations.

SECTION I

History of Police - Aboriginal Relations in Canada and Australia

Virtually all academic and government discussion of Aboriginal peoples and the criminal justice system initially, or ultimately, confronts the stark data on the overrepresentation of Aboriginal people in the justice system. However, recent Canadian and Australian reports on this issue, such as the Manitoba Aboriginal Justice Inquiry (p. 83) and the Australian Royal Commission Into Aboriginal Deaths in Custody (p. 8), have concluded that this data can only be fully understood when set against the history of the treatment of Aboriginal people by colonizing populations. Unfortunately, the Donald Marshall Inquiry did not direct its attention to this issue, and has been heavily criticised for not doing so by Aboriginal analysts such as Turpel and Jackson.

Essentially, no analyst would disagree with Turpel when she states in her critique of the Marshall Inquiry that the linked processes of racism and colonialism are the roots of the tragedy of the criminal justice system in its application to Aboriginal people. If major positive change is to occur we must deal with root causes and recognize that, "Institutionalized racism for Aboriginal people is a by-product of colonization, of the forced imposition of an alien legal, political and cultural regime on to communities", (Turpel, p. 94). Poverty, alcohol and alienation, the universally cited correlates of Aboriginal involvement in the criminal justice system, while notable factors, are primarily intervening variables, not the root cause of the problem in most countries (Jackson, 1989:216).

In a similar context an Australian report made the important observation that:

> there was one aspect of the relations between Aboriginal people and non-Aboriginal people which was very important for all the others and where the relationship was at its worst; this is the relations between Aboriginal people and the police forces of the dominant society. (Australian Royal Commission into Aboriginal Deaths in Custody, p. 10)

As noted in the introduction, a similar concern has been voiced in the report by the Saskatchewan Indian Justice Review Committee (p. 20).

The historical role of the police as agents of colonization responsible for the control of Aboriginal peoples is discussed in similar terms by the report of the Manitoba Aboriginal Justice Inquiry and the Australian Royal Commission Into Aboriginal Deaths in Custody. While just overturned in a landmark decision in June, 1992, the adoption of the legal doctrine of *Terra Nullius*, the land was unoccupied, in Australia after its "founding" by Governor Phillips in 1788 circumvented the treaty process that we had in Canada. Nevertheless, the Canadian literature is in almost exact agreement with the Australian report when it concluded:

> Police officers naturally shared all the characteristics of the society from which they were recruited, including the idea of racial superiority in relation to Aboriginal people and the idea of white superiority in general; and being members of a highly disciplined centralist organization their ideas may have been more fixed than most; but above and beyond that was the fact that police executed on the ground the policies of government and this brought them into continuous and hostile conflict with Aboriginal people. The policeman was the right hand man of the authorities, the enforcer of the policies of control and supervision, often the taker of the children, the rounder up of those accused of violating the rights of the settlers. Much police work was done on the fringes of non-Aboriginal settlement where the traditions of violence and rough practices were strongest (Australian Royal Commission into Aboriginal Deaths in Custody, p. 10).

Both Canada and Australia have a similar legacy in terms of the legislative acts, agents and policies used against Aboriginal people in the hope that they would 'cease to exist.' In Australia, in the early years of colonization, it was a fairly explicit policy and was generally assumed that Aboriginal people would actually die off. Apparently, in the final stages of this process the rapidly diminishing Aboriginal population was moved, sometimes forcibly, on to reserves under the Aborigines Protection and Restriction of the Opium Act 1897. The Aboriginal population in Australia had dropped from between 300,000-400,000 in 1788, (some recent estimates put the population as high as one million) to approximately 81,000 in 1933, through disease, conflict and the disintegration of traditional society (Report of National Inquiry Into Racist Violence in Australia (NIRVA), 1991, p. 59). Australian Aboriginal peoples did not die off as expected. And in 1967 a federal referendum gave the Australian government powers to legislate for Aboriginals in each of the States; recognized Aboriginal people as Australian citizens with full voting rights; and included them in the census. By the 1986 census count the Australian Aboriginal population had rebounded to 228,000.

In Canada, a similar historical process of segregation, legalized paternalistic control and population decline was orchestrated through the Act for the Gradual Civilization of the Indian Tribes, (1857), and the infamous Indian Act (1876), (cf. Frideres and Robertson, forthcoming: 6). The registered Indian population shrank from between 300,000-350,000 to approximately 108,500 by 1881, and remained at that level until the 1940s. It then started a rapid climb reaching 349,000 in 1984 (cf. Herberg, 1989 and Frideres, 1988:140). Recent publications note that the total Aboriginal population (status, non-status, Métis, Inuit) has reached just over 700,000.

Increasing numbers, increasing militancy, such as the Mohawk-Canadian Armed Forces standoff at Oka, coupled with pressure to deal with land claims and Aboriginal sovereignty in the wake of the defeat of the 1969 'assimilationist' White Paper on Canadian Aboriginal People and the negation of the *Terra Nullius* doctrine in Australia, are combining to produce a major and largely irreversible demand for change in the treatment of Aboriginal people in society. This is perhaps more true in Canada, but is certainly also a concern in Australia, especially in terms of Aboriginal-police relations.

SECTION II

Basic Demographics and Comparative Data on Criminal Justice System Overrepresentation. Given the absence of the treaty process, and the rejection by Aboriginal peoples of the white Australian attempt to introduce a full, half and quarter 'caste' system, the first peoples of Australia do not have the same 'definitional fragmentation' that was created in Canada, largely after the Indian Act. Australian Aboriginal peoples are made up of descendants of the continental Aborigines and of the Torres Strait Islands off the northeast coast of Australia. In 1986, Australian census data showed Aboriginal peoples constituting 1.4% of the total population. But in the Northern Territory and Western Australia they make up 22% and 2.6% of the population respectively. Of the 228,000 Aborigines and Torres Strait Islanders who were counted in this census more than half were in New South Wales and Queensland.

Of particular note is the fact that in Victoria, New South Wales and the Australian Capital Territory, 90% of Aboriginal peoples live in urban centres. Urban centres are defined in the 1986 census as consisting of one or more adjoining collector districts with urban characteristics and representing a population cluster of 1,000 or more people. However, at the time of the 1986 Australian census, 25% of the total Aboriginal population were in major cities. In addition, in a forthcoming study, Frideres and Robertson note that in Australia, as in Canada, a full 50-60% of Aboriginal people incarcerated were charged with crime in an urban context.

Data are available from the 1990 Australian National Prison Census on the percentage of Aboriginal prisoners (see Table 1). It is important to note that, unlike Canada, each state can enact criminal laws. There is no federal/provincial split in sentences or correctional institutions

in Australia. The percentage of Aboriginal prisoners (versus percentage Aboriginal population) begins with a low of 3.8% (v. 0.3%) in Victoria and Tasmania 5.1% (v. 1.5%), then rises to 9.1% (v. <1.0%) in New South Wales, 13.3% (v. 1.1%) in South Australia, 16.0% (v. 2.4%) in Queensland, then jumps noticeably to 34% (v. 2.7%) in West Australia and a full 68.9% (v. 22.4%) in the Northern Territories.

