In the Matter of the Commission of Inquiry into the Circumstances and Events Surrounding the Death of Anthony O'Brien (Dudley) George

Submissions on behalf of the Aazhoodena and George Family Group

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Part I: Overview

1. The format of these submissions

1. It is submitted that the antipathy of Premier Mike Harris' government towards First Nations people and that government's desire to be seen as "actioning" were essential factors leading to the unprovoked attack by the Ontario Provincial Police which resulted in the killing of Dudley George.

2. These submissions begin with an overview consisting of an outline of the facts it is proposed that the Commissioner should find and a list of the recommendations it is requested that the Commissioner make. The overview is followed by a detailed discussion of the evidence and arguments in support of the proposed factual findings and recommendations. The detailed discussion is divided under three headings: the land, the government, and the police.

2. An outline of the facts

3. In the Treaty of 1827, the Chippewas of southern Ontario ceded 2.7 millions acres to the British Crown. However, the Treaty specified that four parcels of land were not ceded and were to be reserved for First Nations people in perpetuity. Two of these reserves were Stoney Point, which became Indian Reservation number 43, and the nearby Kettle Point, which became Indian Reservation number 44. The traditional name for Stoney Point was "Aazhoodena."

4. Although the Stoney Point and Kettle Point reserves were administratively lumped together by the Department of Indian Affairs, they remained separate reserves, each having its own leaders.

5. In 1928, a part of Stoney Point reserve was "surrendered" to a politician and real estate agent named W. Scott. The surrender is appropriately described as a "rip-off" of

the First Nations people, aided and abetted by the Indian agent whose responsibilities purportedly included protecting the Stoney Point people from such swindles. Mr. Scott sold the bulk of the "surrendered" land to the Province of Ontario; that portion became Ipperwash Provincial Park. He sold another portion of the property to private individuals to use for cottages.

6. In 1942, the Government of Canada appropriated the rest of the Stoney Point reserve, pursuant to its extraordinary powers under the *War Measures Act*. The proclamation that authorized the seizing of the reserve stated that it would be returned to the Stoney Point people when it was no longer required by the military. It was generally presumed that this meant that the Stoney Point Reserve would be reconstituted when the Second World War ended.

7. The Government of Canada established a military base on the Stoney Point lands. There was nothing that made that parcel of land uniquely or even particularly suitable for use as a military base. There were numerous very similar properties in Ontario, many of which were occupied by private cottages. Although private cottage properties are not reserved for their owners in perpetuity, no cottage properties were seized by the government under the *War Measures Act*.

8. The Stoney Point people had to be re-located. Most were forced to live on Kettle Point Reserve, while others moved into nearby towns. Although relationships between the Stoney Point and Kettle Point people had generally been harmonious prior to this relocation, the animosities created by the resettlement were substantial. Since the Kettle Point lands were already crowded, many of the Kettle Point residents resented the intrusion of the Stoney Pointers, calling them "refugees".

9. The Government of Canada did not return the land when the Second World War ended. Over the next fifty years, Stoney Point people wrote letters, demonstrated and beseeched politicians to return their land to them. In 1972, then Minister of Indian Affairs Jean Chretien wrote to the Department of National Defense urging that the land be

returned. Nothing happened. The use of the base became very occasional, restricted to the training of cadets in the summer. Nonetheless, the Government continued to ignore the pleas of the Stoney Point people that their land be returned. Several generations of Stoney Point people were forced to live in other places because they were not allowed to live on their own land.

10. Finally, in 1993, some Stoney Point people re-occupied a portion of their land by camping on the perimeter of what was then the army camp. For the next two years there was an uneasy but basically peaceful co-existence of Stoney Point people and military personnel.

11. On July 29, 1995, the Stoney Point people re-occupied the barracks area of the Army Camp. The few soldiers present simply left the area, so the Stoney Pointers regained all the land that had been taken under the *War Measures Act*. Stoney Pointers have been living there ever since, although the Federal Government has still not formally returned the land.

12. On Monday September 4, 1995, Labour Day, Ipperwash Provincial Park was to close for the season. Late in the afternoon, when almost all visitors had left, some Stoney Point people re-occupied Ipperwash Provincial Park. Their action was motivated by the knowledge that there were burial sites of their ancestors located on that property, as well as by their belief that these treaty lands belonged to them. Several OPP officers attended but then withdrew.

13. Three months earlier, in June 1995, Mike Harris had taken office as Premier of Ontario. The basic attitude of Premier Harris and his government was that “First Nations people have been pandered to for too long.” At a meeting of several members of his cabinet and others that took place on September 6, Premier Harris expressed annoyance that the Ontario Provincial Police had not prevented the Stoney Pointers from regaining Ipperwash Provincial Park. He loudly proclaimed “I want the fucking Indians out of the

Park."

14. There was a standing committee of the provincial government called the "Interministerial Committee" [hereinafter, the "IMC"], also known as the "Blockade Committee", one of whose purposes was to try to ensure peaceful resolutions of Aboriginal blockades and occupations.

15. Premier Harris' representative on the IMC was Deb Hutton. Ms. Hutton's insistence that there be no negotiations and that the government wanted "to be seen as actioning" prevented the IMC from appointing a negotiator who might have helped to prevent violence. Ms. Hutton advocated that the Stoney Point people be treated as trespassers and criminals.

16. The official position of the Ontario Provincial Police was that they would not attempt to remove the Stoney Pointers from Ipperwash Park unless there was a court injunction that required them to do so. (However, they did inform the Stoney Pointers that they considered them to be trespassers.) Lawyers from the Ministry of the Attorney General prepared an application for such an injunction, and obtained a court date for the application to be heard on the morning of September 7, 1995.

17. Inspector (as he then was) John Carson was the "Incident Commander" for the Ontario Provincial Police with respect to Stoney Point. The Harris government's attitude towards the Stoney Pointers' presence in Ipperwash Park was communicated to Inspector Carson in several ways from several different sources. Inspector Carson informed a number of his command officers of this "heat from the political side." Early on the evening of September 6, MPP Marcel Beaubien attended at the OPP Command Centre and reaffirmed the government's position in a meeting with Inspector Carson and other command officers.

18. Later in the early evening of September 6, an incident occurred near the "sandy parking lot" just outside the main entrance to Ipperwash Provincial Park. Gerald George,

a Band Councilor from Kettle Point who had written a letter denouncing the Stoney Point people that had been published in the local newspaper, stopped his car near the sandy parking lot. He got into an altercation with his relative Stewart George, one of the occupiers. As Gerald George drove away, Stewart George threw a rock at the back of Gerald's car; the rock caused some damage. Gerald George reported the incident to OPP officers and gave a statement to the officers at a checkpoint.

19. Over the next couple of hours, the description of the altercation between Gerald George and Stewart George was greatly exaggerated in the course of re-telling by police officers. It was transformed into the following completely false story: A woman was driving by the sandy parking lot when her car was attacked by eight to ten First Nations people with baseball bats. In fact, no woman drove by the sandy parking lot and no one attacked anyone or anything with baseball bats.

20. On the evening of September 6, the OPP command officers knew that a police officer was obtaining a statement from the victim of the incident at the sandy parking lot, whoever he or she was. Inspector Linton suggested waiting for the statement before taking any action. However, Inspector Carson ordered deployment of the Tactical Rescue Unit [hereinafter, "the TRU team"] and of the Crowd Management Unit [hereinafter, "the CMU"] without seeing the statement or being told of its contents.

21. There is contradictory evidence about what orders Inspector Carson gave the TRU team and the CMU that night. It is noteworthy that the scribe notes, which are supposed to contain a record of all significant events that happen in the command centre, do not mention the reasons for the deployment of either the CMU or TRU. Inspector Carson claimed that he ordered the CMU to get any Stoney Point people who were in the roadway or in the sandy parking lot back into Ipperwash Park, and to arrest everyone who refused to go into the Park, as he felt that otherwise nearby cottagers might be endangered. However, Staff Sergeant Skinner, the head of the TRU team who was evaluating the situation with Carson and transmitting Inspector Carson's orders, testified that CMU was ordered to go part way down the roadway and then await further

instruction. If there was nothing dangerous going on, Skinner testified, then the officers were to leave the people alone, whether they were in the sandy parking lot or not. This is consistent with an order of Carson's which is recorded in the scribe notes, to the effect of "If they are just having a campfire, leave them alone." Skinner's version was confirmed by P.C. Zupancic, who was the only other officer with Carson and Skinner as the orders were being transmitted that evening. Moreover, Carson did not offer any reasonable explanation for the failure of the CMU to have a bullhorn to direct people if the goal really had been to get people back into the park. (Skinner testified that TRU had two bullhorns available.)

22. At about 11 p.m. on September 6, 1995, for whatever purpose, approximately forty members of the CMU marched down the road towards the sandy parking lot from their initial position about eight hundred metres away. Members of TRU teams accompanied them, with their stated purposes being "to get an eye" and to "provide cover."

23. It is submitted that there was no rational, legitimate police purpose served by marching a large number of officers towards the Stoney Point people late at night; to do so was an obvious recipe for disaster. If Inspector Carson had been genuinely concerned that the Stoney Pointers might endanger someone, as he claimed in his testimony at the Inquiry, he would simply have had one or several officers drive by to see what was happening. Carson acknowledged that his objective of protecting people could have been attained by officers at the observation posts warning any persons who came along that they should not continue down the road towards the sandy parking lot. The conclusion is inescapable: Carson ordered the CMU to march against the Stoney Point people because he wanted to show the Harris government that the OPP was taking firm action.

24. The CMU did briefly stop part way along the road, but then resumed marching towards the sandy parking lot without having received instructions from the command centre to do so. The officer commanding the CMU as it marched down the road was Sergeant Wade LaCroix, an old acquaintance of MPP Beaubien's who had been personally informed by Beaubien of Premier Harris' hard line with respect to the people

in the Park. LaCroix did not have a reasonable explanation of why he didn't wait to receive further instructions from the command centre before ordering the CMU officers to continue all the way down the road. There is little doubt that LaCroix's ordering the CMU to confront the Stoney Pointers was influenced by his knowledge of the position of Premier Harris and his government.

25. When the CMU approached the sandy parking lot, the Stoney Pointers assumed that the police purpose was to clear them from the park, as the police had earlier told them they were trespassing and there had never been any suggestion by the police that they would permit them to remain in the park.

26. There was a scuffle between the police and the Stoney Pointers, with the police using their batons and shields and the Stoney Pointers using sticks and stones. Towards the beginning of this confrontation, numerous police officers hit Mr. Cecil Bernard George with batons, while others kicked Mr. George as he lay on the ground. Mr. George received at least twenty-eight distinct injuries from the application of blunt force.

27. Two of the Stoney Pointers drove vehicles towards the police officers in attempts to get the officers to stop beating Cecil Bernard George. Police officers fired a number of shots at those vehicles.

28. TRU team member Acting Sergeant Kenneth Deane later claimed that he saw Dudley George scanning the crowd with a rifle. Deane shot and killed Dudley George. Deane was subsequently charged with criminal negligence causing death. The judge hearing the case concluded: "I find that the accused Kenneth Deane knew that Anthony O'Brien Dudley George did not have any firearms on his person when he shot him. That the story of the rifle and the muzzle flash was concocted ex post facto in an ill fated attempt to disguise the fact that an unarmed man had been shot."

29. Unfortunately, Kenneth Deane died in a traffic accident several weeks before he was scheduled to testify at the Inquiry. However, the Inquiry heard testimony from numerous

police officers that were involved in the confrontation. Only one of those officers provided evidence in support of the allegation that any of the Stoney Pointers possessed a firearm on the evening of September 6, 1995. That officer, P.C. Cossitt, had been found by the judge hearing the Deane trial to have fabricated his evidence. Moreover, it was apparent from his testimony at the Inquiry that Cossitt had perjured himself at the criminal trial of Cecil Bernard George. In addition, his evidence at the Inquiry was riddled with contradictions and was obviously concocted.

30. A number of First Nations witnesses testified that none of the occupiers had any firearms in their possession on the evening of September 6. It is therefore virtually certain that all of the shots that were fired near Ipperwash Park on September 6 were fired by police officers.

31. After killing Dudley George, the OPP officers left the scene. Some of the Stoney Pointers transported Dudley George to the army camp part of Stoney Point. They put Dudley in a car belonging to his brother Pierre George who, accompanied by Dudley's sister Caroline George and Dudley George's nephew J.T. Cousins, drove towards Strathroy Hospital. En route, one of the tires on the car went flat. After calling an ambulance but then getting discouraged when it failed to arrive after some time, they drove towards Strathroy on the flat tire. The rubber fell off the tire; they continued driving, with sparks flying from the steel wheel of the car. They eventually arrived at Strathroy Hospital. As they got out of the car and prepared to carry Dudley into the hospital, police officers roughly grabbed them and placed them under arrest. Dudley was examined by doctors at the hospital but could not be saved. Pierre and Carolyn George were held in jail over night; they were released the next afternoon without charges being laid.

32. Upon hearing reports that OPP officers had shot at and wounded some Stoney Pointers, Marcia Simon and her elderly mother Melva George drove to a telephone booth to call for ambulances. They were followed by police officers. As Ms. Simon was describing the need for ambulances to an operator, four officers pointed long guns at her

and at her mother. An officer roughly grabbed Ms. Simon and forced her to the ground. She was placed under arrest, and not released for several hours.

33. Whenever a police officer in Ontario causes serious injury or death, the possibility of laying criminal charges against the officer is investigated by the Special Investigations Unit ("the SIU"). In such situations, it is the responsibility of the police force to notify the SIU of the occurrence as soon as possible, so that the SIU can begin its investigation.

34. An OPP officer did notify the SIU reasonably soon after the killing of Dudley George. However, that officer knew very little about what had happened, so the officer gave the SIU a phone number at which to call Inspector Carson to obtain the information necessary to begin the investigation. Carson got the message to call the SIU. However, he did not return the call for some time. He was concerned that he might not be permitted to put out a press release after he spoke to the SIU, so he first dictated a press release.

