

Planning for Events on Aboriginal Lands

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This chapter discusses the unique setting of Aboriginal communities and the importance of strategic initiatives that facilitate a successful police response to events on Aboriginal lands. A community-based policing approach is presented, one that engages the Aboriginal community prior to a major event, mobilizing the community, establishing positive relationships and a network of support. The importance of involving Aboriginal and non-Aboriginal community members as well as leaders, groups, government, business and industry representatives is presented.

This chapter also outlines the Ontario Provincial Police "Framework" approach to event planning and how police are to respond to incidents occurring on Aboriginal lands. By way of open dialogue and mediation, cooperation of all parties is sought by police as a means to avoid unlawful or violent activities, preventing injury or harm and avoiding potential conflict.

Keywords: Aboriginal lands, Aboriginal policing, Tribal Police, First Nations Police,

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Aboriginal Communities and the Police

Relations between Aboriginal peoples and the police, historically and in contemporary times, have often been characterized by a high degree of mutual suspicion and hostility. In addition, Aboriginal communities confront a variety of social and policing problems that are distinctive and typically more serious than those in non-Aboriginal communities. The rural, isolated nature of most Aboriginal communities and, the disproportionate presence of poverty as well as associated social problems create a distinctive geographic and community context for Aboriginal law enforcement.

In many Aboriginal communities, the typical criminal justice oriented and crime control model of policing has resulted in unacceptable levels of the criminalization and incarceration of Aboriginal peoples. This criminalization has failed to adequately resolve the crime and policing problems of many Aboriginal communities.

In response, most Aboriginal communities have expressed the desire for a different style of policing that would include an alternative model of community justice that is different from the conventional model offered by US and Canadian criminal justice systems. The values expressed can generally be described as restorative and integrative rather than retributive and exclusionary, community-based rather than simply criminal justice based (Linden, 2001: 39). In this regard, Aboriginal community justice with a restorative community-based focus requires the police to play a broad policing role and to utilize alternative policing techniques and methods.

In Canada, numerous government task forces and commissions of inquiry conducted over the past two decades have also documented instances in which police officers acted in a discriminatory fashion against Aboriginal peoples. This has led to initiatives on the part of various police agencies to improve the training and cultural

sensitivity of police officers, to establish better lines of communication with Aboriginal communities, and to support Aboriginal police forces that have been created.

In conjunction, several Aboriginal bands have developed community-based criminal justice services and programs that are designed to address the specific needs of community residents, victims, and offenders. These initiatives have often been developed as part of a process of cultural and community revitalization and are part of the increasing efforts by Aboriginal peoples and communities to reassert their authority over all facets of community life (Griffiths and Hamilton 1996). These trends have also provided the opportunity for Aboriginal peoples in the United States and Canada to create autonomous police services and to establish partnerships between Aboriginal and non-Aboriginal police services.

Aboriginal Policing

A unique feature of the North American policing landscape is “autonomous” Aboriginal police forces, which have developed over the past decades. Typically known as “Tribal Police” in the United States and “First Nations Police” in Canada, these Aboriginal law enforcement entities are emerging within the context of Aboriginal self-government. In Canada, the First Nations Policing Policy (FNPP) is a tripartite agreement negotiated among the federal government, provincial or territorial governments, and First Nations. The agreements are cost-shared and, depending on the resources available, the First Nation may develop and administer its own police service.

In other instances, the First Nation may enter into a Community Tripartite Agreement (CTA) in which the First Nation has its own dedicated contingent of officers from an existing police service such as the Royal Canadian Mounted Police or the

provincial police in Ontario or Quebec). Every effort is made by these police services to have the department staffed by members of the First Nations community.

In 2008 there were 405 Aboriginal communities in Canada with dedicated police services employing 1,217 police officers, most of whom are of Aboriginal descent. In the province of Ontario, there are 92 First Nations communities policed by eight self-directed services. For communities without self-directed police services, the Ontario Provincial Police administers policing for 20 communities under the Ontario First Nations Policing Agreement and provides direct services to 22 other communities.

Among the larger Aboriginal police forces is the Nishnawbe-Aski Police Service, providing policing to 35 communities, the Six Nations Tribal Police in Ontario policing a population of 10,000 people and, the Amerindian Police Council in Quebec. These police forces have been established through negotiations and cost-sharing arrangements involving the federal government, the provincial governments, and First Nations communities.