The western and northern peak in Aboriginal percentage of general population and much more so in percentage of prison population indicated in Table 1, has a high degree of similarity with Canada. Moreover, in Western Australia as in Western Canada, Aboriginal females constitute a greater percentage of prison population than do Aboriginal men. However, the percentage differences here are much lower, 37.4% versus 33.8% respectively. In Australia the greatest Aboriginal female rates of overrepresentation in the criminal justice system are at the police 'lockup' level, and are, currently, a very explosive issue in Australia.

Recent comprehensive data on this issue comes from an analysis of the Australian National Police Custody survey done in 1988. The report examines 28,566 incidents of police custody in Australia's eight police forces for a one-month period, August 1988. The report reveals that, "Aboriginal people made up almost 29% of the incidents of custody in which Aboriginality was stated, with the proportion varying from the highest levels of 76% in the Northern Territory and 54% in Western Australia, to the lowest of 5% in the Australian Capital Territory and 4.1% in Victoria", (p. 193). More importantly, the report notes that the national Aboriginal police custody rate was 3,539 per 100,000, while the corresponding non-Aboriginal

rate was 131. Based on these data, the report concludes "that, in August 1988, Aboriginal people were apprehended and placed in police cells at a rate some 27 times that of non-Aboriginal people" (p. 193).

In terms of our concern with gender, the report states that Aboriginal women made up almost 50% of all females taken into police custody, although they made up less than 1.1% of the national adult female population (p. 194). When it comes to the issue of charge, the report found that public drunkenness and other good order offenses, such as common assault, which could also involve alcohol, totalled almost 64% of the Aboriginal cases, but only 32% of those for non-Aboriginal people (p. 194). This pattern is very similar to Canada, as is the overrepresentation of young Aboriginals in the justice system.

One of the best analyses of the overrepresentation and treatment of Australian Aboriginal youth in the justice system is Cunneen's 1990 study of Aboriginal Juveniles and Police Violence, for the National Inquiry into Racist Violence. Cunneen stated that recent national figures indicate that Aboriginal juveniles are massively overrepresented in juvenile institutions, in some states more than Aboriginal adults (p. 3). He cites data by Semple (1988) which shows that Aboriginal youth were overrepresented in juvenile institutions across Australian states, from a high of 25 times greater than non-Aboriginal youth to a low of seven times greater. Cunneen similarly reports, for the three states in his study, that Aboriginal juveniles comprised 73% in Western Australia, 32% in Queensland and 23% in New South Wales of the respective juvenile detainee populations (p. 3). D'Souza (1990) reports a similar level of overrepresentation of Aboriginal youth in custody in Western Australia. He adds that Aboriginal children, however, made up only 12% of panel divisions from court and only 29% of all children in court.

Finally, in this discussion of Australian Aboriginal overrepresentation in the justice system, we must cover the historical dimension of this issue. Midfort notes that in Western Australia, which currently has the greatest Aboriginal overrepresentation in the justice system of the five States, in 1949 only 9% of the prison population was Aboriginal (p. 172). This was also the low point in the Aboriginal population. In the 1950s and early '60s the percentage of Aboriginal prisoners rose slowly to 16.7% of the average daily muster in 1964. From then on it rose rapidly to a high point of 37% of average daily muster of prisoners in 1981, where it has hovered ever since. One central reason for this rapid rise, Midfort states, was the legislative changes in 1968 whereby Aboriginal stockmen were granted the same pay as whites (p. 172). Until this time white station owners had been accepting large family groups of Aboriginal people on their property in return for cheap or even free labour. Station owners were not generally prepared to pay award wages, and as a consequence many Aboriginals were denied employment. Thus a large drift of Aboriginal peoples into northern towns occurred. Unfortunately, there were few employment opportunities for them in the urban areas, especially work that could be accommodated within traditional lifestyles. The modern spiral of poverty, disorganization of traditional life, and incarceration for urban Aboriginal peoples had begun.

In Canada, there are about twice as many, and twice the national percentage, of Aboriginal peoples as in Australia. However, their regional distribution, urban concentration and involvement with the justice system is similar to that of Australian Aboriginals. Recent census data show that of the 711,120 Aboriginal people counted (2.8% of Canada's population), about 84% live west of Quebec. The greatest concentrations of Aboriginal people, as a percentage of provincial population, are in Manitoba, Saskatchewan, the Northwest Territories

and the Yukon, with the latter two regions having relatively low absolute numbers (see Table 2). In 1991, there were over 100,000 registered Indian and Metis people in Saskatchewan. Forty-six percent of registered Indians lived off-reserve, and 37% of Saskatchewan Metis live in the urban centres of Regina, Saskatoon and Prince Albert. Much like the Northern Territories of Australia, Aboriginal people are predicted to constitute over 20% of the population of Saskatchewan by the turn of the century (Saskatchewan Indian Justice Review Committee report, p. 5-6).

Similar data exist for Manitoba, with a full 63% of the estimated 1991 population of 130,000 Aboriginal people living off-reserve. This is primarily due to the relatively large Metis population (47,000); 63% of status Indians in Manitoba do live on-reserve, one of the highest percentages in Canada. In Alberta, which has similar numbers of Aboriginal people as these two provinces, but a lower percentage (4.8%) of population, 44% lived off- reserve in 1986, with just under one-third of this urban group in Edmonton and Calgary. In terms of status Indians, as of September 1990, 37% lived off-reserve in Alberta.

It is important to pay particular attention to the demographics of Aboriginal peoples in Manitoba and Saskatchewan. In these two provinces the growing Aboriginal population coupled with an increasing urban Aboriginal population, and the highest Aboriginal overrepresentation in federal and provincial correctional institutions, produces some of the most notable concerns in Canada over Aboriginal people and the criminal justice system.

Data on the general over-involvement of Canadian Aboriginal people in the justice system are presented in Table 3. The problem of relatively large scale overrepresentation of Aboriginal people in provincial and federal institutions begins in Ontario (8% and 5%) takes off in

Manitoba (47% and 40%), peaks in Saskatchewan (66% and 54%), then declines in Alberta (11% and 23%) and British Columbia (19% and 14%). Overrepresentation rates are also very high in the Yukon (65% and 44%) and the Northwest Territories (88% and 75%). All in all, in 1989-90 Aboriginal people, while constituting less than 3% of the Canadian population, made up 18% and 11% of provincial and federal corrections admissions.

These basic data need some additional data to give a more complete picture of Aboriginal involvement in the justice system. Hylton (1982) concluded in his research that, a male Treaty Indian turning 16 in 1976 had a 70% chance of at least one incarceration in a provincial correctional centre by the age of 25. For a non-Aboriginal male the figure was 8%. These data are substantiated by the Alberta Justice on Trial report (p. 4-30), which found that 78% of Indian men surveyed by the Indian Association of Alberta reported being arrested at some time in their lives.

Similarly, Mason reported in 1988 that in Alberta, Aboriginal youth constituted less than 5% of the total youth population, but made up between 35% and 40% of youth in custody over the 1980s (p. 61). In Saskatchewan, in June of 1991, Aboriginal youth constituted 45% of all young offenders receiving some form of disposition, but they represented 72% of those in custody. They also accounted for 42% of youth in community programs (probation, community service and restitution), but only 29% of youth dealt with under alternative measures (cf. Saskatchewan Indian Justice Review Committee report, p. 11). Manitoba reports a similarly high (61%) rate of Aboriginal population in institutions for young people in 1989.