35. The press release that Carson dictated, and that was sent to the media, included the following:

> On Wednesday 6 September 1995 at 7:55 p.m. a disturbance was reported to the OPP at Parkway Drive and Army Camp Road where the Police had removed a number of picnic tables and two tents from the public roadway yesterday. A private citizen's vehicle was damaged by a number of First Nations people armed with baseball bats. As a result of this, the OPP Crown Management Team was deployed to disperse the crowd of First Nations people which had gathered at that location, which is the township property adjacent to Ipperwash Provincial Park and local cottages.
>
> As the crowd was dispersing into Ipperwash Provincial Park, officers were confronted by First Nations persons hurling rocks at the officers. As the Crowd Management Unit was leaving the area a school bus and a fill sized vehicle drove through the Provincial Park fence striking a dumpster, then pushing the dumpster and the vehicles into the Crowd Management Team.
>
> Occupants of those two vehicles fired upon Police Officers and subsequently Police Officers returned fire. There is one First Nations person fatally injured and two First Nations persons seriously injured. Identification is not being released pending notification of next of kin.
>
> The Special Investigation Unit (S.I.U.) has been notified and is now investigating the shooting incident. Any further information pertaining to this investigation will be released by S.I.U.

36. Another press release was issued by the OPP the next day. The essence of that press release was the following:

> The Ontario Provincial Police would like to clarify the events leading to the tragic situation last night outside of Ipperwash Provincial Park.
>
> "The OPP were there to address a disturbance involving First Nation's persons causing damage to private property in the area. OPP personnel did not enter the provincial park and were not there to remove those individuals occupying the grounds," Commissioner Thomas B. O'Grady said today.
>
> The officers were pelted with rocks and sticks. As OPP personnel were preparing to leave the area, two vehicles broke through the fence of the park and came at the officers. It was at this time that OPP personnel were fired upon from the vehicles. The officers felt their safety was endangered and returned fire, fatally injuring one man.
>
> "This situation is an isolated incident. The OPP has a proven track record of many years of peacefully resolving issues with First Nations people," Commissioner O'Grady said. "The events of last night are tragic, and we are committed to a course of action which will bring this situation to a peaceful conclusion as quickly as possible."

37. Within at most a few days after September 6, Inspector Carson and other OPP officers knew that their press release had falsely accused the First Nations people of attacking a vehicle with baseball bats. Moreover, it subsequently became apparent that there was no credible evidence that any First Nations person fired any weapon from a vehicle (or from anywhere else). In spite of the fact that those false accusations obviously reinforced negative stereotypes about First Nations people, the OPP never issued any corrections to these press releases.

38. Viciously racist remarks by two OPP officers acting as media people at Ipperwash Park in September 1995 were recorded on videotape. This information was only made public in 2003, when it was revealed as a consequence of a freedom of information request.

39. OPP officers designed two different T-shirts and a coffee mug "commemorating" the OPP operation at Ipperwash. Many witnesses at the Inquiry, including some from the

OPP, generally agreed that the designing and distribution of these items was racist, especially in light of the fact that the OPP had killed a First Nations person during the operation being "commemorated." Incident Commander Carson was given one of the T-shirts by an officer who was distributing them at the Forest Detachment of the OPP.

40. In the summer of 1995, the OPP collaborated with Ministry of Natural Resources personnel to enact a policy that required MNR employees who saw First Nations people committing criminal or provincial offences to report their observations to the OPP. There was no such reporting policy with respect to people who were not First Nations. Incident Commander Carson testified that he would have discussed these protocols with the OPP officer who negotiated them with MNR employees, and that 'we would have asked for their cooperation." Although the present OPP Commissioner, Commissioner Boniface, testified that it was "very disturbing" that there had been such a policy providing for special policing of First Nations people, Incident Commander Carson still did not see any problem with that policy.

41. Although the OPP purportedly investigated the above-described racist actions by their officers, no OPP officer received any significant discipline for any of those actions. In particular, Incident Commander Carson received no discipline whatsoever for his acquiescence to the distribution of racist "memorabilia" or to the special policing of First Nations people, or with respect to any aspect of his actions concerning Ipperwash.

42. On the contrary, Inspector Carson was subsequently promoted to the rank of Deputy Commissioner. There are only four Deputy Commissioners of the OPP, and the only higher-ranking officer is the Commissioner herself. At present, Carson continues to hold the rank of Deputy Commissioner. Mark Wright, the then-Detective Sergeant who stated to Carson on the evening of September 6, 1995 "Let's just go get those fucking guys," was subsequently promoted to Inspector, a very high rank within the OPP.

43. A large number of OPP officers assisted Kenneth Deane in his defense to the charge of criminal negligence in causing the death of Dudley George. This assistance was

rendered as part of their paid, official duties as OPP officers. Even after Deane was convicted and the trial judge found that he had concocted the claim that Dudley George had been armed, many officers assisted in preparation of Deane's appeal as part of their paid, official duties.

44. Soon after the killing of Dudley George, there were demands from many quarters for a public inquiry into the circumstances surrounding the killing, including the role of political influence. The Harris government refused to call an inquiry, so it was not called until a different political party took office many years later. While the passage of time has created some difficulties in reconstructing events, it is submitted that the documentary and oral evidence presented at the Inquiry is sufficient to clearly establish the facts and conclusions described above and in the balance of these submissions.

3. Proposed Recommendations

A. Restoring Stoney Point First Nation

1. The Governments of Canada and Ontario should formally recognize the Stoney Point First Nation as separate and independent from the Kettle Point First Nation.

2. The Government of Canada should restore Stoney Point Reserve #43.

3. The Government of Canada should immediately return the former Camp Ipperwash lands to the care, control and ownership of the Stoney Point First Nation.

4. The Government of Canada should apologize for the appropriation of the Stoney Point reserve in 1942.

5. The Government of Canada should suitably compensate the descendants of those displaced by the 1942 appropriation of Stoney Point Reserve #43.

6. The Government of Canada should suitably compensate the Kettle Point First Nation for the expense and disruption caused by the 1942 relocation of Stoney Point people to that reserve.

7. The Government of Ontario should relinquish all claims it may have to the property known as Ipperwash Provincial Park. More specifically, the Government of Ontario should return the care, control and ownership of the property known as Ipperwash Provincial Park to the Stoney Point First Nation.

8. In recognition of the failure of the Government of Canada to protect the interests of the Stoney Point First Nation with respect to the 1928 surrender of Stoney Point Reserve #43 lands, and the negligence and wrongdoing of the Indian Agent of the time, the Government of Canada should:
    (a) suitably compensate the Stoney Point First Nation for the wrongful taking of these reserve lands.
    (b) purchase those portions of the lands wrongfully taken in the 1928 surrender that are currently privately owned, and restore these lands to Stoney Point Reserve #43.

9. As portions of the Stoney Point Reserve #43 have been seized for the creation of encumbrances and roads, without any apparent surrender by the First Nation, the Governments of Canada and/or Ontario and/or the Township of Bosanquet, whichever is responsible, should:
    (a) Suitably compensate the Stoney Point First Nation for the wrongful taking of these reserve lands.
    (b) Enter into negotiations with the Stoney Point First Nation with respect to the disposition of these wrongfully seized lands, and should restore these lands to Stoney Point Reserve #43 if that is the desire of the Stoney Point First Nation.

10. Where a First Nations group asserts that it is an independent First Nation with an interest in a land claim or assertion of an Aboriginal or treaty right, the Governments of Canada and Ontario should treat these claims as they would any other formal land claim or assertion of an Aboriginal or treaty right, even if the said First Nations group does not have formal status in Canadian law at the time.

11. The Government of Canada should reconstruct the Stoney Point Band List by beginning with the 1942 Stoney Point #43 band list.

12. The Government of Canada should ensure that the following services are available to the reconstituted Stoney Point First Nation #43:
    a. Educational Programs and Facilities,
    b. Medical and Treatment Services,
    c. Housing Programs,
    d. Roads Department,
    e. Telephones and Electricity,
    f. Water and Sewer,
    g. Programs for the disabled and elderly,
    h. Culture and Language,
    i. Law and Enforcement,
    j. Lands and Estates,
    k. other services which other First Nations enjoy.

13. The Governments of Canada, Ontario and the relevant municipality should ensure that the Stoney Point First Nation #43 is not excluded from programs that are enjoyed by other communities in Ontario.

B. Creating a Fair Process for Addressing First Nations' Claims.

14. The current processes in place to address disputes between the Governments of Canada and Ontario and First Nations over land claims, Aboriginal rights and treaty rights should be replaced.

15. The Governments of Canada and Ontario should ensure that the following six principles guide the design of an effective process for resolving land claims and disputes over Aboriginal and treaty rights:
    1) it should be timely;
    2) it should be fair and perceived by all parties to be fair;
    3) it should address the underlying grievances behind the claim and contribute to reconciliation between First Nations and the Crown;
    4) it should take into account the division of responsibilities between the federal and provincial governments, without allowing that division to cause delays in the settlement of claims;
    5) it should protect the interests of the general public; and
    6) it should address systemic disincentives that discourage governments from negotiating settlements in a timely manner.

16. Negotiation between equally resourced parties should be the primary method for resolving disputes between First Nations and the Governments of Canada and Ontario over land claims or the assertions of Aboriginal and/or treaty rights, with access to a fully independent tribunal to assist the negotiation process where impasses arise between the parties.

17. Recognizing that First Nations in Canada are nations that have not lost their sovereignty, and that the colonizing of Canada was based on a partnership with First Nations peoples, the Governments of Canada and Ontario should agree that any dispute with a First Nation over a land claim or the assertion of an Aboriginal and/or treaty right can, should the First Nation so request, be adjudicated by an international body or organization, such as the International Court, the United Nations or the Organization of American States.

18. The negotiation and adjudication of disputes between First Nations and the Governments of Canada and Ontario over land claims, Aboriginal rights and treaty rights should be based on the principle of the continuity of First Nations' laws.

19. The design and implementation of new processes to address disputes between the Governments of Canada and Ontario and First Nations should be done with equal participation and partnership with First Nations.

20. To demonstrate their commitment to honouring First Nations' rights, at the final settlement of a claim, the Governments of Canada and/or Ontario should offer a public apology to the First Nation in relation to the events giving rise to the claim.

21. To avoid delays in the settlement of claims, the Governments of Ontario and Canada should develop a process, whether of negotiation or arbitration, whereby they can efficiently resolve disagreements between them about their share of responsibility for past actions of the Crown in relation to a claim.

22. Pending the implementation of new processes for resolving disputes between First Nations and the Governments of Canada and Ontario, the Governments of Canada and Ontario should immediately introduce, with respect to the current processes, binding deadlines for these Governments to review claims and conduct the various stages of the negotiation process for claims, with an option for extensions of time with the consent of the First Nations party(ies).

23. In recognition of the fact that the Supreme Court of Canada (in the cases of *Haida Nation, Taku River* and *Mikisew*) recognized a duty requiring the Governments of Canada and the Provinces to consult with First Nations when the Crown has knowledge of an Aboriginal rights or title claim and is considering actions that might negatively affect those claimed rights or title, the Governments of Canada and Ontario should develop, in consultation and partnership with First Nations, a detailed policy to guide decision-makers in assessing and accommodating Aboriginal and treaty rights in order to ensure that First Nations' rights to land and to harvest, amongst others, are not interfered with.

24. Given the well-documented, historical violations of the rights of First Nations in Canada, when a First Nation raises a grievance with respect to a claim to land, or the violation of Aboriginal and/or treaty rights, by way of either a formal or informal process, all parties should act upon a presumption that there is validity to the claim. Such a presumption should also guide the actions of police services in Ontario that respond to First Nations blockades and occupations. This presumption would replace what appears to generally be the current assumption, that First Nations claims lack validity.

25. When a First Nation raises a grievance with respect to a claim to land, or the violation of Aboriginal and/or treaty rights, all relevant levels of government should make every effort to quickly locate and share archival evidence with respect to that claim with the First Nation.

C. The Protection of Sacred Sites

26. The Province of Ontario, and/or the University of Western Ontario, should make every effort to locate the skeletal remains that were removed from the lands that made up Ipperwash Provincial Park. If these remains are located, the Province of Ontario

and/or the University of Western Ontario should return the remains to the Stoney Point First Nation.

27. The Province of Ontario should apologize to the Stoney Point First Nation for the disruption and removal of burials in the lands that were the Ipperwash Provincial Park.

28. The Government of Canada should make every effort to locate any remains and tombstones that were removed from the cemetery that is located within the bounds of the former Camp Ipperwash. If these remains and tombstones are located, the Government of Canada should return them to the Stoney Point First Nation.

29. The Government of Canada should apologize to the Stoney Point First Nation for the destruction and disruption of the cemetery that is located within the bounds of the former Camp Ipperwash.

30. The Governments of Canada and Ontario should enact dedicated Aboriginal sacred and ceremonial sites legislation, to replace the provisions found in multiple pieces of legislation that currently affect Aboriginal archaeological, burial and other sacred sites.

31. The Governments of Canada and Ontario should enact legislation to establish a process aimed at recognizing
    a. Aboriginal peoples as the owners of cultural sites, archaeological resources, religious and spiritual objects, and sacred and burial sites located within their traditional territories.
    b. Aboriginal people as having sole jurisdiction over sacred, ceremonial, spiritual and burial sites within their traditional territories, whether these sites are located on unoccupied Crown land or on occupied Crown lands (such as on lands under forest tenure or parks);
    c. Aboriginal people as having at least shared jurisdiction over all other sites (such as historical camps or villages, fur trade posts or fishing stations); and
    d. Aboriginal people as being entitled to issue permits and levy (or share in)the fees charged for access to, or use of, such sites.

32. The creation and implementation of new legislation to protect First Nations' archaeological, burial and other sacred sites should be done in consultation and partnership with First Nations.

33. Any legislation designed to protect First Nations' archaeological, burial and other sacred sites should include a definition of "sacred" that reflects the fact that First Nations communities are diverse, and that each community defines for itself what it considers to be "sacred."

34. Any legislation designed to protect First Nations' archaeological, burial and other sacred sites should include a provision that, to the extent possible, all First Nations groups with a historically-based interest in the site will be given the opportunity to participate in the process of determining the disposition of that site.