Officers in Aboriginal police forces generally have full powers to enforce the *Criminal Code of Canada*, federal and provincial statutes, as well as band bylaws on reserve lands. The activities of Aboriginal police forces are overseen by reserve-based police commissions or by the local band council. There are also band constables who are appointed under provisions of the *Indian Act* and who are responsible for enforcing band bylaws. Band constables are not fully sworn police officers and their powers are limited (Whitelaw & Parent, 2013: 24).

Mobilizing and Engaging the Aboriginal Community: Prior to an Event

In 2010, the Ontario Association of Chiefs of Police introduced a policing model known as the Ontario's Mobilization and Engagement Model of Community Policing (see illustration). This model is designed to deliver policing services to the unique needs of a community. The model also serves as a diagnostic tool in which both the police and community leaders assess how much support is required to achieve a safer community. The model is broken down into four key areas:

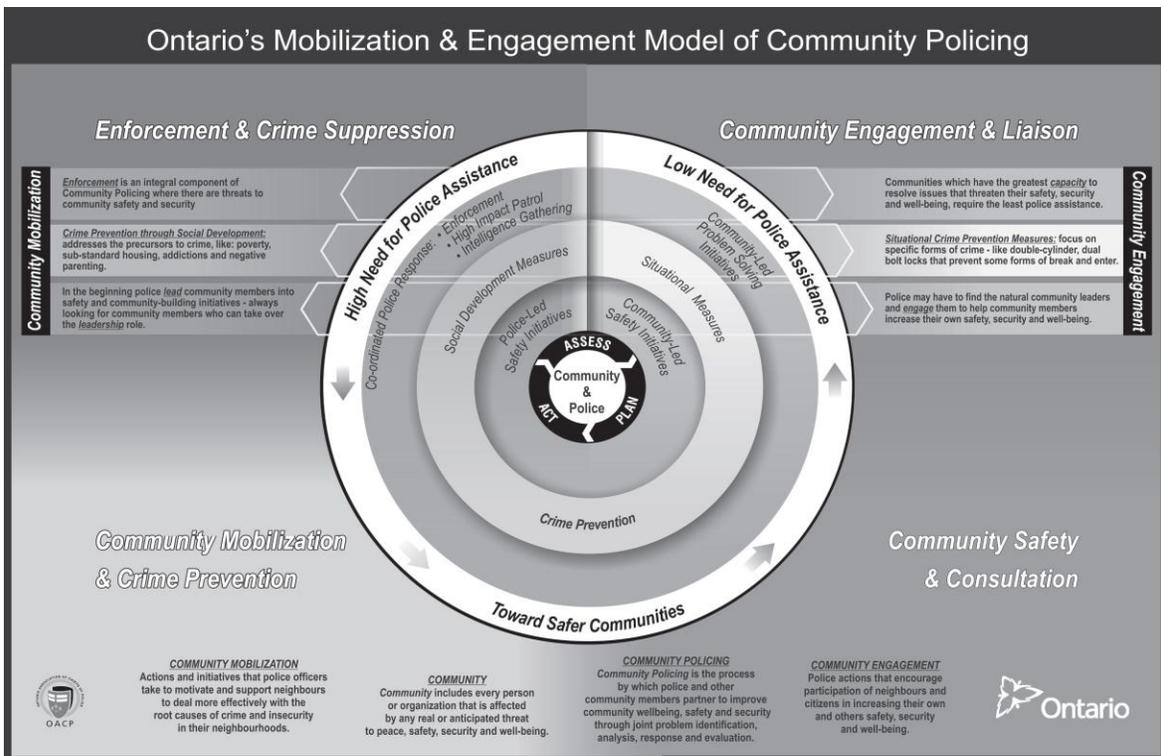
- Enforcement and crime suppression,
- Community mobilization and crime prevention,
- Community safety and consultation, and
- Community engagement and liaison.

The mobilization and engagement concept is key to event planning as it requires police officers to meet with Aboriginal community leaders and determine how a community rates across these four dimensions. Policing strategies are identified that will assist to maintain or improve overall community safety. For example, police may be required to stabilize neighborhood problems and begin developing community capacity (ability) to take ownership for many problems that lead to feelings of insecurity.