Still, the highest overrepresentation of Aboriginal people in the justice system occurs for Aboriginal women. In recent years, Aboriginal women have made up nearly one-third of inmates of the Federal Kingston Penitentiary for women, and a full 85% of all provincial admissions in Saskatchewan in 1990-91. These are two of the most notable cases of Aboriginal female overrepresentation in the justice system. These incarceration data are mirrored by early police-based research by Bienvenue and Latif (1974) which found notable overrepresentation of Aboriginal males and females in Winnipeg police arrests, especially for Aboriginal females.

Two final facts need note in this section. Most analysts conclude that Aboriginal over-involvement in the criminal justice system, so far, generally shows little sign of levelling off or decreasing (cf. Satzewich and Wotherspoon 1993, p. 264). However, the Manitoba Aboriginal Justice Inquiry concluded that the progressively increasing overrepresentation of Aboriginal people in prisons has been a post World War II phenomenon. Before that it stated, "Aboriginal prison populations were no greater than Aboriginal representation in the population" (p. 101). The report noted, for example, that the percentage of Aboriginal inmates at Stony Mountain penitentiary went from 22% in 1965, to 33% in 1984 and to 46% by 1989. Few, if any, of other studies discuss this issue. The vast majority of published material, government and academic, begins analyzing the overrepresentation issue in the early 1970s, or later (cf. Schmeiser, 1974; McCaskill, 1970; and McCaskill's, 1985, longitudinal analysis of 1970-1984.)

It is possible to see the defeat of the 1969 'assimilationist' White Paper on Canadian Aboriginal People, as heralding a new dawn for Aboriginal people, in terms of the beginning of Aboriginal regeneration through land claims developments, self-government, and possibly through Aboriginal justice initiatives. However, as Cunneen has written within the Australian context:

> If the volume of Aboriginal juveniles processed by corrective institutions is considered then it is possible to see the continuities with earlier policies which legitimated the removal of Aboriginal children from their families. Indeed the process of criminalisation has replaced the previously overt genocidal doctrine of 'breading out' Aboriginality. Aboriginal youth are no longer apparently institutionalised because they are *Aboriginal*, but rather because they are *criminal*. While the earlier welfare practices in relation to Aboriginal youth were self-consciously based on race, the practices of the justice system remain committed at an ideological level to the rule of law - equality and due process. Therefore it becomes increasingly important to understand the role of the police in the process of criminalisation and state intervention, in particular those police practices which provide the most latitude in the use of discretion (Cunneen, C., The Detention of Aborigines in Police Cells, 1990, Aboriginal Law Bulletin, p. 304).

It has also been recognized in Canada by Griffiths and Verdun-Jones (1989:551) that, "The high rates of Native arrests in many jurisdictions raise serious questions about Indian-police relations". Two overarching concerns structure much of this debate on Aboriginal-police relations; the 'overpolicing' of 'visible' Aboriginal people in urban areas in terms of arrest, charging practices and treatment; and the 'underpolicing' of less 'visible' violence against Aboriginal people, especially violence against Aboriginal women. In the next section, we deal with the issue of the 'overpolicing' of Aboriginal people, and in particular police adherence to the *Anunga Rules* in Australia. In the section after that we will consider the 'underpolicing' of Aboriginal communities.

SECTION III

'Overpolicing' of Australian Aboriginals: From Colonialism to 'Law and Order' Systemic Racism.

As we noted in the introduction to this paper, many recent Canadian Aboriginal justice inquiries and studies have concluded that Canadian police handling of Aboriginal peoples at the police interrogation stage, and the admissibility of evidence, should follow the Australian *Anunga Rules*. For example, the 1991 Law Reform Commission report cites the case of *R. V. Aunga* (1976) as establishing 'Rules' for admissibility of statements by Aboriginal suspects (p. 55).

Under these nine 'rules' the Supreme Court of the Northern Territory of Australia held that an interpreter should be present if necessary; where practicable "a prisoner's friend", whom he/she has confidence in, should be present at interrogation; care should be taken to administer a caution in simple terms; care should be taken in formulating questions that do not suggest answers; and that, if requested, reasonable steps should be taken to obtain legal assistance for the prisoner (see Appendix I). However, the concluding judicial statement after the listing of the nine provisions for police handling of Aboriginal suspects is that, "the guidelines are not absolute rules, but the consequence of their non-observance may be the exclusion of statements of persons questioned".

Consistent with the fact that *Anunga* only sets out guidelines that are primarily oriented toward ensuring admissible statements, and that have no penalty provisions per se for police misconduct, all Australian research concludes that the guidelines have had virtually no positive impact on police handling of Aboriginal suspects. Indeed, since their promulgation, most

observers agree that police-Aboriginal relations have deteriorated noticeably. Sweeney has recently published (1988) an in-depth analysis of recent amendments to police questioning of Aboriginal suspects for Commonwealth or federal offenses in Australia. He noted that the need to protect the rights of Aboriginal and Torres Strait Islander suspects during police interrogation has been the subject of considerable judicial and academic comment, and then stated: "Despite the *Anunga* guidelines which provide guidance for police interrogating Aboriginals in the Northern Territory and subsequent police administrative directions in other jurisdictions [see Appendix II] significant problems remain with interrogation of Aboriginal suspects" (p. 10). A central problem is that compliance with the guidelines by police is not mandatory, and courts have no absolute exclusionary rule when guidelines are violated.

It has been noted that the only novel aspects of the *Anunga Rules* are that a "prisoner's friend" be present during the interrogation and that no questioning take place until the suspect understood the meaning of the standard caution. The remaining guidelines apparently do little more than flesh out the English Judges' Rules and police standing orders (Rees, 1982:43). One of the best overviews of research on these core *Anunga Rule* components is provided by Cunneen in his study on Aboriginal youth and police interrogation. This issue was brought to the fore in Canada by the Donald Marshall Jr. Inquiry.

Cunneen notes research by O'Conner and Tillbury (1986:24) which stated, "There is a consensus that [Aboriginal] youth, either through ignorance or fear, are unable to assert their rights in police questioning". This author also cites research by Staden (1987), on 50 interviews with Aboriginal youth in New South Wales remand centres. Staden (1987) found that:

> Only 11% of those interviewed fully understood the formal caution of the right to remain silent, although the majority said that they knew that they did not have to answer questions. Importantly, of the 37 who said they understood that they did not have to answer questions, some 32 did in fact answer police questions. The major reason they said that they answered questions, despite knowing that they were not legally compelled to do so, was to avoid police violence" (cited in Cunneen, 1990a:32).

Systematic national empirical data is not currently available on the extent to which police interviews of Aboriginal youth are conducted without an independent adult present. However, data is available from some states and it does not bode well for the *Anunga Rules* (Cunneen, 1990a:32). A study by Bacon and Irwin (1990) in Sydney found that of 25 juveniles charged, only 13 had someone other than police present during questioning. Data are also available on two Western Australia studies from Rayner (1988:39). The Longmore study found that 50% of Aboriginal youth interviewed by police requested that a relative or friend be contacted. But the study found that in 86% of the cases no adult other than the police was present during the interview. The McDonald study similarly found that in 94% of cases in the sample there was no adult except the police present during interview. To make matters worse, Rayner (1988:39) reports that in the McDonald study there were some cases where parents, although present in the police station, were prevented from being present during questioning. Moreover, Rees (1982b:74) stated that the type of persons suggested as 'independent' also frequently constituted authority figures for most youth, and thus may be virtually 'indistinguishable' from police.