35. The participation of a First Nations group with a historically-based interest in an archaeological, burial or other sacred site in Ontario should not be dependent on whether or not that First Nations group is formally recognized as a Band pursuant to the *Indian Act*.

36. The protection and identification of First Nations' burials should not entail the disruption of the burial sites.

37. Traditional First Nations and/or customary methods of identifying a burial should be recognized.

D. Concerning Policing

38. The Province of Ontario should amend the *Police Services Act* to provide that there be a police services board for the Ontario Provincial Police.

39. The Province of Ontario should amend Regulation 926 to the *Police Services Act* so that it restricts police officer's pointing of any firearm (not only a handgun) at a human being to situations where the officer believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm. More specifically, section 9 of Regulation 926 should be amended so as to read as follows (the proposed amendment is that the italicized words be added):

> s. 9. A member of a police force shall not draw a handgun, *point any firearm at a human being*, or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.

40. The Province of Ontario should amend Regulation 926 to the *Police Services Act* to require a use of force report if a police officer points any firearm (not only a handgun) at a human being. More specifically, section 14.5 (1)(a) of Regulation 926 should be amended so as to read as follows (the proposed amendment is that the italicized words be added):

> s. 14.5 (1). A member of a police force shall submit a report to the chief of police or Commissioner whenever the member,
>
> > (a) draws a handgun in the presence of a member of the public, excluding a member of the police force while on duty, *points any firearm at a member of the public*, or discharges a firearm;

41. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that all telephone calls and radio transmissions made by police officers in the course of performing their duties be recorded in all cases in which it is practical to do so.

42. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that, whenever there is an incident which is likely to be investigated by the Special Investigations Unit (SIU), all police officers who are potential witness or subject officers must be segregated pending their being interviewed by the SIU. During the period proceeding the SIU's completing initial interviews with all such officers, no individual can discuss any aspect of the event with more than one of the officers involved. In particular, if any officer wishes legal advice preceding the officer's being interviewed by the SIU, she or he must obtain it from a lawyer who has not discussed the event with any other officer.

43. The Province of Ontario should enact legislation to ensure that Special Investigation Unit investigations are conducted in a free and independent fashion and that joint "parallel investigations" such as occurred into the death of Dudley George do not occur in the future.

44. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that Ontario police forces must each adopt a policy of "zero-tolerance" towards racism by police officers.

45. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* making it an offence for an police officer to use a vehicle marked as an ambulance (or otherwise marked so as to indicate that it is a vehicle used for the provision of medical services) for any operational purpose other than the rendering of medical assistance.

46. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that, whenever a police force is planning a "public order" operation, the force must ensure that there be appropriate medical assistance available in case any civilians or police officers are injured. In addition, in such circumstances the force must ensure that counseling is made available as soon as possible to any civilians who suffer psychological trauma as a consequence of the police operation.

47. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that persons (other than police officers doing first aid) who provide medical assistance at the request of or by arrangement with police officers must be paramedics or other medical personnel who are independent of the police.

48. The Ontario Provincial Police should institute a program of periodically reminding officers that they must have "reasonable and probable grounds" before they place persons under arrest. The reminders should include hypothetical or real examples of situations in which there were not reasonable and probable grounds, such as with

respect to the detentions of Marcia Simon, Melva George, Pierre George and Carolyn George on September 6, 1995.

49. The Ontario Provincial Police should review the suitability of Deputy Commissioner John Carson and Inspector Mark Wright for their current high ranks in light of the evidence at the Inquiry of their actions at Ipperwash in September 1995 and of their attitudes towards First Nations people.

50. The Province of Ontario should enact a regulation under the *Police Services Act* creating an offence for police officers to assist a fellow officer's defense to criminal charges as part of their paid duties.

51. As part of their training in first aid, police officers should be taught that it is important that information from family members or others about the circumstances of the injury and the medical history of the victim be made available to medical personnel treating the victim.

E. On Government

52. The Government of Ontario should re-name the "Ontario Secretariat for Aboriginal Affairs" the "Ontario Ministry for Relations with First Nations."

53. The Government of Ontario should create a separate Ontario Minister for Relations with First Nations who does not head any other ministry.

54. The Government of Ontario and the Government of Canada should be prepared to consider the merits of the substance of any land claim in the course of negotiating a resolution of an aboriginal occupation or blockade.

55. The Government of Ontario should offer appropriate apologies and compensation (unless such has already been settled) to the First Nations people who were victimized by the Ontario Provincial Police at Ipperwash in 1995, including Marcia Simon, Melva George, Pierre George and Carolyn George.

56. In recognition of the fact that the failure to include appropriate education concerning First Nations' issues and First Nations' history in the Ontario educational system does a disservice to all residents of Ontario, the Government of Ontario should revise the educational curriculum in Ontario so that it includes substantial information concerning First Nations' issues and history. Instruction concerning this portion of the curriculum should begin at an early age and should continue throughout both elementary and secondary education.

57. The Government of Ontario should ensure that the First Nations' portion of the curriculum in Ontario public schools should be written, and periodically updated thereafter, with the input and partnership of First Nations.

58. The Governments of Canada and Ontario should ensure that there is adequate funding and resources for the teaching of First Nations languages.

59. The Government of Canada should make Aboriginal Solidarity Day a statutory national holiday.

60. The Province of Ontario should enact “whistleblower” legislation that would protect civil servants from reprisals for revealing wrongdoing by politicians or by political staff.

61. The Ontario Ministry for Relations with First Nations should maintain a roster of qualified facilitators/negotiators who are well regarded by First Nations communities to be available to be called upon to assist in the resolution of First Nations occupations or blockades.

62. The Province of Ontario should enact a regulation requiring that any substantive interaction between a politician or civil servant and any police officer concerning any police operation must be fully and permanently documented by all the parties to the interaction, and that such documentation must be made public as soon as such disclosure would not interfere with the operation.

Part II: The Land

45. Over the past 250 years, First Nations peoples have been largely dispossessed of their lands and resources in Canada. There is a well-documented and grievous history of the relationship between First Nations and governments in Canada that includes the suppression of First Nations' institutions of governments, the denial of land, the forced taking of children, the criminalization of traditional subsistence practices, and the negation of the rights of religious freedom, association, due process and equality. The solemn treaties entered into with First Nations that allowed the settlement of Canada have been broken by successive Canadian governments, an activity that continues to this day.

> J. Borrows, "Crown and Aboriginal Occupations of Land: A History and Comparison" (October 15, 2005) (Part II Paper) at pp. 5, 97.

46. This same history, however, is also characterized by continuous resistance on the part of First Nations peoples.

47. The history of Stoney Point is one of these many stories of dispossession and grievance that went ignored and unaddressed for many years, despite the insistent and increasing protest and resistance from the Stoney Point community.

48. Marcia Simon and Kevin Simon described the experiences of their relative, Calvin George, and his legal struggle to assert his right to hunt for food on his own reserve, one of a string of Canadian legal cases that denied this now-recognized right of First Nations people.

> [Calvin] George is not just a case of law to us. He is our uncle Calvin George whom we know as "Uncle Cabbage". Our Canadian laws or lack of them have not always treated out "Uncle Cabbage" with dignity and respect he richly deserves.
>
> As a young child, he was removed from his community and his first language, the beautiful rich Ojibwe language, led to severe brutal punishments in the Mt. Elgin Residential School.
>
> As a Native Veteran, his veteran's benefits were less than other Canadian Veterans at the end of the war.

> As a young hunger with a large family to feed, his hunting rights were violated. His food he was going to feed his family, a poor family in need of food, was seized by the Royal Canadian Mounted Police. He was criminalized and charged.
>
> During the course of the lengthy legal battles that followed, during the financial hardships, during the emotional distress placed upon this young family, his family life broke down.
>
> And Uncle Cabbage landed up being fined for trying to feed his family two ducks. At the same time, one could read in the papers of the thousands of ducks that were killed due to oil slicks but we didn't read of those ducks being seized and those responsible receiving any charges.
>
> Our Uncle Cabbage was without his family, his home, and his community respect and dignity. He had been one of our brightest young community leaders serving on council and defending our hunting rights. After the loss of family and home, he had to struggle to make a small temporary home in a fourteen-foot trailer without the comfort of hydro or running water. But he did it and now his "George" name is in your law books. What a story of needless anguish and hardship behind that one name in the law books.
>
> Kevin Simon and Marcia Simon, "A Reaction to the Paper 'The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario'" (March 15, 2005)

49. Calvin George's story of anguish and hardship is but one story from the Stoney Point community, which, despite enormous tragedy, has always struggled to assert its rights.

50. After decades of government indifference, the Stoney Point people were forced to take direct action to protect and reclaim their territory. It was in that struggle that Dudley George was killed. However, to understand the events that lead to the tragic loss of Dudley George's life, it is necessary to understand the history of the First Nations community of which Dudley George was a part.

1. Political Organization of the Anishnaabeg prior to 1827

51. The Great Lakes Region has been home to indigenous people for millennia. When French explorers and missionaries reached the Great Lakes in the early 17th Century, they encountered Anishnaabeg people. The Anishnaabeg people have been called many

different names by settlers, including Chippewas and Ojibway. The Stoney Point people are Anishnaabeg.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at pp. 3-4, 13.

52. The people of Stoney Point belong to the Three Fires Confederacy, which was made up of the Odawa, Pottawatomi and Chippewa. The three fires were started long ago by three brothers who shared similar lands and backgrounds. All three are of the Anishnabek Nation.

> Aazhoodena and George Family Group, "Aazhoodena: The History of Stoney Point First Nation" (June 30, 2006) (Part II Project) at p. 4.

53. For the Anishnaabeg, the Great Lakes region is a "spiritual landscape formed and embedded with the regenerative potential of the First Ones who gave it form."

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 6.

54. Following the conquest of New France, the British began to seriously consider their relationship with the First Nations, particularly those like the Anishnaabeg who had formerly allied with France. King George III issued the *Royal Proclamation* of 1763, which formalized a policy of protecting First Nations' lands. The *Royal Proclamation* of 1763 is one of the most significant statements about the relationship between First Nations and the Crown.

55. Far from being an act of generosity on the part of the King of England, the *Royal Proclamation* was a recognition that the British were in a vulnerable position, given the military power of the First Nations and the relative ease with which First Nations peoples could re-occupy the lands the British hoped to settle. In order to secure peace, King George III reserved all lands outside the boundaries of the settled colonies as hunting grounds for the "several Nations or Tribes of Indians with whom We are connected, and who live under Our protection." The entire Great Lakes region was included within the reserved territory.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 14.

56. The *Royal Proclamation* recognized that First Nations were autonomous units capable of entering into negotiations and agreements with the Crown. It recognized First Nations' ownership of land and that First Nations were entitled to continue in the possession and use of their lands unless those lands were ceded to the Crown through a treaty.

> J. Teillet, "The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario" (March 31, 2005) (Part II Paper) at p. 13.
>
> J. Borrows, "Crown and Aboriginal Occupations of Land: A History and Comparison" (October 15, 2005) (Part II Paper) at p. 15.
>
> D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) at p. 25.

57. The Constitutional nature of the *Royal Proclamation* is recognized in the Canadian Constitution. Section 25 of the *Charter* provides that *Charter* rights and freedoms shall not be interpreted to derogate from "any rights or freedoms that have been recognized by the *Royal Proclamation* of October 7, 1763."

> M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at p. 5.

2. The Treaty of 1827

58. Following the War of 1812, the British began to turn their attention to the settlement of lands for agricultural purposes. With this purpose in mind, Indian Agent John Askin entered into negotiations for the purchase of Anishnaabeg lands north of the River Thames in 1818.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 19.

59. A provisional agreement was reduced to writing in March 1819. The agreement remained provisional because the location of reserves had not yet been agreed upon. However, a sketch that accompanied the agreement shows a reserve at Kettle Point and another reserve at the mouth of the River Au Sauble.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 19.

60. The negotiation of treaties was an expression of the policy set out in the *Royal Proclamation*, which allowed non-native settlement only with the express consent of the First Nations. These nation-to-nation treaties were seen as solemn agreements that would allow separate peoples' to live side-by-side in peace and friendship.

61. The First Nations who participated in the negotiations leading to what is now referred to as the "Huron Tract Treaty" saw treaty making in just that way, and were so trusting of the goodwill of the British Crown that they allowed the British to determine the appropriate value of the land that was being ceded in the treaty.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 12.

62. There were early signs that this trust was misplaced. For example, there was a significant difference between the boundaries set out on the sketch and the text of the Provisional Agreement. Darlene Johnston notes that based on the sketch, the Chippewas were surrendering only a small portion of land north of the Sable River. However, the written text of the Agreement indicates that the northerly limit of the surrender was located 10 miles above the Red River: in other words, more than doubling the frontage on Lake Huron that was being surrendered. This discrepancy is troubling and throws the negotiations and treaty that ultimately followed into some doubt. It should be noted that similar problems have arisen with respect to other treaties, such that the Royal Commission on Aboriginal Peoples has noted that "it is doubtful in many cases that the First Nations participating in the numbered treaties knew that the written texts they signed differed from the oral agreements that they concluded."

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 19.
>
> J. Borrows, "Domesticating Doctrines: Aboriginal Peoples after the Royal Commission" (2001) 46 McGill Law Journal 615-661 at para. 21.
>
> Report of the Royal Commission on Aboriginal Peoples, Volume 1 at p. 173.

63. Further negotiations followed. As Indian Agent John Askin had passed away, another official carried on these negotiations, though it is clear from the historical record that the

Chippewas felt bound by their earlier agreement. A further Provisional Agreement was prepared in 1825, and the formal treaty was ratified in 1827. In these agreements, the map accompanying the final agreement corresponds with the written description.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 20.

64. Joan Holmes notes the disparity between the early provisional agreements and what was ultimately set out in Treaty 29:

> When they first met in 1818 the Chiefs asked for specific reserve locations which could be enlarged if found too small to support the people; in the final treaty they were left with less than one percent of their traditional territory with no provision for expansion. Furthermore, after surveying the tract, prior to the confirmation treaty in 1827, the acreage of the reserves had been reduced to 75 per cent of the acreage quoted in the 1825 provisional agreement. At the opening of the negotiations in 1818 they asked the King's representative to set the appropriate compensation, trusting in his good will and sense of justice. The initial offer of 1,375 pounds ($5,500) was reduced to 1,100 pounds ($4,400) and the provision of a blacksmith and an agricultural instructor was omitted.
>
> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 17-18.