The goal for both the police and the Aboriginal community is to move away from a community requiring a high need for police assistance to a low need. In this regard, police must establish partnerships by identifying Aboriginal leaders who are able to sustain and build on positive accomplishments and continually engage the Aboriginal community to address many of its crime and disorder problems. Over time, through the application of community-based policing strategies, the community is better equipped to

manage its own problems and consequently lessen its reliance on the police (Whitelaw & Parent, 2013: 309-311).

Importantly, this strategic approach to policing engages the Aboriginal community and their leaders prior to a major event, establishing positive relationships. If and when required, the community can be further mobilized to respond in a proactive fashion with event planning and policing issues.



Partnering For A Safe Community!

**Ontario's
Mobilization & Engagement
Model of
Community Policing**

Community Policing

Past models depicted community policing as a philosophy for the way officers do policing. This model emphasizes roles, responsibilities and philosophies for non-police community members as well. The result is a dynamic, graphical representation of community policing in a variety of neighbourhoods ranging from very safe, ordered areas where police rarely respond; to places that police visit many times a day after public calls for assistance. The goal of community policing is for communities to move toward ever safer and more secure conditions - and when they get there, stay that way.

Building On The Past

The 1970s-80s saw community policing interpreted as improved public relations. The '90s added strategies for consulting with community people on police priorities. Today's model stresses non-police community members partnering with police in making, and keeping their neighbourhoods safe and secure. It highlights police tactics for stimulating and supporting community members to do this. Such tactics require police services to add skills and capabilities; and reconsider how they organize and operate. Today's vision requires that police become better partners with community members.

Crime Prevention That Works

Ontario's Police Services Act says that crime prevention is the first duty of police services. This community policing model distinguishes between relatively safe neighbourhoods where situational crime prevention measures like target hardening and community watch strategies work; and areas where broader social problems make such measures impracticable. The model emphasizes crime prevention through social development in areas where police are most often called for assistance. It guides all community partners to select crime prevention strategies that work.

A Continuum Of Service

Community policing refers to a continuum of police service in all communities - a range of tactics and strategies to help the community be and remain well, safe and secure. What officers do depends upon the particular situation in which they find themselves. Sir Robert Peel's "... the police are the people and the people are the police..." reflects that police and all community members share responsibility for community policing. Particular roles vary. But, ensuring everyone's safety, security and well-being requires everyone's combined efforts.

Partnering For a safe community!

Partnering For A Safe Community!

(OACP, 2010)

A Framework Approach to Confronting Incidents on Aboriginal Lands

“Critical incidents are often avoidable. The benefits of the Framework are maximized if put to use before an issue becomes a critical incident. Identifying, establishing and maintaining open and transparent relationships with all stakeholders are vital to maximized public safety.”

“... the Framework provides a guideline for police response to conflict and has applicability to both Aboriginal and non-Aboriginal issue-related conflict. ... Its focus on negotiation and mediation applies to police-related matters during a conflict. The Framework is recognized as a best practice for police response to an Aboriginal critical incident.” (OPP, 2013: 11-13)

In Canada, the Ontario Provincial Police (OPP) utilizes a “Framework approach” in defining and guiding the police response to various incidents that can occur on Aboriginal lands. It provides flexibility in how to manage individual conflict situations while establishing consistency and meeting policing core duties as well as statutory and common law responsibilities. The Framework approach also provides for accommodation and mutual respect for differences, positions and, interests of involved Aboriginal and non-Aboriginal communities and the police. The strategies that are developed support the minimal use of force by police, to the fullest extent possible.

The Framework identifies three stages of potential conflict that can occur: pre-incident, incident and post-incident. Actual incidents occurring on Aboriginal lands are further defined:

- A *major incident* is an occurrence that, by circumstance, requires employees, equipment and resources beyond those required for normal police service delivery; for example civil disturbances or disasters such as an airplane crash.
- A *critical incident* is a high-risk incident requiring mobilization of an integrated emergency response; for example an active shooter, a hostage taking or a barricaded person. Typically, in these instances, a tactical team will be deployed in conjunction with an incident commander and crisis negotiators.
- An *Aboriginal critical incident* is any critical or major incident where the source of conflict may stem from assertions of inherent, Aboriginal or treaty rights; or that is occurring on a First Nation territory; or involving an Aboriginal person(s), where the potential for significant impact or violence may require activation of an integrated emergency response unit (OPP, 2013: 4 - 6).