Three further dimensions of research on police handling of Aboriginal youth in Australia add heavily to the evidence on the failure of the *Anunga Rules*. First, after extensive analysis of the *Anunga Rules*, similar judicial case decisions, and police standing orders, Rees (1982b) concluded that, while Superior Australian Courts may be reluctant to admit a confession not

made in the presence of an independent third party, the same cannot be confidently stated in relation to Childrens' Courts. Given the very heavy overrepresentation of Aboriginal youth in the Canadian justice system, this is certainly of note to Canada.

Second, a recent discussion paper, Youth Crime and Criminal Justice In Queensland (1992), released by the Criminal Justice Commission of Queensland, concurred with other research that, "young Aboriginals are unnecessarily or deliberately made the subject of trivial charges or multiple charges, with the result that the appearance of a serious criminal record is built up at an early age" (p. 57). This data links in with other Australian research on police charging practices for Aboriginal versus non-Aboriginal youth and alternatives to formal youth court processing. Two of the most prominent pieces of research on this concern are by Gale and Wundersitz (1987/89). A crucial finding by the authors is important as it compares police handling of Aboriginal and non-Aboriginal youth, controlling for socio-economic circumstances. This is seldom achieved statistically in research on Aboriginal people and the justice system, Australian or Canadian. As these authors concluded in their analysis of the pre-court processing of youth:

> The key finding of this study then, is that court referrals are predominantly determined by differential treatment by the police at the point of arrest and the Screening Panels, far from countering police action, actually compound the already disadvantaged position of Aboriginal youths. This is very serious in view of the fact that the differences we have tested occur even when we limit our comparison to those non-Aboriginal youths who are also in extremely poor socio-economic circumstances. Thus, even Aboriginal youths living westernized lifestyles in the city seem to be treated worse than white youth who occupy the very bottom rung of the social equality ladder in spite of the introduction of an elaborate welfare intervention system (Gale, F., and Wundersitz, J., The Operation of Hidden Prejudice in Pre-Court Procedures: the Case of Australian Aboriginal Youth (1989), Australian and New Zealand Journal of Criminology, p. 18).

Third, consistent with the frequently reported fear of violence just noted in the Staden (1987) research, much social concern and emergent academic data centre on police violence against Aboriginal youth in Australia. There is no doubt that a very high proportion of Aboriginal youth report violence from police to various commissions and surveys. Cunneen provides a good review of the documenting evidence here. In his own survey done for the National Inquiry Into Racist Violence, overall 85% of the young offenders interviewed in three Australian states "reported being hit, punched, kicked or slapped by police" (1990a:2). Importantly, Cunneen (1990a) attempted to ascertain whether the alleged violence was racist, that is to say more common against Aboriginal youth. He noted research which showed that non-Aboriginal youth were also subject to police violence. He concludes, however, that police violence is apparently more frequent against young Aboriginal suspects. He reports the differences between general estimates of police violence and his own Aboriginal specific data to be such that:

> While approximately one half of the young people interviewed in the Alder (1990) study and one third in the Youth Justice Project (1990) reported allegations of police violence, around 90% of the Aboriginal youth interviewed in this report had allegations of police violence. The difference is more apparent when considered as gender-specific: the Youth Justice Project (1990,p.254) reported one girl in 15 complaining of police violence, whereas eleven of the 15 Aboriginal girls interviewed in this report alleged police violence.

Unfortunately, the failure of the *Anunga* guidelines is just part of a very serious pervasive problem of draconian 'overpolicing' of Australian Aboriginal peoples. One of the most comprehensive analyses of this, and other, policing concerns is the report of the National Inquiry

Into Racist Violence in Australia (NIRVA). This report concluded its discussion of police practices and procedures for the handling of Aboriginal people, and complaint mechanisms in cases of Australian police misconduct, by stating:

> Police instructions are simply guidelines which do not have the force of law. Reports from the Royal Commission into Aboriginal Deaths in Custody have pointed out that police departments have approached police instructions as guidelines that do not have to be strictly complied with. Commissioner Wootten reported that such an approach 'makes it difficult to hold police accountable even for clear breaches of mandatorily expressed instruction' (p. 319).

More condemningly, the NIRVA report stated that police violence against Aboriginal suspects, especially those in custody, and racist draconian 'overpolicing' of Aboriginal people generally, were a notable problem across Australia (p. 210). Here we must let the NIRVA report again speak for itself. The report states that 63% of the 133 incidents reported to the commission on racist violence, intimidation, and harassment were against the police:

> Most significantly, submissions, oral testimony and independent research indicated that police officers were frequently the perpetrators of racist violence against Aboriginal people. Although the Inquiry recognizes the seriousness of these assertions, they were made with such conviction and regularity that they indicate at best a major crisis of confidence by Aboriginal people in the police, and at worst, the presence of systemic racist violence. The Inquiry has been forced to conclude that Aboriginal and Islander people regularly experience racist violence, intimidation and harassment at the hands of the police.

Testimony to the Inquiry included statements by serving police officers that they had witnessed physical assaults, verbal abuse, threats of death and/or rape against Aboriginal suspects in police custody. Evidence of sexual assault, sexual exploitation, and actual rape of aboriginal women and teenagers by police was also presented to the Inquiry from a range of individuals and agencies.

In Australia between 1980 and 1988 over 100 Aboriginal people died while in custody, 63% in police custody. Furor in the Aboriginal and legal community over this issue, which exploded in several particularly notable cases, finally resulted in the establishment of a two-year, $24 million Royal Commission into Aboriginal Deaths in Custody, which delivered its final report in 1991. It found that Aboriginal people were 23 times more likely than non-Aboriginal people to die while in custody (Biles et al., 1990). The Royal Commission concluded that of the 99 deaths investigated, most were the result of a combination of neglect and deliberate violence. In about half of the cases, the individual was only taken into custody on alcohol-related matters. Still, the report found that while in custody 30 hanged themselves, 11 died from head injuries, two from gunshots, two from other "external trauma", two from drug use, and five from alcohol. To date, no prosecutions have been announced against police.

The sorry state of police-Aboriginal relations in Australia was perhaps underlined by an incident that occurred shortly before the Royal Commission Into Aboriginal Deaths in Custody commenced hearings. Police from New South Wales made a home video in which they blackened up their faces, put a noose around their neck, pulled at the noose, and said "I'm David Gundy" and "I'm Lloyd Boney". An innocent David Gundy was killed in a bungled tactical response team raid in Sydney in 1989, while Lloyd Boney had hung himself while in police custody in New South Wales. Both men were Aboriginal. To date, the only known official reaction to this video is the statement by one of the commissioners, Mr. Wootten, that "The callousness and contempt is appalling, but, frankly, it doesn't surprise me".

Unfortunately, in the 26 months following the cut-off date set by the Royal Commission for investigations, a further 27 Aboriginal and Torres Strait Islander people, according to the National Committee to Defend Black Rights, are reported to have died in custody.

There have been efforts made recently to deal with the very serious policing problems in Australia. Some of the community-based initiatives seem promising but, overall, efforts to change police department attitudes and actions appear to have had very limited success. This is true for police handling of Aboriginal suspects in custody as well as for the policing of Aboriginal communities. This conclusion is reinforced by the report of the National Inquiry into Racist Violence in Australia.