65. Ultimately, as a result of the 1827 treaty, the Chippewas of southern Ontario ceded 2.7 millions acres to the British Crown, on behalf of 440 Chippewas with an interest in the land. They retained only one percent of their original territory. The Treaty specified that four parcels of land were not ceded and were to be reserved for First Nations people in perpetuity. An "Indian Refuge" already existed at Walpole Island. Undoubtedly, these five parcels were specifically retained because of the great significance these lands had to the Anishnaabeg. Two of these reserves were Stoney Point, which became Indian Reservation number 43, and the nearby Kettle Point, which became Indian Reservation number 44. The traditional name for Stoney Point was "Aazhoodena."

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 20.

66. The treaty described the reserve at River Aux Sauble (Stoney Point) in the following terms:

> …saving, nevertheless, and expressly reserving to the said Nation of Indians and their posterity at all times hereafter, for their own exclusive use and enjoyment, the part or parcel of the said tract which is hereinafter particularly described, and which is situate at the mouth of the River aux Sable, on Lake Huron that is to say, beginning at the north-west angle of the reserve at the water's edge, at the distance of one chain seventy-two links (on a course north twenty-eight degrees west) from where a large cedar post squared and marked to the east "Reserve," to the west "12th October, 1826," and to the north "M. Burwell, Depy. Surveyor," has been planted well in the sand on the hillock; then from the place of beginning on Lake Huron south twenty-eight degrees east eighty chains, one mile post-marked; then on the same course eighty chains, to the rear of the reserve at its south-west angle, where stands a large elm tree square and marked on the north and east sides "Reserve"; thence north sixty-two degrees east eighty chains, one mile post marked; thence on the same course eighty chains, two miles, to the post of black ash square, marked and witnessed; then north twenty-eight degrees west eighty chains, one mile post marked; then on the same course seventy-six chains eighty-five links to the cedar post square and marked on the west "Reserve," and on the east "1826; thence on the same course one chain eighty links to the water's edge of Lake Huron; thence westerly along the shore of the said lake to the place of beginning, containing two thousand six hundred and fifty acres.
>
> Text of the Huron Tract Treaty, July 10, 1827. Canada, Indian Treaties and Surrenders, vol. 1 (Ottawa: Brown Chamberlain, Printer to the Queen's Most Excellent Majesty, 1891), pp. 71-75.

67. Harvesting rights, and the continued use of their territory beyond the express "reserves", was not addressed in the treaty itself. It is unlikely that the Chippewas who participated in the agreement intended to give up their rights to use of this territory, and certainly, at the time, the degree of settlement to come could not have been contemplated.

> Report of the Royal Commission on Aboriginal Peoples, Volume 1 at pp. 172-174.

68. Treaty 29 was one of several treaties between the Crown and Anishnaabeg peoples. For the Anishnaabeg, the treaties recorded and defined the relationship between the Anishnaabeg people and the Crown, and ensured that they would be able to continue their ways of life on the lands.

> D. Nashkawa, "Anishnabek Perspectives on Resolving Rights Based Issues and Land Claims in Ontario" (August 30, 2005) (Part II Paper) at p. 1.

69. Throughout the years, the Anishnaabeg showed a great attachment to the lands that they had refused to cede in the 1827 Treaty. Despite numerous attempts on behalf of the colonial administration to move them to less valuable lands, they never consented to be removed elsewhere.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 24.

70. The community at Stoney Point was soon joined by Potawatomis. Because of support the Potawatomi provided in the war of 1812, the British Government invited the Potawatomi to Upper Canada to settle and receive their annual payments. The Potawatomi moved to southern Ontario from northern Indiana, southern Michigan and Wisconsin in the 1830's and settled at Walpole Island, Kettle Point, Stoney Point and other locations addressed in the 1827 treaty. The people at Stoney Point were welcoming of the Potawatomis, and as a result, the Stoney Point people are descended from both Potawatomi and Chippewa people.

> Aazhoodena and George Family Group, "Aazhoodena: The History of Stoney Point First Nation" (June 30, 2006) (Part II Project) at p. 4.

3. The Stoney Point First Nation is an independent First Nation

71. One of the most controversial issues arising in this Inquiry is the relationship between the Stoney Point and Kettle Point people. The question of whether Stoney Point First Nation is a separate and distinct band, or whether the two communities are a single entity raises strong feelings on all sides.

72. However, the historical record and the oral traditions of the Stoney Point people provide overwhelmingly strong support for the claim by the Stoney Point people that they are a separate First Nation.

73. Historically, the Anishnaabeg peoples have been diverse and autonomous:

> Although united by bonds of totemic relationships, similar in outlook and understanding, speaking one common language, and observing one tradition, the Anishnabeg were diverse and autonomous. Perhaps distances

> may have precluded political and economic unity, but the sense of independence and individual freedom was, it is suggested, too deeply entrenched in the Anishnabeg character to encourage submission to a central government, adherence to one set of laws as required by political and economic union. Nor did they feel that one community ought to submerge its well-being or commit its destiny to another.
>
> Basil Johnston, *Ojibway Heritage* (McLelland & Stewart, 1976) at pp. 72-73, as referenced in Aazhoodena and George Family Group, "Aazhoodena: The History of Stoney Point First Nation" (June 30, 2006) (Part II Project) at p. 23.

74. From the earliest discussions about the cession of land in the Huron Tract, the Anishnaabeg wished to ensure that land at Stoney Point was secured. As recorded in the minutes of a council between Superintendent Askin and 24 Chippewa Chiefs in Amherstburg on October 16, 1818, the Chippewa chiefs made clear which lands they wished to reserve. Reserved lands included five tracts of land, two of which were: two miles at Kettle Point Lake Huron [Kettle Point] and two miles square at the River au Sable [Stoney Point].

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at pp. 12-14.

75. Thus, the Chippewas Chiefs described "Kettle Point" and the "River au Sable" as two separate locations. One of the reasons that the Chippewa Chiefs would have refused to cede these territories was because they were being used by particular groups. Superintendent Askin clearly recognized that the groups he was dealing with were separate bands associated with different locations. The Huron tract territory was quite large, and no traditional Band would have used all of that territory. Rather, separate groups would have been using separate territories.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at pp. 12-14.
>
> Testimony of Joan Holmes, August 19, 2004 at p. 160

76. Despite this separation of "Kettle Point" and "River au Sable" in the descriptions of the proposed unceded territories, the two historians who provided reports to the Ipperwash Inquiry (Darlene Johnston and Joan Holmes) repeatedly treated references to River Aux Sable or the Au Sable Indians as including both Kettle Point and Stoney Point.

Neither provides an explanation for this conflation. Nor was either historian asked to specifically research the question of whether Kettle Point and Stoney Point were historically separate First Nations. Thus, they did not review the historical record with that question in mind.

> For example, Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at pp. 12-14.
>
> Testimony of Joan Holmes, August 19, 2004 at pp. 186-187.
>
> Testimony of Darlene Johnston, 14 July 2004, pp. 153-154.

77. For example, Darlene Johnston states in her report to the Inquiry:

> Even though the Aux Sables Indians do not appear in the archival record until 1819, their identity as primarily Beaver and Caribou people links them to ancestors in the region. During this period, they are identified collectively as the Aux Sables Indians. They can be distinguished on the basis of their totemic identity, that is we know which families are Beaver and which families are Caribou. But there is no indication that they can be distinguished on the basis of discrete interests in the lands reserved at Kettle Point and at the mouth of the River Aux Sable.
>
> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 32.

78. As shall be summarized below, Johnston is quite incorrect to state that "there is no indication that they can be distinguished among themselves with regard to the ownership of the two reserves." For the period for which records exist with respect to Kettle Point and Stoney Point, there were two separate communities with separate chiefs and headmen.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at pp. 21-22.

79. Attempting to reconstruct the history of the peoples indigenous to the southern Great Lakes regions based on the records of Europeans and later-colonial governments is fraught with difficulties. Darlene Johnston notes that many First Nations people lived in places that were not frequented by European record-makers. Moreover, Europeans often used different names to describe the same peoples and localities. A lack of documentation, combined with a confusing array of names for people and places, creates a false impression of disruption and discontinuity in the Southern Lake Huron region.

Moreover, there is a great risk that the documents in these records are more likely to reflect the cultural bias of the European author rather than the culture being observed.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at pp. 2-3.
>
> Testimony of Darlene Johnston, 13 July 2004 at p. 89.

80. Given these problems, Professor Johnston cautions against drawing a conclusion that there is no connection between the present day "Chippewa" and the earliest recorded First Nations peoples in the region. Rather, we must be sensitive to other evidence of identity.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at pp. 2-3.

81. Darlene Johnston relies on evidence of totemic identities in order to assist in the reconstruction of indigenous history in the Great Lakes region. While Johnston's analysis of the use of totems in the Great Lakes region is undoubtedly helpful in many ways, analyzing totems is not useful for determining whether a particular Great Lakes group was a separate First Nation with its own communal interest in lands. Johnston herself acknowledged that the same totemic identity could be found in different Nations, which leads her to theorize that "family or totemic identity preceded the formation of national groups and persisted within those groups." As a result, totemic identity is not determinative of "national" identity.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 17.

82. Thus, we must look to the documentary evidence and oral histories that are available. The absence of documentary evidence of First Nations settlement at Stoney Point prior to 1819 does not mean that there was no such settlement. The oral histories of today's Stoney Point peoples place them in that locality since time immemorial, as a separate and autonomous community. Documentary evidence that is available after the Huron Tract treaty was signed does support the oral history of the Stoney Point people.

> Testimony of Clifford George, September 10, 2004 at p. 48.

83. The earliest archival documentation identified that refers to the existence of a band at the River aux Sable is a letter written for Chief Wapagas by the Indian Agent, William Jones. The letter is dated March 5, 1819, and Chief Wapagas is identified as the Chief of River Aux Sable Indians. Wapagas' mark appears on the 1825 Provisional Agreement, though it is not on the formal 1827 Treaty. Despite the absence of his mark on the treaty document, in 1833, one Chief, seven warriors, five women and 23 children living at the River Aux Sables are included in an account of those persons entitled to a share of the land payments. The unnamed chief is likely Wapagas.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at pp. 20-21.

84. In 1842, after some families relocated to the River Aux Sables from the Sarnia Reserve, there were two Chiefs (Wapagas and Quakegwun) and their families that made up the 77 Aux Sables Indians. Wapagas and Quakegwun were traditional chiefs, most likely the heads of extended families, which was the traditional way in which different groups lived and recognized leadership.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 21.
>
> Testimony of Joan Holmes, August 19, 2004 at p. 176.

85. Of course, relying on government records to determine whether the communities considered themselves separate and distinct nations is problematic as, to make matters convenient for the colonial government, the peoples at Walpole Island, Moore Township, Kettle Point, Sarnia and Stoney Point (in other words, those who participated in the 1827 Treaty) were administered as one Indian Band. As Joan Holmes noted, the Department of Indian Affairs of the time was not in favour of "small bands": "In fact, the Department wanted people to amalgamate rather than to separate. They wanted larger bands, they wanted also people to be settled on larger reserves and not – not split into smaller units because a smaller unit was more expensive from an administrative point of view."

> Testimony of Joan Holmes, 17 August 2004 at p. 171.

86. Following Confederation in 1867, Canada's Department of Indian Affairs treated the disparate Huron Tract bands as one community with a communal interest in all of the

territories that remained unceded. The terminology "Band" was as defined in the Indian Act of the time: "any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible."

> Aazhoodena and George Family Group, "Aazhoodena: The History of Stoney Point First Nation" (June 30, 2006) (Part II Project) at p. 4.
>
> *Indian Act 1876*, s.3(1).

87. During this period, the Department of Indian Affairs actively pursued a policy of domination and assimilation, one component of which was to replace traditional First Nations' forms of government with an imposed "band council" structure. This administrative bias undoubtedly influenced the manner in which the people at Stoney Point and Kettle Point are described in the historical record.

88. The policy of treating all of the Chippewas that participated in the Huron Tract Treaty as one "band" quickly began to cause problems, and the archives contain many references to the difficulties this policy caused.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 18.

89. Although the Stoney Point and Kettle Point reserves were administered jointly by the Department of Indian Affairs, like the peoples at Walpole Island and Sarnia, they remained separate reserves, each having their own leaders.

> Testimony of Joan Holmes, August 19, 2004 at p. 174.
>
> Testimony of Carl Tolsma, 22 February 2005 at p. 82.

90. Joan Holmes acknowledged that the treatment of the populations living on the five separate reserves as one Band by the Indian Department administration was not determinative of the question of whether or not they actually were separate communities. She stated:

> While the Indian Superintendent who dealt with the Chippewa as they negotiated the Huron Tract Treaty clearly treated them as separate and

> distinct groups associated with particular geographical locations, less than two decades later they were being administered by the Indian Department as a single regional band. Their unifying feature was that they had adhered to the Huron Tract Treaty and were considered to have a common and undivided interest in the Huron Tract reserves and annuity.
>
> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 18.

91. Why is this treatment acknowledged to be an error with respect to some of the adherents to the Huron Tract Treaty but not others? Today, it is unquestioned that the Aamjiwnaang First Nation (formerly the Sarnia Band) and the Walpole Island First Nation in the Bkejwanong territory are separate and independent First Nations. Yet, in the 19th Century, the Indian Affairs Department treated them as a single band that included the people of Kettle Point and Stoney Point.

92. The treatment of the Chippewas as one band has lead to serious repercussions for the Stoney Point people, who have suffered consistent attacks on their autonomy, to the point where it is now widely believed that this colonial administrative practice was an actual reflection of the unity of the Kettle Point and Stoney Point peoples.

93. One apparent source of confusion is the petitions by Kettle Point and Stoney Point to separate from the Sarnia Band, a request that was granted in 1919 after almost 30 years of requests. Both Kettle Point and Stoney Point were concerned that the Sarnia Band was using its majority on the General Counsel to interfere with the rights of the Stoney Point band and the Kettle Point band to deal with their own reserves. As a result, Kettle Point and Stoney Point collaborated in a joint effort to separate from the Sarnia Band. This was likely a wise move, given the Department's bias towards amalgamating as opposed to separating bands in order to lower administrative costs. Even working together, it still took several decades to achieve their goal of separating from the Sarnia Band.

> Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 3.
>
> Testimony of Joan Holmes, 17 August 2004 at p. 171.

94. Joan Holmes characterized these efforts as indicating that the Kettle Point and Stoney Point people wanted to join together as one band. This is not an accurate conclusion, as she was forced to acknowledge during cross-examination. Kettle Point and Stoney Point were already "joined" by the Indian Act administration – not by their own choice. They wished to separate from the Sarnia Band because of their experience of unfair treatment by the larger community at Sarnia.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 37.
>
> Testimony of Joan Holmes, August 19, 2004 at pp. 187-190.

95. The petitions themselves demonstrate that Kettle Point and Stoney Point saw themselves as distinct bands. Their own words should be given the greatest weight in determining how they perceived their relationship to one another.

96. For example, a letter protesting a resolution to survey the reserves was sent by a lawyer on behalf of "Two of the Council, Chief Johnston of Stony Point and Lewis Cloud, chief at Kettle Point" who "both say they never drew up such a resolution." The wording strongly suggests that on November 18, 1894, there was a person named Johnston at Stoney Point, who was regarded by the people at Stony Point as their chief and there was a person named Lewis Cloud at Kettle Point, who was regarded by the people at Kettle Point as their chief. The letter goes on to say that the signatures of 23 "members of these *bands* the Stoney Pt. & Kettle Pt" were enclosed, again reinforcing that in the minds of the letter's authors, there were two distinct bands at Kettle Point and Stoney Point (emphasis added).

> Exhibit P4, Transcript of letter from George Moncrieff to Thomas Mayne Daly (18 November 1894) (Inquiry Document No. 4000086).
>
> Testimony of Joan Holmes, August 19, 2004 at pp. 181-182.

97. Similarly, a petition from 1885 describes itself as "The Petition of John Johnson, Chief of the Sable Indians, and Adam Shawnoo, Chief of the Kettle Point Indians, and other Indians of the same bands." The petition goes on to note that:

> *The land now alloted to the Sauble and Kettle Point Indians have been the hunting grounds of their respective tribes* and their property since before

> the Revolutionary war and they feel very [keenly] at having their property controlled in this way by the other Indians. (emphasis added).
>
> Exhibit P4, Transcript of a petition of the Chiefs and leading men of the Kettle Point and Sauble (28 September 1885) (Inquiry Document No. 4000064).

98. Again, the wording of the petition supports an interpretation that the authors of the petition regarded the Indians at Kettle Point and the Sable Indians as two separate bands.

> Exhibit P4, Transcript of a petition of the Chiefs and leading men of the Kettle Point and Sauble (28 September 1885) (Inquiry Document No. 4000064).
>
> Testimony of Joan Holmes, August 19, 2004 at pp. 184-187.

99. The 1885 petition then goes on to lay out several complaints with respect to the actions of the Sarnia Band, and concludes with: "Your petitioners therefore pray that the Kettle Point and Sable Reserves be separated from the Sarnia Reserve and that they may have control as one band of all monies to which they are from time to time entitled to from the Crown and their share of any monies now held by the Crown in trust for them."

> Exhibit P4, Transcript of a petition of the Chiefs and leading men of the Kettle Point and Sauble (28 September 1885) (Inquiry Document No. 4000064).

100. Thus the petition appears to be from the Chiefs of two separate communities, who wish to be separated administratively and for financial purposes from the Sarnia Reserve. Thus, these documents do not support the view that Kettle Point and Stoney Point were one distinct community.

101. Following the separation from the Sarnia Band, Kettle Point and Stoney Point each elected their own councilor to a General Council. The vote for the Stoney Point councilor was taken at the school house on the Stoney Point reserve, and only the residents of the Stoney Point reserve were permitted to vote. Members from both bands elected a Chief of the General Council.

> Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 4.

102. The loss of sovereignty that has resulted from the failure on the part of Canadian government to recognize the independent Stoney Point First Nation has caused enormous

hardship that continues up to the current period. Kevin Simon and Marcia Simon, both of the Stoney Point First Nation, commented on the pain this administrative sleight of hand has caused their community:

> Our affairs were put into the hands of Indian Agents and divided into agencies. For their convenience they often did not distinguish between the different bands and reserves and the differences in their sizes; they were unilaterally grouped together. This unilateral decision on the part of the Canadian government and the repercussions stemming from it are what has led directly to the death of Dudley George, the anguish of our families, the lack of recognition of the Stoney Point Indian Reserve #43 and the continuing impoverishment of the Aazhoodenaang Enjibaajig – the people who come from Stoney Point.
>
> Kevin Simon and Marcia Simon, "A Reaction to the Paper 'The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario'" (March 15, 2005) at p. 5.

103. The Aazhoodena and George Family Group recommends:

> **Recommendation No. 1**
> **The Governments of Canada and Ontario should formally recognize the Stoney Point First Nation as separate and independent from the Kettle Point First Nation.**

4. The 1928 "Surrender"

104. In 1928, a portion of the Stoney Point reserve was "surrendered" to an influential local politician and real estate agent named W. J. Scott.

> Exhibit P12, Sarnia Observor, "Mayor helped develop provincial park" (June 8, 1996) (Inquiry Document No. 9000560).

105. It appears from correspondence in the archives that William Scott originally attempted to negotiate directly with the members of the Kettle and Stony Point Band concerning the surrender of the lands at Stoney Point. The Department of Indian Affairs suggested to Scott that the appropriate procedure would be to make a formal application to the Department of Indian Affairs rather than negotiating directly with the Band. The Department of Indian Affairs took care to add that this did not mean that the department would take an unfavourable attitude towards the application, but simply that this was the proper procedure to follow.

Memorandum from Janet Whitehead to Russel Raikes, dated September 13, 1993.

106. Following this advice, W.J. Scott applied to Indian Affairs to purchase portions of the Stoney Point reserve for $1 per foot. The Indian Agent of the time, Thomas Paul, fully supported the purchase, stating that the land "being white sand, and from an agricultural point of view is absolutely worthless."

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 42 (referencing Thomas Paul to J.D. McLean, June 15, 1928. NAC RG 10 Vol. 7794 File 29029-2).

107. It is apparent that there was opposition to the surrender prior to its approval. On October 12, 1928, a lawyer by the name of Moorhouse wrote to the Department of Indian Affairs stating that he acted for a group of Chippewas who objected to the surrender. He stated that he had been informed that there was to be a surrender meeting on the evening of October 13, 1928 and he requested that the meeting be held in abeyance until he had an opportunity to go into the matter with his client.

Memorandum from Janet Whitehead to Russel Raikes, dated September 13, 1993.

108. Moorhouse's request was not granted and in fact the meeting went ahead on October 12, 1928, the same day as Moorhouse's letter.

109. Of 44 eligible members from both Kettle Point and Stoney Point, 28 were present at the surrender meeting. Of these, 25 voted in favour of the surrender and three did not vote either way. Paul forwarded the surrender documents to the Department and recommended approval of the surrender.

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 42.

110. As a result of this vote, the entire beachfront of the Stoney Point reserve was surrendered for sale at a price of $35 per acre. The 377 acres taken in the surrender constitutes approximately 14 percent of the total land base at Stoney Point.

111. The Province of Ontario purchased a portion of the surrendered land and established the Ipperwash Provincial Park in 1932. The provincial government relies upon the 1928 surrender as a valid document that allows them to claim unquestioned title to the park lands.

112. Unfortunately, the story is not that simple. There are a number of highly questionable aspects of the 1928 surrender that call its validity into serious question.

113. Firstly, a year earlier, 83 acres of the Kettle Point reserve had been surrendered for sale for $85 per acre to two purchasers: Crawford and White. The surrender received the full support of the local Indian Agent Thomas Paul (the same Indian Agent responsible for Stoney Point). A March 21, 1927 letter from Cornelius Shawnoo, who vehemently opposed that surrender, claimed that Crawford was offering $10 as an enticement to those who would agree to vote for the surrender. Despite his protests, a resolution endorsing the surrender of Kettle Point lands for a cash payment of $85 per acre was passed. Of the 39 men who voted, 27 voted in favour of the resolution. There were numerous allegations of bribery and fraud that followed the vote, but nonetheless the surrender was permitted to proceed.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at pp. 40-41.

114. In 1992, the Chippewas of Kettle and Stony Point initiated a court action to challenge the validity of the surrender, claiming that the 1927 surrender was obtained as a result of bribery and fraud and a violation of the Crown's fiduciary duties. The courts rejected this claim. However, the Indian Claims Commission has also reviewed the surrender and concluded that, while the surrender was valid and unconditional, Canada breached its fiduciary obligation to the First Nation. The ICC recommended that the claim be accepted for negotiation under the Specific Claims Policy.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 42.

115. The fact that Canada, and in particular, the Indian Agent of the time, has been found to have breached its fiduciary obligation with respect to a surrender just one year prior is strong evidence that the circumstances of the 1928 Surrender at Stoney Point should be examined very closely.

116. Documents have recently come to light that strongly suggest that, as occurred with the Kettle Point surrender, at least two First Nations people were paid a bribe in order to secure the surrender. In a letter dated March 19, 1929, the author speaks to securing a loan for William Scott for the purpose of buying the surrendered lands. The letter states: "For this land they are paying $13,500 plus $800 to one Indian and $1,500 to another, making a total of $15,800." Direct payments to First Nations persons in exchange for reserve land is not permitted.

Exhibit P1021: Letter to W.J. Skinner from WRP, dated 19 March 1929.

117. A second troubling aspect of the 1928 surrender is the extremely low payment made for the purchase and the subsequently high profit that the purchasers made on the property. Of particular note is that while Mr. Scott purchased the land for $35 per acre ($50 less an acre than the purchase a year earlier at Kettle Point), he sold the bulk of the "surrendered" land eight years later to the Province of Ontario for over $90 per acre.

118. The Department of Indian Affairs was aware of the discrepancy between the price paid for the Kettle Point lands and Scott's offer of $1 per metre (which amounted to $27.25 per acre). The Acting Assistant Deputy Secretary, A.F. MacKenzie wrote to Indian Agent Thomas Paul, directing his attention to the discrepancy in price, and noting that the price offered was insufficient.

Memorandum from Janet Whitehead to Russel Raikes, dated September 13, 1993 at p. 2.

119. Paul responded by noting that Scott did not consider the offer to be the "maximum amount". Rather, the surrender issue was to be submitted to a general counsel of the Band and such surrender would be conditional upon a mutually agreed price. A

general counsel meeting was subsequently organized, with no further communication between the Department and the Indian Agent regarding the appropriate price.

Memorandum from Janet Whitehead to Russel Raikes, dated September 13, 1993 at pp. 2-3.

120. During the same period, the Chief Surveyor wrote a memorandum to the lands branch, dated June 21, 1928, in which he suggested that it would be advisable to have a surveyor proceed to the area to examine the property and make an evaluation report "as it may be that these lots would be quite desirable if subdivided for a summer resort or other purposes." No response appears to have been made to his request to assign a surveyor to conduct such a report.

Memorandum from Janet Whitehead to Russel Raikes, dated September 13, 1993.

121. Despite these warnings, the Superintendent General considered the price offered by Scott to be satisfactory, though he notes that: "while ordinarily the department does not sell Indian lands except by public competition, had the Band voted exclusively on Mr. Scott's application, I do not think there is any reason why the sale should not be approved."

Memorandum from Janet Whitehead to Russel Raikes, dated September 13, 1993 at p. 5.

122. Upon examining the circumstances of the 1928 surrender, after which the purchasers resold the land for three times what they had paid for it, Joan Holmes was asked to comment on the assertion that the 1928 surrender was "an incredible rip-off":

Q: Now, 1936 was the depression?

A [by Joan Holmes]: That's correct.

Q: Prices were low?

A: I'm not sure what land prices were, but prices were generally low, yes.

Q: 1928, was before the depression, before the crash of 1929?

A: That's correct.

Q: It seems that the people who bought this park made a tremendous profit, especially given the depression, isn't that right? The people who bought the land and the sold it for the park?

A: Yes, it – because they – yes, I would say that it appears that they made a considerable profit.

Q: This was an incredible rip-off, in any sense, right?

A: Well, you know, in a Court of law I don't use colloquial terms like rip-off, but I would say that the person who bought that land and then sold it, made a considerable profit, yes.

Testimony of Joan Holmes, August 19, 2004, at p. 100.

123. It is unconscionable that the local Indian Agent, whose express role was to act at all times in the interests of the First Nations people, and to carry the honour of the Crown, would support a surrender so contrary to the interests of the Stoney Point people. The loss of reserve lands in 1928 bears all the hallmarks of an improvident surrender.

Blueberry River Indian Band v. Canada (1995), 130 D.L.R. (4th) 193 (S.C.C.).

124. The third questionable aspect of the 1928 surrender was the subsequent involvement of the purchaser, William J. Scott, in the creation of the provincial park. Scott became the mayor of Sarnia in 1928. As mayor of Sarnia, William J. Scott was very active in the development of the property at Ipperwash beach and the opening of the Ipperwash Park. It is astonishing that this politician would have been active in pursuing the creation of a provincial park on lands that he himself owned. This strongly suggests that the 1928 surrender was orchestrated with the goal of making an extraordinary profit by subsequently selling the property to the province for the creation of a provincial park.

Exhibit P12, Sarnia Observor, "Mayor helped develop provincial park" (June 8, 1996) (Inquiry Document No. 9000560).

125. Finally, it is of great concern that members of the Kettle Point band were permitted to vote in the surrender vote. The right to vote on the surrender of another band's land was a right created by the *Indian Act*, and thus was not a decision within the control of the Kettle Point or Stoney Point bands. It is noteworthy that prior to 1919, the adult males of Kettle Point and Stoney Point were permitted to vote on land surrenders at Sarnia, but rarely did so. Only Stoney Point people should have decision-making power with respect to the disposition of their communal lands.

Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 4.