The OPP Framework approach also provides guidance for police engagement. The uniqueness of Aboriginal occupations and protests are underscored as they are often complex in nature and qualitatively different from single issue labor or political disputes. Emphasis is placed upon the awareness of related Aboriginal historical and cultural factors. These factors should be considered in determining what police resources may be required to peacefully resolve the incident.

Emphasis is placed upon the importance of understanding what is at issue and the complexities involved; the various positions being taken; the range of interested and influential parties – both Aboriginal and non-Aboriginal, with potential to impact achievement of a peaceful resolution of the Aboriginal critical incident.

A measured and flexible police response that employs the use of negotiation and mediation has the greatest potential to achieve success. This process benefits most when these skills and tactics are utilized prior to the incident becoming a critical incident. Relationship building and open communication with all of the involved parties are key to the Framework approach (OPP, 2013: 4 - 5).

The Framework approach emphasizes peacekeeping as a means to minimize violence, keep and restore public order, maintain neutrality, facilitate rights and work toward trusting relationships. Equally important, the Framework establishes that the OPP will investigate and take appropriate action in response to civil disobedience and unlawful acts, using discretion, a carefully measured approach and only the level of force necessary to ensure the safety of all citizens and to maintain/restore peace, order and security. The use of force is always a last resort. In

keeping with the objectives of peacekeeping, police may exercise considerable discretion with respect to how and when enforcement initiatives are undertaken. (OPP, 2013: 5).

Specialized Police Training and Organizational Sustainability

In 2009, the OPP created the Provincial Liaison Team (PLT) program with the mandate to establish and maintain open and transparent lines of communication with all stakeholders who may be affected, directly or indirectly, by major events. PLT members are specially trained, experienced police officers who operate openly as part of a police response to major events. These officers receive intensive, two-week training on building trusting relationships, effective communication, mediation and negotiation, as well as relevant, regular, ongoing training in specialized areas (OPP, 2013: 7).

Under the objective of sustainability, the OPP also ensures that there is a mandated element of training for all uniformed police personnel in regards to the Framework approach. This includes recruit training which involves the presentation and the discussion of the Framework approach. These concepts and strategies are further embedded within the training provided to Major Critical Incident Command management, specialty teams such as tactics and rescue units, emergency response teams, and other specialty support services, including public order units and crisis negotiators.

OPP policy and operational planning for major incidents additionally incorporate the Framework approach reinforcing the need to proactively establish relationships; to communicate, mediate and negotiate police-related interests; and to work to maintain and restore relationships following an event or incident. This would include community

outreach initiatives, undertaken proactively and in response to requests, providing information about and explaining the Framework approach. The recipients may include Aboriginal and non-Aboriginal community members and leaders, groups, government, business and industry representatives, and activists. By way of open dialogue and mediation, cooperation of all parties is sought by police as a means to avoid unlawful or violent activities, preventing injury or harm and avoiding potential conflict (OPP, 2013: 9 - 11).

In sum, an embedded organizational commitment must be made by the police agency to engage in a flexible, consistent and professional approach to policing Aboriginal and major critical incidents. In order to be effective, this approach must be sustainable, transparent and wide reaching, to both Aboriginal and non-Aboriginal members of the community. Mutual respect for differences must be acknowledged while resolving conflict and managing crisis situations with minimal force.

A Framework Towards Peaceful Resolution

A key aspect of the Framework approach is the emphasis and use of observations made by police personnel, prior to the event, during the event and, upon conclusion of the event. The Framework approach incorporates signs, behaviors and cues that may be present at each stage of the three-stage “conflict cycle” with suggested resolution techniques on how to avoid, de-escalate or appropriately manage a situation (OPP, 2013: 14-16). The observations and concerns by police personnel and, the resolution opportunities that may be available are outlined as follows:

1). The Pre-Event: Police Observations & Concerns

- real or perceived inequities in privilege or power with the community or, between the community and contemporary society;
- an initiative or event being planned that could lead to conflict;
- high probability that an ongoing initiative or event could lead to conflict or crisis;
- words and images used to describe an initiative or event that could generate negative emotions, dissension, disagreement, or conflict; and/or
- involved persons stating that if an initiative or event is not dealt with sensitively, a conflict or crisis will ensue.