> In recent years Police Departments have made positive attempts to improve relations with the Aboriginal community. Police-Aboriginal community liaison committees have been established and police training in Aboriginal issues has increased. However, the Inquiry found that police operations within the Aboriginal community are still carried out in an insensitive and sometimes brutal manner. This inconsistency was evident in the so-called 'Redfern Raid' which took place in February 1990...The raid was racist. It was planned on the assumption that normal surveillance activities cannot operate in the black [Aboriginal] community and it involved a level of force which far exceeded the threat to society (p. 211-12).

This type of 'overpolicing' graphically illustrates, the report concluded, the concept of institutionalized racism in action. Individual officers were not necessarily actively motivated by racism, they simply believed that 'ordinary' police practices did not, or could not, apply when policing Aboriginal peoples.

One major factor fuelling this 'overpolicing' of Aboriginal peoples in Australia is the transference of old colonial racist attitudes and practices into a new 'Law and Order' campaign, especially in the last decade. This 'Law and Order' program arose, O'Connor and Callahan

(1989:121) argue, at least in Queensland, as the state and communities sought to manage the social tensions that resulted from a depressed economy. Frequently solutions were sought through a coercive shift to expansion of police powers, changes in the criminal law and harsher sentencing practices of the court.

It has also been argued by Finnane (1990) that police in Australia have assumed an increasingly interventionist role in politics. "Police, both departments and unions, have been playing a prominent role in public debates over law and order issues, police staffing levels and other policy matters" (Finnane, 1990:218). Cunneen (1990b) and the National Inquiry into Racist Violence in Australia (1991) concur that this emergent 'Law and Order' campaign has been directed particularly at Aboriginal peoples. As Cunneen (1990b:8) stated, "There had been a clear articulation during the mid-1980s that there was a 'crime problem' in western and northwest NSW [New South Wales] and that to a large extent, the crime problem was synonymous with the 'Aboriginal problem'". This fact was strongly reiterated for Australia generally by the NIRVA report. It concluded that historically policing clearly operated within a wider social and political framework, and stated that currently: "The portrayal of Aboriginal people as a law and order problem, as a group to be feared, or as a group outside assumed socially homogeneous values provides legitimacy for acts of racist violence...of which police violence is the most extreme and of most concern", (p. 121).

One other aspect of 'overpolicing' of Aboriginal people in Australia needs mention here. The ratio of police to civilians has increased substantially in Australia, especially in the past decade. For example, in New South Wales the estimated ratio of police to civilians was 1:766 in 1945 and 1:432 in 1990. However, a report by the International Commission of Jurists

emphasised that policing was much more concentrated in urban areas with Aboriginal Communities. Chatswood, a suburb of Sydney, had a police civilian ratio of 1:926, whereas the ratio in Bourke was 1:120, Wilcannia 1:77 and Brewarrina 1:100. These latter three areas are heavily Aboriginal.

Aboriginal peoples have recently publicised and opposed the coercive policing of Aboriginal communities. Aboriginal peoples in Australia are pressing for answers as to why money is not redirected from the 'overpolicing' of Aboriginal communities into non-custodial, community-based justice services, as well as alcohol rehabilitation programs, job creation, education and health services. Developing these types of community-based policing and Aboriginal service programs may also be important for correcting the 'underpolicing' of violence against Aboriginal people. It is to this concern that we turn to next.

However, one concluding observation must be made here. Adopting the *Anunga Rules* was presumably advocated to make Canadian policing of Aboriginal people more professional, culturally sensitive and community-based. Based upon a wealth of data on Australian police-Aboriginal relations, particularly as described in this section, there is little evidence to date that the *Anunga* guidelines have contributed in any notable way to positive change in Australian police handling of Aboriginal peoples. In the concluding section of this paper the issue of how to obtain greater success than Australia in this area will be dealt with.

SECTION IV

The 'Underpolicing' of Violence in Aboriginal Communities: Increasing Aboriginal Community Input

In his recent paper The Police and the Community in the 1990s, Australian criminologist B. Miller stated that high levels of violence were creating a law and order crisis in Australian Aboriginal communities.

A trend toward high levels of inter-personal violence in Aboriginal communities, particularly in the last two decades, has emerged. For example, historical data are available from the Kimberly area on the proportion of Aboriginal deaths over one year of age due to 'external causes' (homicide, suicide, motor vehicle accidents and other accidents) for the 30-year period from 1957 to 1986. This data shows a relatively low steady rate of 5.5% male and 3.8% female Aboriginal deaths due to 'external causes' for the first half of this period. But, by the mid-1980's, the proportion of deaths due to 'external causes' rose to 22.6% for males and 15.2% for females. Violence in Aboriginal communities is currently having a particularly debilitating impact upon those least able to defend themselves: women and children. They are frequently victimized physically and sexually.

Systematic national data are not available, but some studies on this concern do exist and serve to highlight well the problem. Atkinson (1990) reports on three Australian studies in her article on "Violence Against Aboriginal Women". First, referring back to the Kimberly data, she notes that Kimberly Aboriginal males were more likely to die from motor vehicle accidents, other accidents or suicides, and Aboriginal females were more likely to be victims of homicide. Second, she cites data which show that in 1987, Aboriginal women made up 79% of victims of

chargeable homicide in the Northern Territory. Finally, Atkinson notes research done further south in the Queensland Aboriginal community. In this research, Barker, et al., (1989) stated that rape and assault, though common offenses, were heavily under-reported. They expressed additional concern that, "in one town no Aboriginal girl over the age of ten had not been raped" (Atkinson 1990:6).

Police reluctance to attend to violence against Aboriginal people has been noted by the Equal Opportunity Commission of Western Australia (1990), the National Inquiry Into Racist Violence in Australia, and by Hunter (1990). One of the most pernicious rationalizations for the existence of, and lack of police attention to, this violence is that it is posited as "their way of life". This rationalization, which confuses symptoms with cause, has been criticised by many articles and reports. Importantly, Payne reported in her article (1990) in the special edition of the Aboriginal Law Bulletin on Women's Issues that; "Groups of Aboriginal women in the Northern Territories are saying that they are being subjected to three types of law: "white man's law, traditional law, and bullshit law", the latter being used to describe a distortion of traditional law used as a justification for assault and rape of women ('it's Aboriginal law you don't interfere')" (p. 9).

Thus, unlike the 'Law and Order' campaign driving the 'overpolicing' of Aboriginal people, in the case of violence, physical and sexual, against Aboriginal people, especially women and children, there is a distinct lack of police 'attention'[3]. In a society that once advocated an official policy based on the hope that 'degenerative' Aboriginal people would 'just die off', this

fact is perhaps not surprising. When this colonialist legacy is coupled with the destruction of traditional Aboriginal ways of life and the introduction of alcohol, we get a picture of a society which could be about as much Canadian as Australian.

> Men use violence against women to re-assert their authority. Homicide, assault, rape, and suicide occur as a result of Aboriginal men's fear of loss of a valued relationship and jealousy over their wives or defacto's. This fear takes on greater proportions when it is experienced in the context of few alternatives (such as meaningful employment) to develop a sense of self-worth. (Miller, B., Crime Prevention and Socio-Legal Reform on Aboriginal Communities in Queensland (1991), Aboriginal Law Bulletin, p. 10.)