126. Commissioner Linden has stated on the record that he does not intend to "decide on the validity of the surrender" or "resolve the land claim".

Transcript of statement of Commissioner Sidney Linden, 17 January 2006 at p. 38.

127. However, without making a finding regarding the "validity of the surrender", there is certainly strong evidence before this Inquiry to demonstrate serious unfairness in the manner and outcome of the surrender. Further, as shall be detailed later, there is also evidence of the continuing attachment of the Stoney Point people to the lands that were surrendered in 1928 as well as the presence of several sacred sites, including burials.

128. The land that became Ipperwash Provincial Park was indisputably part of the original treaty lands. The Park has been in the control of the Stoney Point people for over 10 years now, and has not re-opened as a Park since it was closed on September 4, 1995. The Park remains an emotional symbol, as Dudley George was killed in the struggle for its return to First Nations people.

129. Given that context, this Inquiry does have the ability to at the very least comment on the fairness of the surrender, and recommend that the lands that were taken in that surrender be returned to First Nations' people. A legal conclusion with respect to the surrender is not required in order to make such a recommendation.

130. Therefore, the Aazhoodena and George Family Group recommends that:

Recommendation No. 7
The Government of Ontario should relinquish all claims it may have to the property known as Ipperwash Provincial Park. More specifically, the Government of Ontario should return the care, control and ownership of the property known as Ipperwash Provincial Park to the Stoney Point First Nation.

Recommendation No. 8
In recognition of the failure of the Government of Canada to protect the interests of the Stoney Point First Nation with respect to the 1928 surrender of Stoney Point Reserve #43 lands, and the negligence and wrongdoing of the Indian Agent of the time, the Government of Canada should:

(c) suitably compensate the Stoney Point First Nation for the wrongful taking of these reserve lands.
(d) purchase those portions of the lands wrongfully taken in the 1928 surrender that are currently privately owned, and restore these lands to Stoney Point Reserve #43.

5. The 1942 Appropriation of Stoney Point Reserve

131. In the years following the 1928 surrender, the people at Stoney Point continued to live as an independent community. Stoney Point had its own school and its own church. It also had its own young men's fastball team. Stoney Point people were self-sufficient, growing their own food on small farms, making crafts, and hunting in fishing in their territory.

> Aazhoodena and George Family Group, "Aazhoodena: The History of Stoney Point First Nation" (June 30, 2006) (Part II Project) at p. 13.
>
> Testimony of Rose Manning, 6 April 2005 at pp. 178-189.

132. This community was scattered in 1942, when the Federal government seized all the lands that remained as part of the reserve for an Advance Infantry Training Centre.

133. The Department of National Defence began its attempts to seize the land by contacting the local Indian Agent, Down. Down advised DND that the question of a surrender would need to be put to the Band and then to Indian Affairs. He favoured the surrender, stating that it would be:

> A wonderful opportunity to gather a few straggling Indians and locate them permanently with the main body of the Band at Kettle Point. It would solve many problems and dispense with a great deal of expense from both Band Funds and Department Appropriations such as schools, roads, visitations, etc. This service is maintained to accommodate twelve families.
>
> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 48 (quoting Down to MacInnes, February 5, 1942. NAC RG 10 Vol. 7754 File 27029-2 pt. 1).

134. There was immediate objection to the proposed surrender from the Band. Despite these objections, DND asked the Deputy Minister of Mines and Resources to arrange for

a meeting of the Band to consider a surrender. An appraiser placed a value of $33,600 on the land, or $15 an acre – thus even less than the price paid in the 1928 surrender 14 years earlier. DND valued the buildings at $8,000 and offered $3,400 to assist in the re-establishment of the people at Stoney Point on "other Indian lands."

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 49 (quoting Colonel H. DesRosiers, Department of National Defence, to Charles Camsell, Deputy Minister, Indian Affairs Branch, Department of Mines and Resources, March 21, 1942; and "Appraisal Report from Bert Weir & Co., Realtors, London Canada, Property, Stoney Point, Ontario", attached to Memorandum to H.W. McGill, Superintendent General of Indian Affairs, March 23, 1942. NAC RG 10 Vol. 7754 File 27029-2 pt. 1).

135. The appraiser made it clear in his report that the appraisal was not made according to the standard of practice of the professional association. In particular, the value of the land was determined by reviewing the amount that was usually obtained in sales between band members. As Holmes notes, that method does not take into account that sales between band members do not alienate the land from the band, or deprive the community of its communal interest in the land. Thus, that method would grossly undervalue the land.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 49.

136. When put to a vote, the surrender was rejected by a wide margin. Of 83 eligible voters, 59 voted against the surrender while only 13 voted in favour.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 50.

137. Despite this clear statement of the will of the Band, DND continued to survey, inspect and drill at Stoney Point. DND obtained an Order in Council approving the appropriation of all of Stoney Point reserve under the authority of the *War Measures Act* on April 14, 1942.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 51.

138. The Order in Council contained a promise that the lands would be returned:

> … if subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then

be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement.

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 51 (quoting OCPC #2913, April 14, 1942. NAC RG 10 Vol. 7754 File 27029-2 pt. 1).

139. It is clear that the Stoney Point people believed that their land would be returned to them when the war was over. In the interim, the families at Stoney Point had to be re-located. Most were forced to live on Kettle Point Reserve, while others moved into nearby towns. Although they were promised that homes would be bought for them at Kettle Point, the Stoney Point people had to purchase their new land and homes at Kettle Point.

Testimony of Rose Manning, 6 April 2005 at p. 199.

Testimony of Joan Holmes, 19 August 2004 at p. 113.

Exhibit P4, Letter from Indian Agent McCracken dated 1 June 1942 (Inquiry Document No. 4000298).

Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 9.

140. It is very difficult to reconstruct the names of all of those people forced to leave Stoney Point as a result of the appropriation. A June 1942 letter from Indian Agent McCracken lists the names of the heads of 22 families who were entitled to relocation assistance. However, it is also clear that there were people living at Stoney Point who were not captured in this list: for example, those that were living with relatives. Nor is the possession of a location ticket determinative, as the location ticket lists of the time were in complete disarray. Some people had location tickets who were not so entitled, whereas others who did have entitlement did not have a location ticket.

Testimony of Joan Holmes, 19 August 2004 at pp. 113-119.

Exhibit P4, Letter from Indian Agent McCracken dated 1 June 1942 (Inquiry Document No. 4000298).

141. Although relationships between the Stoney Point and Kettle Point people had generally been harmonious prior to this relocation, the animosities created by the resettlement were substantial. Since the Kettle Point lands were already crowded, many

of the Kettle Point residents resented the intrusion of the Stoney Pointers, calling them "refugees".

> Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 9.

142. The Government of Canada established an Advanced Infantry Training Camp on the Stoney Point lands. There was nothing that made that parcel of land uniquely or even particularly suitable for use as a military base. There were numerous very similar properties in Ontario, many of which were occupied by private cottages. Although private cottage properties are not reserved for their owners in perpetuity, no cottage properties were seized by the government under the *War Measures Act*.

> Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 9.

143. It is impossible to fully describe the repercussions that the seizure of the Stoney Point lands has caused. Families were devastated by their losses, which included the loss of the Stoney Point educational system, the loss of the distinct Stoney Point culture, the loss of autonomy and the loss of access to the Stoney Point burial grounds (discussed further below). The most obvious loss, of course, was the loss of their land base. Most of the residents at Stoney Point occupied lots of 40 acres in size. The lots made available at Kettle Point were only a small number of acres, mainly on swampy land that could not be used for agricultural purposes.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 53.
>
> Aazhoodena and George Family Group, "Aazhoodena: The History of Stoney Point First Nation" (June 30, 2006) (Part II Project) at p. 13.
>
> Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 10.
>
> Testimony of Elizabeth Stevens, 7 March 2005 at p. 119.

144. Elder Clifford George, who was a young man away fighting in the second World War when the appropriation occurred, testified regarding the impact of the appropriation on the Stoney Point community:

> **A: It was very difficult for some of them people. Some of them old people that never drank in their life started drinking. They grew big**

families and then yet they ended up drinking , you know, just to relieve all the – all the problems that they were facing in the deal, and they couldn't handle – a lot of old people passed away on account of that.

You know, their own lands which they called their own and then to be moved – to be moved and then – and not wanted where they are and then the Government just didn't – doesn't realize, you know, the feelings of some of these people that are moved at that time.

…

Q: All right. And you've indicated to us, Mr. George, that some people did not leave the Stoney Point reserve voluntarily?

A: Well, so that's what I was talking about, none of – I think none of them went voluntarily because there was their home, that was their land, they were given land, and then – and we have – we have an idea that the Creator put us there on account of all – all the essentials deals that we needed on the reserve itself, the medicines and all that, the wood lots and everything that goes with it.

So, we have a very strong conviction about all that, that they were spiritually given to us many years ago.

Testimony of Clifford George, September 10, 2004 at p. 48.

6. The failure to return the Stoney Point lands after the War

145. The appropriation of the Stoney Point reserve was clearly unnecessary and was an unequivocal violation of the solemn promises of the Treaty of 1827. This violation is compounded by the fact that more than 60 years have since passed without the return of the lands.

146. On October 6, 1944, DND expanded the land included within the base by purchasing some of the lakefront property from William Scott. In other words, part of the lands that were included in the 1928 surrender were added to the military camp.

Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 9.

147. For decades after the end of World War II, the military repeatedly claimed that it required the lands at Camp Ipperwash for military purposes. Yet, the Advanced Infantry

Training Camp only operated from late 1942 until May 31, 1946. For the most part, particularly after the 1960s, the Army Base was used mainly for a few weeks a year as a training camp for teenage cadets and as a summer resort known as the "Marriage Patch" for the families of military personnel.

Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at pp. 9, 12.

Testimony of Allan Howse, 26 June 2006 at pp. 201-203.

P44, Extracts from the Fifth Estate TV Show "Hell of a Deal" (17 October 1989).

148. It was not until February 1994 that the DND finally announced that it intended to return Camp Ipperwash lands to Indian Affairs. Notably, this announcement was made after the Stoney Point people had begun to reclaim the Army Camp lands through occupation of the rifle ranges in May 1993 (as shall be discussed further below).

Testimony of Allan Howse, 27 June 2005 at p. 19.

Exhibit P1790, Recoverable assets and role of military police at Camp Ipperwash, November 25, 1994 (Inquiry Document No. 7000093).

149. However now, more than twelve years after that announcement, DND has still not returned Camp Ipperwash to the First Nations. Former Captain Allan Howse testified that it is DND's view that the land cannot be safely returned until all of the "unexploded ordinances" (for example, unspent shells) have been removed from the land. Yet despite this apparent safety concern, for many years DND allowed teenage cadets as well as the children of military personnel to roam throughout the Army Camp grounds with no restriction.

Testimony of Allan Howse, 27 June 2006 at p. 210-211.

150. After all of this time, it is hard to accept that DND truly has the best interests of the Stoney Point people in mind. Rather, it must be concluded that the claim that the lands cannot be returned prior to an environmental clean up is simply an excuse to delay the hand over of the Camp lands. While DND certainly does have a responsibility to return Stoney Point lands to the pristine condition they were in at the time of appropriation, there is no reason why that process cannot be carried out after the lands are

returned to First Nations' ownership – particularly as Stoney Point people are currently living on those lands.

151. Therefore the Aazhoodena and George Family Group recommends:

Recommendation No. 3
The Government of Canada should immediately return the former Camp Ipperwash lands to the care, control and ownership of the Stoney Point First Nation.

Recommendation No. 4
The Government of Canada should apologize for the appropriation of the Stoney Point reserve in 1942.

Recommendation No. 5
The Government of Canada should suitably compensate the descendants of those displaced by the 1942 appropriation of Stoney Point Reserve #43.

Recommendation No. 6
The Government of Canada should suitably compensate the Kettle Point First Nation for the expense and disruption caused by the 1942 relocation of Stoney Point people to that reserve.

Recommendation No. 11
The Government of Canada should reconstruct the Stoney Point Band List by beginning with the 1942 Stoney Point #43 band list.

Recommendation No. 12
The Government of Canada should ensure that the following services are available to the reconstituted Stoney Point First Nation #43:

- **Educational Programs and Facilities,**
- **Medical and Treatment Services,**
- **Housing Programs,**
- **Roads Department,**
- **Telephones and Electricity,**
- **Water and Sewer,**
- **Programs for the disabled and elderly,**
- **Culture and Language,**
- **Law and Enforcement,**
- **Lands and Estates,**
- **other services which other First Nations enjoy.**

Recommendation No. 13

The Governments of Canada, Ontario and the relevant municipality should ensure that the Stoney Point First Nation #43 is not excluded from programs that are enjoyed by other communities in Ontario.

7. Burial Grounds and other sacred sites at Stoney Point

152. Ancestral burial grounds have enormous significance for Anishnaabeg peoples. According to the Anishnaabeg, the human body holds a diversity of souls. A spiritual essence remains bound to the body after death. For this reason, there is an ongoing attachment and responsibility to the graves of ancestors.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 28.

153. The Living have an obligation to ensure that their relatives are buried in the proper manner and in the proper place. According to Darlene Johnston's research and experiences, "failure to perform this duty harms not only the Dead but also the Living. The Dead need to be sheltered and fed, to be visited and feasted. These traditions continue to exhibit powerful continuity."

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 24.

154. This deep connection to the burials of ancestors contributes to the importance that Anishnaabeg peoples place on continuing to reside in proximity to their family burial grounds. The desecration of a burial ground is deeply painful.

> D. Johnston, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context" (Prepared for the Ipperwash Inquiry) at p. 24.

155. In the treaty-making process in Ontario, many First Nations showed a deep connection to the burial grounds of their ancestors. As a result, "reserves" were typically retained in the vicinity of established villages, fishing grounds and burial grounds.

> D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft" (November 28, 2005) at pp. 28-29.

156. The Stoney Point people have also displayed an ongoing attachment to the burial grounds of their ancestors. There are burials in both the portion of Stoney Point that became the provincial park and the portion that was used as Camp Ipperwash.