The police response may include:

- be informed and consult with Aboriginal elected Councils, First Nations / Tribal police, community members, groups, other levels of Aboriginal leadership;
- remain informed of the positions and the impact of non-Aboriginal stakeholders;
- consider the policing implications of the local issues identified;
- develop and display respect for all concerned by active listening;
- always be honest: overt and consistent honesty is the best way to earn trust;
- build positive trusting relationships with members of all communities, First Nations / Tribal police officers and other agencies;
- be open and available to all parties, engage and begin dialogue;
- encourage individuals to come together around issues and activities where agreement and common ground exist;

- consult with elected and traditional leaders of the community if an issue arises that may precipitate a dispute or conflict;
- consult with community leaders on potentially conflicting issues using existing opportunities for dialogue;
- identify community and agency representatives who can serve as resource persons or mediators;
- review the local emergency plan to ensure it adequately addresses potential conflict situations including diversion routes as well as possible blockade locations.

2). The Actual Event: Police Observations & Concerns

- involved persons expressing a perception that their concerns are not being satisfactorily addressed;
- comments about the incident increasing in frequency or intensity, indicating greater likelihood of crisis;
- communicated positions becoming entrenched and polarized;
- involved persons becoming increasingly vocal, forceful and threatening;
- increasing media coverage with potential to further divide positions;
- persons or agencies not directly involved, taking public positions concerning the dispute;
- individuals from the Aboriginal community, including leaders, looking for police personnel of Aboriginal ancestry to assist as a point of contact.

The police response may include:

- from an operational perspective, the police agency should consider using an incident commander for the duration of the incident, to be responsible for the overall command and control of an integrated response that may include tactical team deployment and the use of skilled negotiators.
- ensure all parties to the incident have the opportunity to contribute to resolution strategies;
- provide options that are transparent to the parties in conflict to promote a safe resolution. Police should state their position and interests clearly so as to be understood by all. This may defuse an incident and lead to a safe resolution.
- establish the policing interest as it relates to the dispute at hand, e.g. explain that the police intend to maintain an orderly flow of traffic while allowing participants to lawfully demonstrate; and where possible attempt to re-route traffic in order to avoid confrontation and minimize impact;
- emphasize that negotiations will be used at every opportunity;
- acknowledge the existence of underlying factors within the incident;
- communicate to disputants that all demonstrators and other members of the public will be treated with dignity, respect and fairness – consider the values, traditions and interests of the affected communities;
- seek out common ground between all stakeholders and aspects of the dispute where agreement exists – take every opportunity to facilitate productive communication;

- establish with disputants a means by which information and progress will be communicated to media;
- consider the impact of decisions on the safety of police officers, demonstrators and other members of the public;
- respond to conflict with the minimal use of force;
- explain that a cooling off period and its length, if needed and possible, will be jointly agreed to;
- ensure that police personnel on the ground are kept informed.

3). The Post-Event: Police Observations & Concerns

- the emotional and physical exhaustion of participants;
- differing perceptions of the incident by those involved; and
- stakeholders wanting to reflect on what has occurred, discuss lessons learned and identify peace-building actions.

The police response may include:

- operational debriefings to review and assess operations and seek lessons learned;
- develop and implement a strategy to restore relationships with all involved communities.
- consider general objectives, responsibilities and potential activities to restore relationships and be adapted to specific circumstances as necessary.

(OPP, 2013: 14 - 16).

Examples of Applying The Framework Approach to Conflict on Aboriginal Lands**Case Example One: First Nation Opposition to Harmonized Sales Tax in Ontario - 2009**

In late 2009, the Governments of Ontario and Canada signed a Memorandum of Agreement to create the Harmonized Sales Tax (HST). First Nations people and political leaders across Ontario immediately opposed this new tax as there was no consultation with First Nations as to how harmonization would impact them and there were no provisions in place to ensure the existing Point of Sale tax exemption would continue.

Frustration boiled over in the form of protests and other organized events across the province for many months. Following the Framework Approach to dealing with events, the Ontario Provincial Police (OPP) began outreach to First Nations leaders and research into the new legislation (pre-incident stage). Proactive efforts during this pre-incident stage positioned the OPP well and ensured a consistent and coordinated response to planned events as they happened (incident stage).