Australian academic research by Bolger (1991) and the National Inquiry Into Racist Violence in Australia agrees with Canadian data presented in the report of the Manitoba Aboriginal Justice Inquiry, that the legal system has been, and still is, a major factor in the oppression of Aboriginal women. It's blend of patriarchal and racist-based victim blaming and judicial inaction that, according to Bolger speaking of Australia, "repeatedly sends out messages that it is acceptable to bash and rape".

Canadian data from the Manitoba Aboriginal Justice Inquiry is probably quite applicable to the abuse of Aboriginal women in Australia. This report cited data from a recent study conducted by the Ontario Native Women's Association in 1989. The survey found that 80% of Aboriginal women had personally experienced family violence. Also, a study done for the Inquiry by the Manitoba Indigenous Women's Collective found that 53% of Aboriginal women who responded reported having been physically abused. Significantly, 74% of these women indicated that they did not seek help. Moreover, the Manitoba government Family Disputes Services branch stated that abuse of Aboriginal women occurs at least 35 times before any outside assistance is sought.

However, it must be stated that Australian and Canadian publications strongly concur that police arrest and/or incarceration is perhaps, at best, the last recourse to be employed in this area. It does not deal with the cause of the problem and further contributes to the incarceration spiral of Aboriginal men. In addition, importantly, as Payne has stated in the Australian context; incarceration for either short-term doxification or for longer punitive periods does little to deal with the alcohol abuse dimension of the problem.

> It is often the wives, mothers and grandmothers who are left to deal with the violent mental and physical abuse problems associated with alcohol abuse. Failure to address the underlying reasons why Aboriginal men (and women) are abusing alcohol, and the circumstances which lead to the self-destruction, physical and mental abuse, allows the cycle to continue into the next generation and the next. (Payne, S., Aboriginal Women and the Criminal Justice System 1990, Aboriginal Law Bulletin, p. 10.)

Virtually all publications, both Canadian and Australian, agree that community development and social justice options rather than incarceration, offer the best chance for stoping the spiral of violence in Aboriginal communities. The most notable Australian developments in this vein have been more rural than urban. The potential, however, for transferring successful programs from smaller towns to Aboriginal sub-urban and inner city areas does exist, with difficulties to be sure, and has been recommended by the National Report of the Australian Royal Commission into Aboriginal Deaths in Custody.

A recent article in the 1991 special edition of the Australian Aboriginal Law Bulletin on policing is important to cite here. In her article, "The Role of Aboriginal Organizations In Improving Aboriginal-Police Relations", Edmunds stated that one of the most notable developments here has been the Julalikari program in the town of Ternant Creek, Northern Territory. Edmunds notes that Julalikari has been particularly active in working with police,

principally through the local police superintendent, to improve community-police relations. A recently implemented protocol articulates the nature of this relationship and defines areas of co-operation. Community involvement has also been crucial to the success of the program.

> Perhaps even more importantly, for the past five years, Julalikari has maintained a program of council patrols, staffed entirely by council volunteers, both men and women. These patrols operate every night, until at least three in the morning. They help to maintain law and order by preventing or intervening in disputes, monitoring custodies and organizing morning meetings to mediate and often resolve conflicts that have arisen during the night.

While most rural programs are still in, or just moving out of their embryonic stage of development, Aboriginal community input into the policing of urban areas is still largely at the level of conceptualization. This is true in Canada and Australia. Programs such as Julalikari, despite problems of funding and the transfer of the police superintendent, should, however, provide role models for a range of urban programs. According to the National Committee to Defend Black Rights, this would include "Aboriginal-run 'safe houses', women trained and employed to investigate sexual offenses, police aides trained not with an enforcement mentality but with implementing crime prevention programs, dispute resolution, crises intervention, detoxification units". It is these initiatives along with Aboriginal police-cell-watch local community organizations, which would be contacted whenever an Aboriginal person is taken into custody, which have been called for as alternatives to the fiscal and human costs of traditional policing of Australian Aboriginal people. This does not imply, importantly for Aboriginal people in largely non-Aboriginal urban areas, that some positive internal changes in police attitudes and practices are unachieveable. It is to this concern that we turn to in the next concluding section of this discussion paper.

SECTION V

Conclusion: Creating Positive Change in Aboriginal-Police Relations.

Academic research and commission-based publications in Australia and Canada are very much in agreement both on the problems in Aboriginal-police relations and on possible venues for positive change. Three primary avenues for change are emerging from the two sets of literature. First, the best overall strategy is to continue the development of community-based policing. However, the central thrust here must be to actively include local Aboriginal organizations and individuals in policing of Aboriginal communities through conflict resolution and mediation initiatives, such as the Australian Julalikari program. Traditional formal police arrest and judicial processing should be the last resort utilized, preferably also with community consensus. A final recommendation from the Australian Deaths in Custody report deals with one thorny issue in this area. It recommended that Aboriginal people who are involved in community and police initiated schemes be adequately renumerated for their important contribution to justice and that such funding should come from allocations on justice matters, not from Aboriginal affairs budgets. Unless a good argument can be made for some viable alternative, this is also the conclusion of this report for the Canadian context.

Second, there is consensus between Forceses' (1992) analysis of police control and accountability in Canada and the National Inquiry into Racist Violence in Australia. On this issue Forceses states, "The weight of evidence suggests that the most effective assurance of satisfactory performance...is to be had by competent recruit selection and training, and in the correct selection of properly trained and skilled managers". He noted that external bodies, while

valuable, can perhaps respond better to periodic large-scale crises than they can to day-to-day problems of policing. The NIRVA report similarly stated, "In Geraldton, for instance, inadequacies in police training and selection were seen as exacerbating racial tension".

Importantly, data from two Canadian sources conclude that at the individual level, a primary determinant of the quality of Aboriginal-police relations appears to be age, experience and personal style of the individual officer (Griffiths & Verdun-Jones, 1989:553). In the Canadian North, Aboriginal people had more positive views of older experienced police who were regarded as using their discretion appropriately and who made greater efforts to be involved in the community. This was also the general conclusion of the Alberta Board of Review (1978) (cf. Griffiths & Verdun-Jones, 1989).

Skoog (1993) offers an additional important insight here. In a recent survey Skoog (1993:11) reported that, "police officers, both rural and urban, tended to feel that "hands on experience "was much more practical and useful than courses, lectures, seminars or workshops". His research found that police felt they could learn more from working with Aboriginals and living in the community. He notes that lawyers, social workers, community leaders and judges, on the other hand, tended to view "education" as the solution. In conclusion, based upon these data, it seems appropriate to recommend that police assigned to Aboriginal areas, including urban, be given interaction and experience with Aboriginal poeple prior to such posting, preferably with the Aboriginal group in that area. These officers should then, if possible, not be rotated out of the area, or at least not until similarly trained officers are available. This, of course, may also involve training with Aboriginal officers or police aides in Aboriginal communities. Unfortunately, but perhaps not surprisingly, Australian data also indicate that

there is wide variation in the effectiveness of Aboriginal-police liaison programs. Moreover, in three out of 16 alleged incidents of police violence noted in one Australian study, an Aboriginal police aide was present during the alleged assault. Certainly, further research is needed on the best type of programs and training in this area.