A. Evidence of Burial Grounds on the lands that became Ipperwash Provincial Park

157. Although there have been attempts to deny the existence of burials in what was Ipperwash Provincial Park, it is beyond any doubt that there were such burials that were seriously disrupted and desecrated by both the creation and maintenance of the park. The existence of burials is confirmed both by oral histories of Stoney Point people and by the documentary evidence.

Testimony of Marcia Simon, 28 September 2004 at pp. 91-92.

Testimony of Tina George, 19 January 2005 at pp. 54-55.

Testimony of Stewart George, 2 November 2004 at pp. 12-13, 47-48.

Testimony of Elwood George, 3 November 2004 at pp. 15-16.

Testimony of Mike Cloud, 8 November 2004 at pp. 178-180.

Testimony of Mike Cloud, 9 November 2004 at pp. 138-146.

Testimony of Roderick George, 23 November 2004 at pp. 59-73.

Testimony of Kevin Simon, 1 December 2004 at pp. 71-73.

Testimony of Cecil Bernard George, 6 December 2004 at pp. 151-153.

158. Shortly after the park was created, Stoney Point people requested that their burial grounds be properly protected. The Kettle and Stony Point Band council passed a resolution in August 1937 asking the Department of Indian Affairs:

> To request the provincial Govt to preserve the old Indian burial grounds on the Government park at Ipperwash Beach and have their Engineer mark out and fence off the grounds so that they will be protected.

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 55 (quoting Band Council Resolution No. 377, Kettle and Stony Point Band, August 12, 1937. INAC Toronto Wells Files).

159. The Indian Agent endorsed the Band Council Resolution. It appears from his correspondence that an engineer who had been cleaning out the park had discovered "an old Indian burial ground".

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 55 (quoting, J.C. Trenouth, Acting Indian Agent, Sarnia, to MacInnes, August 13, 1937. INAC File 471/36/-7-8.)

160. Ontario's Deputy Minister of Lands and Forests gave his assurance that he would "do [his] best to make such arrangements as will respect the natural wishes of the Indians." However, it appears that no action was taken to preserve or protect the burial sites and no further related correspondence has been located.

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 55 (quoting Cain to MacInnes, August 19, 1937. INAC File 471/36/-7-8).

161. Local lore tells of truckloads of bones being removed from the sand hill where the reservoir was built in the 1940's.

P909: Note to file, re: Ipperwash skull, Joanne MacDonald fax, October 17, 1996 (Inquiry Document No. 8000186).

162. In 1950, human remains were found in the park by the wife of the Park Superintendent. After these bones were found, they were moved to another location to be photographed, and the skull was kept as a memento on the park superintendent's desk. The rest of the skeleton was apparently abandoned. The skull was eventually sent to the University of Western Ontario.

P908A: picture of skeletal remains.

P908B: picture of man beside skeletal remains.

P909: Note to file, re: Ipperwash skull, Joanne MacDonald fax, October 17, 1996 (Inquiry Document No. 8000186).

Exhibit P906: Excerpt from Chapter 3 (pages 26.1 and 26.2) of Report of Joanne MacDonald (Inquiry Document No. 3000370).

Testimony of Les Kobayashi, 25 October 2005 at pp. 275-283.

163. Analysis of photographs taken of the remains has confirmed that the skeletal remains belong to an "Ojibway child" of roughly 11 years of age who had been buried sometime in the 1800s or very early 1900s. Given rumours that a large number of bones were removed from the park when the reservoir was built in 1942, Dr. M. W. Spence stated that it was possible that the Ipperwash burial was once part of a larger Ojibwa cemetery in the area.

Exhibit P4, Dr. Michael Spence, "The Ipperwash Burial: General Report" (4 November 1996) (Inquiry Document No. 4000408).

164. To date, the remains found in 1950 have not been located at the University of Western Ontario and there is no information available about what happened to them.

Exhibit P4, Dr. Michael Spence, "The Ipperwash Burial: General Report" (4 November 1996) (Inquiry Document No. 4000408).

165. In addition to the discovery in 1950, former park superintendent Les Kobayashi obtained information about other burials from Marilyn Dulmage, who lived in the park as a child. Her father was Arnold Dale, the park Superintendent from 1947 to 1955. Shortly after meeting with Dulmage, Kobayashi sent an email describing the information she imparted regarding at least two separate burial sites:

> Marilyn provided us with information and pointed out where she believes there is a burial site in Ipperwash Park. This site was shown to her by her father while they were residing at the Park.
>
> The information and the detail she provided was accurate as confirmed by Don [Matheson]. The site is located on the north side of Dufus Creek east of the new bridge on a meandering curve of the creek. Don confirms that this particular area is perhaps a site that was never disturbed during the development of the Park.

Exhibit P891, Email from Les Kobayashi to Peter Sturdy, 16 January 1996 (Inquiry Document No. 1012561).

Testimony of Les Kobayashi, 26 October 1995 at pp. 12-134

166. The presence of burials within the boundaries of Ipperwash Provincial Park was brought to the attention of Ministry of Natural Resources officials on several occasions. The earliest evidence is found in the correspondence from 1937, referred to above, in which the Band requested that the burial grounds be protected. In 1950, also as described above, human remains were actually found within the park boundaries. The 1937 correspondence was located in the archives in 1975 and brought to the attention of Ipperwash Park's superintendent. On May 19, 1993, Maynard T. George provided Les Kobayashi with a statement from the Stoney Point First Nation Chief and Councillors that referenced the presence of burial grounds in the park. The statement demanded that

the Stoney Point people be permitted to record and document the sacred burial grounds in the park.

> Exhibit P822: Fax from Daryl Smith to D. Elliot, R. Baldwin, P. Sturdy, L. Kobayashi, E. Vervoort, B. Steele, re: Historical Notes, Ipperwash Provincial Park Sep 6/95.
>
> Exhibit P836: Fax from Les Kobayashi to Ron Baldwin on May 20, 1993, attaching a statement from the Stoney Point First Nation re: Ipperwash Provincial Park – Co-Management Agreement (Inquiry Document No. 1009459).

167. Nonetheless, between 1937 and 1995, the Government of Ontario did nothing to identify or preserve the burial grounds in the Park.

> Testimony of Les Kobayashi, 26 October 2005 at pp. 11-12.

168. Therefore, the Aazhoodena and George Family Group recommends:

> **Recommendation No. 26**
> **The Province of Ontario, and/or the University of Western Ontario, should make every effort to locate the skeletal remains that were removed from the lands that made up Ipperwash Provincial Park. If these remains are located, the Province of Ontario and/or the University of Western Ontario should return the remains to the Stoney Point First Nation.**
>
> **Recommendation No. 27**
> **The Province of Ontario should apologize to the Stoney Point First Nation for the disruption and removal of burials in the lands that were the Ipperwash Provincial Park.**

B. The Cemetery on the lands that became Camp Ipperwash

169. The Stoney Point people also maintained a cemetery on the lands that were later appropriated and turned into Camp Ipperwash. After the 1942 appropriation, Stoney Point people had to get special permission to visit the burial grounds of their ancestors.

170. The military gave Clifford George permission to visit the cemetery, where his mother was buried. He was devastated by what he found, and described to the Inquiry his own personal observations of what had happened to the cemetery while under DND control:

> Q: I understand that together with your brothers you wanted to visit your mother's grave site?

A: When we all come back [from the War] we had to ask for permission to go to the gave site.

Q: can you tell us about that.

A: … We went there, and then it was absolute devastation to see the – the mess that – that the gravesite was. We couldn't even tell where my mother was buried, we just had an idea where she was buried, because at that time, nobody, not very many people afforded headstone.

But there were a headstone there for some, and it was all pot marked with rifle marks and – and there was bandoleers of – of shells just hung over the posts and stuff like that there, blanks of course, you now, where they're playing soldier.

And on top of that, they were – they were supposed to be out of bounds after that, to that Cemetery. And there was – there was trenches dug where they were – where they were playing soldier, right in our gravesite, and that.

That's what – that's what, you know, made it real, real bad for us, you know. …There was a white picket fence around there when I left, right around about half-way down, and that's where all the dignitaries were buried up there, like clan mothers and Chiefs and stuff like that. There was a white picket fence around there … where there's no gates, because us kids weren't allowed to go in there.

That was all devastated. There was no – there was no picket fence and …what stones there were moved….It was a horrible mess when – when dad – when dad himself wrote to me [while I was overseas], he says, don't worry about the gravesite, they're supposed to keep it.

Testimony of Clifford George, September 10, 2004 at pp. 64-65.

171. The Indian Agent confirms Clifford George's account that the military had promised to protect the burial grounds:

> At the time of the expropriation I recall that the military definitely promised to respect the cemetery at all times and everyone assumed that the military would protect the burial grounds by erecting a strong fence or some similar device. This was not done.
>
> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 55 (quoting from McCracken to Indian Affairs Branch, December 15, 1947. INAC File 471/36/-7-8).

172. By at least 1947, the Stoney Point people had been attempting for two to three years to have the damage to their cemetery addressed. The Indian Agent was remarkably

unconcerned by these complaints, which he characterized as "a pet grievance of Robert George," but, in a contradictory observation he stated that "when he mentions it at a Council meeting or any public gathering every Indian present supports his complaints."

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 55 (quoting from McCracken to Indian Affairs Branch, December 15, 1947. INAC File 471/36/-7-8).

173. It was not until 1964 that DND put up a six-foot chain link fence to protect the site.

> Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 55 (quoting from Department of National Defence. "Camp Ipperwash Site Plan, Site Record Drawing." DND J35 Ipperwash, Property Record Plan Folder, Ipperwash, Ontario, October 1, 1964).

174. Stoney Point people were not permitted to bury their relatives in their home territory until 1990, when Dan George I was brought home.

175. Therefore, the Aazhoodena and George Family Group recommends that:

> **Recommendation No. 28**
> **The Government of Canada should make every effort to locate any remains and tombstones that were removed from the cemetery that is located within the bounds of the former Camp Ipperwash. If these remains and tombstones are located, the Government of Canada should return them to the Stoney Point First Nation.**
>
> **Recommendation No. 29**
> **The Government of Canada should apologize to the Stoney Point First Nation for the destruction and disruption of the cemetery that is located within the bounds of the former Camp Ipperwash.**

C. Other sacred sites at Stoney Point

176. Apart from the burial grounds of their ancestors, there are many other sites that are considered sacred to the Stoney Point people. The "point" at Stoney Point is considered a sacred healing place. Historically, First Nations peoples traveled from distant places to benefit from the sacred place at Stoney Point.

177. Stoney Point is also the home to many medicines. According to Clifford George:

> At Aazhoodena there is a bottomless lake, which is cone shaped, and empties into Lake Huron. I know this lake is connected with Lake Huron because I as a boy I saw a loon dive under and come out on the other lake. Michi-Ginebik [the Great Serpent] used to come into the lake and visit the people. He was friendly and brought medicine to the Anishnaabeg. When the serpent surfaced in the lake, he circled and created a whirlpool. Then he would come up on shore and begin sunning himself. There he talked to the people. Wherever he twitched, there was medicine to pick and people were cured.
>
> Quoted in D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) (Part II Paper) at p. 24.

178. Clifford George also explained that the Anishnaabeg have a continuing obligation to care for the land and the spirits that live there.

> Quoted in D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) (Part II Paper) at p. 24.

D. The lack of protection for sacred sites

179. Given the large areas of First Nations lands that were surrendered to the Crown, there are many burial, archaeological and other sites that are sacred to First Nations that lie outside formal reserve lands.

180. Ontario currently owns approximately 87 percent of the lands in Ontario, with the Federal government retaining jurisdiction over less than one percent of the Ontario land base.

> D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) (Part II Paper) at p. 36.

181. The Federal government has shown some leadership in attempting to protect sacred sites in Ontario. Parks Canada has committed to returning to First Nations all sacred artifacts and human remains, negotiate agreements for the use of Aboriginal artifacts in educational programs, work with Aboriginal peoples to create a secure and private inventory of sacred areas and facilitate the execution of ceremonies and rites.

> D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) (Part II Paper) at p. 37.

182. The laws of the Province of Ontario contain five statutes that directly or indirectly affect First Nations' archaeological burial and other sacred sites. However, there is only one piece of legislation that speaks directly to the disposition of First Nations' sacred sites, that being the *Cemeteries Act*. As a result, Ontario's legislative provisions have been more likely to result in the destruction of valuable sites than their protection.

Nye Thomas, "Treaty and Aboriginal Rights (Commission Memo)" (June 2006) at p. 16.

183. The overwhelming experience of First Nations with the *Cemeteries Act* is that the Act completely fails to meet the expectations of First Nations that their burials will be protected.

Darlene Johnston, December 9, 2005 Part II consultation on sacred sites in Ontario.

184. The *Cemeteries Act* distinguishes between an "unapproved aboriginal cemetery" and an "irregular burial." An "unapproved aboriginal cemetery" has some protection, in that the remains cannot be removed or subjected to scientific testing without the consent of the local Indian Band (as defined in the *Indian Act*). The disposition of the remains is determined by way of an agreement between the local Indian Band and the landowner. However, the process for reaching a disposition agreement through this process is extremely lengthy. Of 159 investigations in the last ten years, only 14 disposition agreements have been reached.

Darlene Johnston, December 9, 2005 Part II consultation on sacred sites in Ontario.

185. The determination of whether an "irregular burial" will remain where it is or be moved to a recognized cemetery is within the complete discretion of the land owner. This policy is a direct violation of First Nations' principles of not disturbing the dead.

186. Ontario has proposed changes to the *Cemeteries Act* and other legislation that affects sacred sites. However, none of these recent legislative developments in Ontario have either adequately consulted with First Nations people, or adequately considered their interests and rights with respect to sacred sites.

D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) (Part II Paper) at pp. 40-45.

Nye Thomas, "Treaty and Aboriginal Rights (Commission Memo)" (June 2006) at p. 16.

187. First Nations find the language of "unapproved aboriginal cemetery" and "irregular burial" enormously insulting, demonstrating a failure by the Ontario government to recognize the sacred nature of these sites. Also of great concern is the fact that, in order for a burial to be placed in one of these categories, the suspected burial must be disturbed for verification.

Darlene Johnston, December 9, 2005 Part II consultation on sacred sites in Ontario.