Each police detachment was provided an Operational Plan template to be completed, followed and filed with the Emergency Management Unit. Using one template ensured that the Framework was embedded in each operational plan, making it necessary for all OPP members associated to an event to understand it. Weekly conference calls were implemented with representation from OPP Regions and Units....., Emergency Management Unit, Aboriginal Critical Incident Command and Corporate Communications to maintain a consistent and knowledgeable approach to events associated to the tax (HST) implementation.

On July 1, 2010, the HST was implemented, while at the same time the provincial and federal governments announced that an agreement was in place to continue the existing Point of Sale tax exemption for First Nations.

Across Ontario, there were 25 protests involving more than 30 communities over a six month period. Local detachment commanders and Provincial Liaison Team (PLT) members continued to work with individuals and First Nation communities, after the fact, in efforts to maintain relationships that had been established (post incident stage).

Case Example Two: An Integrated Response on First Nation Territory - 2010

In 2010, Ontario Provincial Police (OPP) officers were deployed as part of an Integrated Response to assist “Treaty Three”, First Nations Police with a barricaded person situation on a First Nation Territory. The suspect eventually surrendered to police and was arrested without incident. The OPP Provincial Liaison Team (PLT) followed up, after the successful resolution of the call, to explain and answer concerns from community members about the OPP presence, the different resources used and the number of officers deployed to the incident.

Members of the Band Council had concerns and questions about the number of officers responding to the incident and the different (green) uniforms worn by some of the officers at the scene. The explanations and information provided served to assure the leadership and community members that the incident was managed with the overall safety of the officers involved and the community and its members as priorities. Further follow-up was provided in response to a community request for a presentation about the OPP Emergency Response Team (ERT). (OPP, 2013: 17 - 18).

Discussion

The case examples involving the Ontario Provincial Police show how the Framework approach, if followed properly, can ‘minimize the use of force to the fullest extent possible’. Several key components of the Framework were used effectively in the cases presented demonstrating relationship building with Aboriginal peoples, open and honest dialogue, proactive engagement of stakeholders, facilitating partnerships, and key messaging, among others (OPP, 2013: 17 - 19).

Prior to an event occurring, the police agency must dedicate the necessary resources to build capacity to respond to events occurring on and involving Aboriginal communities. The police strategy must emphasize the development of communication networks and trusting relationships with Aboriginal peoples before, during, and after an event or crisis occurs. This process emphasizes the need for on-going communication, collaboration and partnerships with Aboriginal leaders and the communities they represent.

Importantly, day-to-day policing activities in Aboriginal communities should be based upon a “cultural foundation” thereby establishing legitimacy. Police officers who understand Aboriginal issues and work closely with Aboriginal communities will be better to identify and defuse potentially violent confrontations. The police agency will be more effective and the Aboriginal community is more likely to view the policing activities as having legitimacy (Ipperwash, 2007: 179-180).

In this regard, there is a need to place greater emphasis upon training police personnel to utilize those communication and tactical skills that are associated with crisis intervention. The components of this training also need to emphasize Aboriginal history,

customs, legal issues and community dynamics. Police officers require training that will allow them to interact in a calm and controlled manner when confronting individuals that may be angry or emotional due to the complexities associated with Aboriginal issues. An informed and comprehensive front-line intervention strategy has greater chance of successfully resolving face-to-face confrontation in a peaceful manner.

Aboriginal protests and occupations should be considered a separate and unique form of protest. As demonstrated by the Ontario Provincial Police Framework approach, there is a need for specific strategies and responses to Aboriginal related events including a dedicated and specially trained police response. The objectives of the police service and the police leaders during the event must be to minimize the potential for violence, facilitate constitutional rights and, to restore public order. Also key to the resolution of the event is the need to maintain and facilitate positive and trusting relationships with individuals in both the Aboriginal community and the non-Aboriginal community.

Canadian police forces have generally shown a preference for cautious engagement. On one hand they can be criticized for not upholding the law, but on the other, they are accustomed to being society's front line in cases of ambiguous justice. Interposing themselves between angry and riotous citizens is neither fun nor safe, yet police are asked to do this somewhere every month. In the case of Indian lands, they have learned that a strict constructionist approach to law enforcement is a recipe for danger and public obloquy (Swain, 2010:191-192).

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