Third, and finally, in terms of strengthening what protection the *Anunga* guidelines may provide Aboriginal suspects, it is useful to cite Cunneen's recommendation for Australian reform. He notes that nominal exclusionary rules of evidence are not sufficient to guard the rights of Aboriginal people, especially youth, in custody. Statutory requirements are necessary to exclude evidence gathered in violation of the *Anunga* guidelines. Serious attention should also be paid to the age-offense-comprehension criterion whereby an independent adult would be required to sign any record of interview of Aboriginal suspects taken into police custody. Overall, it would appear that Canada and Australia face similar Aboriginal-police relations problems, albeit not always in the same degree or form. Comparative analysis of these concerns will, hopefully, illuminate notable venues for positive change in this area.

END NOTES

1. One of the best overviews of the history of suppression of the recognition of colonial displacement of Aboriginal people as the cause of their poverty, alcohol abuse and prosecution by the criminal justice system is provided, within the Australian context, in an excerpt from Midfort (1988: 168):

> In the early years of settlement, Aborigines were dispossessed of their land and thus denied access to their traditional food gathering and hunting sources. As a result, for many Aborigines, initial contact with the Australian legal system was through police expeditions formed to seek out and punish Aborigines for offenses perpetrated against the White community. In Victoria these offenses typically involved animal killing and stealing (Corris, 1968). In Western Australia flour, sheep and cattle stealing...In 1837 Governor Stirling commented that the local Aborigines "steal whenever they can, and they will take life rather than be baulked in their desires" (Fall, 1978: 26).
>
> The colonial newspapers of the day attributed this behaviour to an excess of alcohol and the degenerative nature of the race (Martin, 1973).

2. The legal doctrine of *Terra Nullius* was deemed invalid in the High Court of Australia (3 June 1992 F.C. 92/014), in EDDIE MABO AND ORS AND THE STATE OF QUEENSLAND.

3. The report of the National Inquiry into Racist Violence in Australia also noted cases of inaction, and even harassment, by police when Aboriginal people complained of violence to themselves or their property by non-Aboriginal people.

Table 1. Percentage of Prisoners by Jurisdiction, Sex and Ethno-Social Background

Ethnic Status	New South Wales	Victoria	Queensland	West Australia	South Australia	Tasmania	Northern Territories	Total
Males								
Aboriginal, Torres Strait	9.1	3.7	15.9	33.8	13.6	5.3	69.0	14.3
Other	86.3	96.2	79.2	66.2	84.9	85.0	31.0	82.6
Unknown	4.6	.2	4.9	.0	1.5	9.7	.0	3.1
Number	5 981	2 191	195	1 621	883	227	410	13 527
Females								
Aboriginal, Torres Strait	9.4	6.4	17.8	37.4	8.3	.0	40.0	13.5
Other	90.1	93.6	62.4	62.6	91.7	100.0	60.0	83.7
Unknown	.5	.0	19.8	.0	.0	.0	.0	2.8
Number	385	125	101	99	48	10	5	778
Total Persons								
Aboriginal, Torres Strait	9.1	3.8	16.0	34.0	13.3	5.1	68.9	14.3
Other	86.5	96.0	78.4	66.0	85.3	85.7	31.1	82.6
Unknown	4.4	.2	5.6	.0	1.4	9.3	.0	3.1
Number	6 366	2 316	2 296	1 720	931	237	415	14 305
Percent Total: Aboriginal, Torres Strait	<1.0	.3	2.4	2.7	1.1	1.5	22.4	1.5

Source: Australian Institute of Criminology, National Prison Census, 1990, p.22, (cited in Frideres and Robertson, forthcoming: 34).

Table 2. Registered Indian population and Indian lands, by region, 1986

	Atlantic Provinces	Quebec	Ontario	Manitoba	Sask.	Alberta	BC	NWT	Yukon	Canada
Total Indian Population, 1984*	13 590	34 335	77 313	52 049	54 188	43 436	61 730	8 530	3 638	348 809
% of total Indian population, 1984	3.9	9.8	22.2	14.9	15.5	12.5	17.7	2.5	1.0	100.0
% of total provincial/territorial population, 1984	0.6	0.5	0.9	4.9	5.4	1.9	2.2	17.2	16.5	1.4
% living off reserve, 1984 **	28.2	14.4	31.9	26.7	34.0	24.7	35.9	7.2	24.5	28.7
Number of Indian bands, 1985	31	39	126	60	68	41	196	14	17	592
% of Indian bands, 1985	5.2	6.6	21.3	10.1	11.5	6.9	33.1	2.4	2.9	100.0
Number of reserves and settlements, 1985	67	33	185	103	142	90	1 610	29	25	2 284
% of reserves and settlements, 1985	2.9	1.4	8.1	4.5	6.2	3.9	70.5	1.3	1.1	100.0
Approximate area of reserves (hectares)	31 800	84 450	736 210	235 120	645 010	725 010	372 300	-----	-----	2 830 900

* The official count from INAC as of December 31, 1984 is unadjusted for late-reported births and deaths (which would add about 2-3% to the population). Such an adjustment would be unlikely to alter significantly the percentages shown in this table.

** Off-reserve includes Indians living off reserves and off Crown land settlements.

Sources: INAC Program Reference Centre, *Registered Indian Population by Sex and Residence*: Siggner, 1986, p.3., (as cited in Frideres, 1988:153).

Table 3. Percent Native Admissions to Jails by Year and Province

	1985 - 86		1986 - 87		1987 - 88		1988 - 89		1989 - 90	
	P[1]	F[1]	P	F	P	F	P	F	P	F
Newfoundland/Labrador	4%	1%	5%	1%	4%	4%	5%	6%	4%	2%
Prince Edward Island	4	-	3	7	3	-	3	6	3	-
Nova Scotia	4	1	4	3	4	1	5	1	4	1
New Brunswick	4	3	4	2	4	2	4	2	5	5
Quebec	-	-	2	1	-	-	2	2	2	1
Ontario	9	2	9	4	9	4	10	5	8	5
Saskatchewan	64	61	64	56	66	51	65	52	66	54
Manitoba	54	34	56	39	55	36	44	35	47	40
Alberta	30	22	30	20	31	22	31	31	31	23
British Columbia	16	13	18	14	19	12	18	17	19	14
Yukon	57	33	60	33	60	54	63	50	65	44
Northwest Territories	85	76	90	73	88	63	88	96	88	75
Canada (Total)	20	10	18	10	22	11	19	13	18	11

1. P = Provincial Jail, F = Federal Jail

Source: Adult Correctional Services in Canada, 1985-90, Preliminary Data Report, Canadian Centre for Justice Statistics, Ottawa, Statistics Canada (cited in Frideres and Robertson, forthcoming: 33).

Appendix I

The *Anunga Rules*

[A]boriginal people often do not understand English very well and even if they do understand the words, they may not understand the concepts which English phrases and sentences express. Even with the use of interpreters this problem is by no means solved. Police (terminology) and legal English sometimes is not translatable into the Aboriginal languages at all and there are no separate Aboriginal words for some simple worlds like "in", "at", "on", "by", "with", or "over", these being suffixes added to the word they qualify. Some words may translate literally into Aboriginal language but mean something different. "Did you go into his house?" means to an English speaking person "Did you go into the building?" But to an Aboriginal it may also mean, "Did you go within the fence surrounding the house?" English concepts of time, number and distance are imperfectly understood, if at all, by Aboriginal people, many of the more primitive of whom can not tell the time by a clock. One frequently hears the answer, "long time", which depending on the context may be minutes, hours, days, weeks or years. In case I may be misunderstood, I should also emphasize that I am not expressing the view that Aboriginal people are any less intelligent than white people but simply that their concepts of certain things and the terms in which they are expressed may only be different to those of white people.

Another matter which needs to be understood is that most Aboriginal people are basically courteous and polite and will answer questions by white people in the way in which they think the questioner wants. Even if they are not courteous and polite there is the same reaction when they are dealing with an authority figure such as a policeman. Indeed, their action is probably a combination of natural politeness and their attitude to someone in authority. Some Aboriginal people find a standard caution quite bewildering, even if they understand that they do not have to answer questions, because, if they do not have to answer questions, then why are the questions being asked? Bearing in mind these preliminary observations which are based partly upon my own knowledge and observations and partly by evidence I have heard in numerous cases, I lay down the following guidelines. They apply, of course, to persons who are being questioned as suspects:

1. When an Aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average white man of English descent, an interpreter able to interpret in and from the Aboriginal person's language should be present, and his assistance should be utilized whenever necessary to ensure complete and mutual understanding.

2. When an Aboriginal person is being interrogated it is desirable where praticable that a "prisoner's friend" (who may also be the interpreter) be present. The "prisoner's friend" should be someone in whom the Aboriginal has apparent confidence. He may be a mission or settlement superintendent, or a member of the staff of one of these institutions who knows and is known by the Aboriginal. He may be a station owner, manager or overseer or an officer from the Department of Aboriginal Affairs. Combinations of persons I have mentioned are not exclusive. The important thing is that the "prisoner's friend" be someone in whom the Aboriginal has confidence, by whom he will feel supported.

3. Great care should be taken in administering the caution when it is appropriate to do so. It is simply not adequate to administer it in the usual terms.... Police officers, having explained the caution in simple

terms, should ask the Aboriginal person to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the Aboriginal has apparent understanding of his right to remain silent. Most experienced police officers in the territory already do this. The problem of the caution is a difficult one but the presence of a "prisoner's friend" or interpreter and adequate and simple questioning about the caution should go a long way towards solving it.

4. Great care should be taken in formulating questions so that, so far as possible, the answer which is wanted or expected is not suggested in any way. Anything in the nature of cross-examination should be scrupulously avoided as answers to it have no probative value. It should be borne in mind that it is not only the wording of the question which may suggest the answer but also the manner and tone of voice which are used.

5. Even when an apparently frank and free confession has been obtained relating to the commission of an offence, police should continue to investigate the matter and endeavour to obtain proof of the commission of the offence from other sources.

6. Because Aboriginal people are often nervous and ill at ease in the presence of white authority figures like policemen, it is particularly important that they be offered a meal, if they are being interviewed in the police station, or in the company of police or in custody when a meal time arrives. They should also be offered tea or coffee if the facilities exist for preparation of it. They should always be offered a drink of water. They should be asked if they wish to use the lavatory, if they are in the company of police or are under arrest.

7. It is particularly important that Aboriginal and other people are not interrogated when they are disabled by illness, drunkenness or tiredness. Admissions so gained will probably be rejected by a court. Interrogation should not continue for an unreasonably long time.

8. Should an Aboriginal person seek legal assistance, reasonable steps should be taken to obtain such assistance. If an Aboriginal person states he does not wish to answer further questions or any questions the interrogation should not continue.

9. When it is necessary to remove clothing for forensic examination or for the purposes of medical examination, steps must be taken forthwith to supply substitute clothing.

It may be thought by some that these guidelines are unduly paternal and therefore offensive to Aboriginal people. It may be thought by others that they are unduly favourable to Aboriginal people. The truth of the matter is that they are designed simply to remove or obviate some of the disadvantages from which Aboriginal people suffer in their dealings with police. These guidelines are not absolute rules departure from which will necessarily lead to statements being excluded, but police officers who depart from them without reason may find statements are excluded.

The judges of this court do not consider the effectiveness of police investigation will be set back by compliance with these recommendations. It is basic that persons in custody should be treated with courtesy and patience. (Cited in Aboriginal Justice Inquiry of Manitoba, 1991:605-7)

Appendix II

Australian Police Polices for Handling of Aboriginal Suspects.

In the *Commonwealth* jurisdiction, Federal Police General Instruction 1 covers Aboriginal and Torres Strait Islander persons. The instruction covers the notification of 'specified organizations', the interrogation of suspects, and grounds for the restriction of access to lawyers, specified organisations or prisoners' friends.

In *Western Australia*, police instructions which relate to the interrogation of Aboriginal suspects can be found in Western Australia Routine Orders. These instructions set out guidelines for the conduct of police when interrogating Aboriginal people and are designed to prevent inadmissibility of confessions by Aboriginal people as a result of failure to understand the meaning and effect of police interrogation.

As in other States these instructions set out the requirements necessary to comply with the 'Anunga Guidelines' for the interrogation of Aboriginal and other persons who have difficulties with the English language. Other instructions specify contact with Aboriginal Legal Service personnel.

In *Queensland*, Police General Instruction 4.54A refers to Police Questioning Persons Under Disability. Within this Instruction, section (c) refers to the questioning of Aborigines and Torres Strait Islanders.

In *South Australia*, Police General Order 3810 deals with racial discrimination, while General Order 3015 refers to Aboriginal people. The instruction outlines the operations of the Aboriginal/Police Liaison Committee and Liaison Officers, the employment of trackers, protection of relics and cultural objects, access to Aboriginal Legal Service officers and the Aboriginal Child Care Agency, and interrogation of Aboriginal people. As a result of the Interim Report of the Royal Commission into Aboriginal Deaths in Custody Police Command Circular 90/12 introduced new guidelines to deal with attempted suicides dy detainees.

In the *Northern Territory*, the *Anunga Rules* appear in Police General Order Q2.

In *Victoria*, Chapter 17 of the Police Manual sets out instructions relating to Aboriginal persons. It requires notification of arrests to the Missing Persons Bureau which is responsible for contacting the Aboriginal Legal Service.

In *NSW*, Police Instruction 38 deals with Aboriginal people. It states that the policy of the Force is non-discriminatory and that it 'is not the policy of this Force to discriminate in favour of Aborigines any more than it is to discriminate against them'.

The Instruction deals with Aboriginal people in custody in relation to self-inflicted injury or suicide, and states that where diversionary facilities are available Aborigines should not be detained for minor offenses. In addition every effort should be made to advise relatives, friends or the Aboriginal Legal Service concerning a person detained. Instruction 38 also covers procedures in relation to entry into Aboriginal lands, Aboriginal relics, skeletal remains and rights in relation to hunting, gathering and fishing.

This Instruction also states that a patrol commander must maintain an open line of communication. A regular forum for discussion should be established where Aboriginal people represent a group within a patrol commander's area.

In *Tasmania*, the Police Standing Order 144 deals with the arrest of Aboriginal persons. It specifies that every precaution should be taken in relation to self injury or suicide, the Aboriginal people should be admitted to bail at the first opportunity and not placed in cells unless there are exceptional circumstances. Section 144.3 requires 'every effort to be made' to notify relatives, friends and Aboriginal Legal Aid.
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Police

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