188. The destruction of a burial, with the supposed goal of protecting the site, is completely contradictory. Alternatives to the disruption and destruction of burials must be examined.

189. Granting decision-making power over newly discovered First Nation burials to the local Indian Band is also problematic in several respects. Given the historic movement of First Nations in Ontario, it is not necessarily the case that the burials will have any relationship to the closest Indian Band. There must be a process for allowing other First Nations groups who can establish a possible relationship with the burial to participate in the process.

190. The current regime would also prohibit the Stoney Point First Nation from participating in decisions about what to do with remains of any of their ancestors that are found on provincially-controlled lands, as the Stoney Point First Nation has been denied recognition as an independent Band.

191. When First Nations lack access to and control of sites that they consider sacred, conflict is predictable. The Royal Commission on Aboriginal Peoples considered this problem and made a number of very sound recommendations:

> The Governments of Canada and Ontario should enact legislation to establish a process aimed at recognizing

(a) Aboriginal peoples as the owners of cultural sites, archaeological resources, religious and spiritual objects, and sacred and burial sites located within their traditional territories.

(b) Aboriginal people as having sole jurisdiction over sacred, ceremonial, spiritual and burial sites within their traditional territories, whether these sites are located on unoccupied Crown land or on occupied Crown lands (such as on lands under forest tenure or parks);

(c) Aboriginal people as having at least shared jurisdiction over all other sites (such as historical camps or villages, fur trade posts or fishing stations); and

(d) Aboriginal people as being entitled to issue permits and levy (or share in)the fees charged for access to, or use of, such sites.

Report of the Royal Commission on Aboriginal Peoples, Volume 2: Restructuring the Relationship. Part 2: Chapter 4: Lands and Resources, Recommendations 3.6.1 and 3.6.2.

192. Therefore, the Aazhoodena and George Family Group recommends that:

Recommendation No. 30
The Governments of Canada and Ontario should enact dedicated Aboriginal sacred and ceremonial sites legislation, to replace the provisions found in multiple pieces of legislation that currently affect Aboriginal archaeological, burial and other sacred sites.

Recommendation No. 31
The Governments of Canada and Ontario should enact legislation to establish a process aimed at recognizing

(a) Aboriginal peoples as the owners of cultural sites, archaeological resources, religious and spiritual objects, and sacred and burial sites located within their traditional territories.

(b) Aboriginal people as having sole jurisdiction over sacred, ceremonial, spiritual and burial sites within their traditional territories, whether these sites are located on unoccupied Crown land or on occupied Crown lands (such as on lands under forest tenure or parks);

(c) Aboriginal people as having at least shared jurisdiction over all other sites (such as historical camps or villages, fur trade posts or fishing stations); and

(d) Aboriginal people as being entitled to issue permits and levy (or share in)the fees charged for access to, or use of, such sites.

Recommendation No. 32
The creation and implementation of new legislation to protect First Nations' archaeological, burial and other sacred sites should be done in consultation and partnership with First Nations.

Recommendation No. 33
Any legislation designed to protect First Nations' archaeological, burial and other sacred sites should include a definition of "sacred" that reflects the fact that First Nations communities are diverse, and that each community defines for itself what it considers to be "sacred."

Recommendation No. 34
Any legislation designed to protect First Nations' archaeological, burial and other sacred sites should include a provision that, to the extent possible, all First Nations groups with a historically-based interest in the site will be given the opportunity to participate in the process of determining the disposition of that site.

Recommendation No. 35
The participation of a First Nations group with a historically-based interest in an archaeological, burial or other sacred site in Ontario should not be dependent on whether or not that First Nations group is formally recognized as a Band pursuant to the *Indian Act.*

Recommendation No. 36
The protection and identification of First Nations' burials should not entail the disruption of the burial sites.

Recommendation No. 37
Traditional First Nations and/or customary methods of identifying a burial should be recognized.

8. Sixty Years of Struggle for the Return of Stoney Point

193. The Government of Canada did not return the land when the Second World War ended. Over the next fifty years, Stoney Point people wrote letters, demonstrated and beseeched politicians to return their land to them.

> Aazhoodena and George Family Group, "Aazhoodena: The History of Stoney Point First Nation" (June 30, 2006) (Part II Project) at p. 13.

194. In 1972, then Minister of Indian Affairs Jean Chretien wrote to the Department of National Defence urging that the land be returned.

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 55 (quoting from Jean Chretien to Edgar J. Benson, Minister of National Defence, April 25, 1972; Donald S. Macdonald, Minister of National Defence, to Jean Chretien, January 28, 1972. George v. Harris et al. Doc. Collection).

195. The land was not returned.

196. The use of the base became very occasional, restricted to the training of cadets in the summer. Nonetheless, the Government of Canada continued to ignore the pleas of the Stoney Point people that their land be returned. Several generations of Stoney Point people were forced to live in other places because they were not allowed to live on their own land.

197. Throughout this period, and presently, the Government of Canada refuses to acknowledge the separate and independent interest that the Stoney Point First Nation holds in Stoney Point. As a result, all negotiations with respect to compensation and/or the return of the land have been held with the formal *Indian Act* Band council: Chippewas of Kettle and Stony Point. Not surprisingly, this caused significant discord and frustration, as the Stoney Point First Nation had little power to force the Government of Canada to recognize their claim.

198. It was not until 1980 that a formal draft agreement was placed before Kettle and Stony Point Band members for approval. The proposal contained the following provisions:

(a) All of Camp Ipperwash is to be returned, not just that part taken in 1942.
(b) Payment of back rent and compensation to make up for the shortfall between the amount paid in 1942 and fair market value at the time, in the amount of $2,490,000, inclusive of interest and expenses.
(c) Mines, minerals and timber rights were to be transferred to Indian Affairs.
(d) The Camp lands would be returned at no cost when no longer required by DND.
(e) No part of the Camp could be subject to sale without Indian Affairs approval.
(f) DND agreed to reconsider its need to continue to use all or part of the Camp at regular intervals.

(g) A designated contact would be created to liaise with DND regarding the availability of jobs for Band members.

(h) The proposal dealt only with the "Band's" interest. That is locatee claims for those who were moved were not being affected by the proposal.

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 61 (quoting "Camp Ipperwash Informational Material", 1980. George v. Harris et al. Doc. #1010460).

199. The members of the Kettle and Stony Point band voted 80 percent in favour of the agreement, which was ultimately approved by Order in Council on February 26, 1981. Yet, in the following years, no efforts were made to return the land. The Stoney Point people did not accept this vote, as voting was not restricted to those who had been displaced from Stoney Point and their descendants.

Exhibit P7, J. Holmes, "Ipperwash Commission of Inquiry Historical Background" (June 2004) at p. 61.

200. In December 1991, the Chief of the Stoney Point people, Robert George, traveled to Ottawa and made a submission to the Standing Committee on Aboriginal Affairs. As a result of his submission, the Standing Committee recommended that the "government rectify a serious injustice done to the Stoney Point First Nation almost fifty years ago by returning the land at Stoney Point to its aboriginal inhabitants and their descendants from whom the land was seized under the *War Measures Act*."

Testimony of Marcia Simon, 28 September 2004 at pp. 50-52.

Exhibit P51, "The case of the Stoney Point Reserve No. 43: A Brief Fact and Argument" prepared by the Stoney Point Band Dec 11/91 at p. 4.

P-50. House of Commons Standing Committee on Aboriginal Affairs Third Report Inquiry Document No. 1010458).

201. The land was not returned.

202. In May 1993, after so many years of using those lawful means that were available to them, the Stoney Point people saw no other option but to take direct action to reclaim their land. Some Stoney Point people reclaimed a portion of their land by camping on the perimeter of what was then the army camp. They planted a peace tree, and symbolically

buried a hatchet beneath it, as a symbol that the weapons of war were being buried. For the next two years there was an uneasy but basically peaceful co-existence of Stoney Point people and military personnel.

Testimony of Marcia Simon, 23 September 2004 at pp. 130-131.

203. During that period, the Stoney Point people continued to employ other methods to convince the Federal Government to return their lands. A large group walked to Ottawa to try to meet with the Prime Minister. At the end of their long walk, no Federal official was prepared to meet with them, and they returned to Stoney Point empty handed.

204. It was not until February 1994 that the DND finally announced that it intended to return the Camp Ipperwash lands to Indian Affairs.

Testimony of Allan Howse, 27 June 2005 at p. 19.

Exhibit P1790, Recoverable assets and role of military police at Camp Ipperwash, November 25, 1994 (Inquiry Document No. 7000093).

205. Yet, the land was not returned.

206. On July 29, 1995, the Stoney Point people reclaimed the barracks area of the Army Camp. The few soldiers present simply left the area, and the Stoney Pointers thereby regained all the land that had been taken under the *War Measures Act*. Stoney Pointers have been living there ever since, although the Federal Government has still not formally returned the land.

207. On September 4, 1995, the Stoney Point people reclaimed their lands and burial grounds in the Ipperwash Provincial Park. The situation quickly became very tense as a result of political pressure and police aggression. The events in the days that followed are addressed in other portions of this submission.

9. Envisioning a fair and independent process for resolving claims

208. The violence that occurred at Stoney Point in September 1995 was the culmination of years of frustration at the lack of response by government to legitimate and long standing grievances. The Government of Canada was particularly indifferent to its treaty obligations, and the Government of Ontario showed remarkably little interest in protecting the burial grounds that it knew were present within the boundary of the park.

209. The prime reason for conflict between First Nations and the Crown is the failure by the Crown to recognize and affirm First Nations' rights to occupy their territories set out in the treaties. As John Borrows has noted:

> It is not overly complex to identify some of the most prominent and frequent reasons for conflict leading to occupations and blockades. Aboriginal people want their land and resource rights recognized, and they want their feelings towards them acknowledged. If others are going to share their land and resources, they would like to consent to this use….Canada has not yet adequately settled underlying issues relating to occupation of land. Aboriginal peoples have long-standing grievances about non-Aboriginal peoples occupying land and blocking them from using ancient territories and resources. The failure to recognize or affirm this problem is a significant irritant.
>
> J. Borrows, "Crown and Aboriginal Occupations of Land: A History and Comparison" (October 15, 2005) (Part II Paper) at pp. 95-97.

210. Of course, the most straightforward step to defuse conflict would be for the Crown to cease occupying and blockading First Nations peoples' access to their traditional lands and resources.

> J. Borrows, "Crown and Aboriginal Occupations of Land: A History and Comparison" (October 15, 2005) (Part II Paper) at p. 105.

211. In any event, a fundamental change in the relationship between First Nations peoples and the Crown is required. The relationship must be built on the recognition of the continuing sovereignty and independence of First Nations in Canada, and a commitment to renewing the promises made in the treaties.

212. First Nations peoples assert that they have both the legal right to their land and resources and that the government has a lawful and solemn obligation to protect those rights. Acknowledging and respecting Aboriginal and treaty rights is essential both to right grievous historic wrongs, but also to avoid situations of possible violence that are certain to occur when these wrongs are not addressed.

> J. Teillet, "The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario" (March 31, 2005) at p. 11.

213. Where no legitimate and fair process is available to quickly address these grievances, First Nations peoples will have no choice but to take direct action, as the Stoney Point people did, to protect their rights, their territories and their sacred sites.

214. However, it is clear from the evidence heard over the course of the evidentiary hearings, and also from a number of the Part II research papers, that the processes currently in place for addressing Aboriginal and treaty right claims are completely inadequate and lack legitimacy in the eyes of First Nations people.

215. Virtually all of the numerous studies and reports that have addressed the issue of how best to resolve disputes with First Nations have agreed that the negotiation is the most effective method. As Michael Coyle notes, resolution through negotiation honours the relationship between First Nations and the Crown.

> M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at p. 50.

216. In general, the adjudication of disputes must be taken out of the courts. Courts are costly, focus only on narrow issues, and are adversarial and biased. A long history of grave mistakes on the part of Courts – in favour of non-native interests – undermines First Nations' trust in the courts. Governments have been slow to take up the legal duties outlined for them in Canadian caselaw.

> J. Borrows, "Crown and Aboriginal Occupations of Land: A History and Comparison" (October 15, 2005) (Part II Paper) at p. 109.
>
> D. Nashkawa, "Anishnabeck Perspectives on Resolving Rights Based Issues and Land Claims in Ontario" August 30, 2005) (Part II Paper) at p. 23.

217. Apart from the courts, currently there are no processes available for First Nations persons in Ontario to assert an Aboriginal or treaty rights to resources, such as the right to hunt. The Government of Ontario has no policies, laws or regulations to guide them with respect to how and when to consult with First Nations peoples where government actions may result in an interference with an Aboriginal or treaty right.

> M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at p. 1.

218. Both the Ontario and Canadian government have processes in place to negotiate land claims. Although there are differences and particularities, in general terms they both require that a Band recognized pursuant to the *Indian Act* initiate the process by submitting a package outlining its claim with supporting documentation. The receiving government subjects the claim to a lengthy historical and legal review, at the end of which the government decides whether or not, in its view, there is a basis for the claim. If it concludes there is no basis for the claim, the process concludes. If the government concludes that there is a basis for the claim, negotiations follow. This entire process can take decades.

219. There are numerous problems with the current land claim negotiation processes, many of which have been identified in the Part II Papers that were prepared for this inquiry. These problems include a conflict of interest in having the Crown essentially ruling on the legality of its own past actions, a process that is biased in favour of the Crown, reliance on Canadian law to determine claims, the extremely long time required to settle a claim, and the refusal to accept claims from unrecognized First Nations. At its core, the current negotiation processes reject the sovereignty and independence of First Nations and thus are fundamentally antithetical to First Nations who assert their continuing nationhood.

A. Conflict of Interest

220. There is an inherent unfairness and imbalance of power built into the heart of the current land claims process. Claims are asserted against the Government of Canada

and/or the Government of Ontario – and these same governments have complete decision-making power over both the process for determining a claim and the ultimate determination of whether or not the claim has any validity. The State has unilateral power to trump the First Nations' view whenever there is a disagreement over the State's legal obligations.

> M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Project) at p. 55.

221. Thus, the party that stole the land is the one that has the power to decide if they did so lawfully.

222. If the Government of Canada or Government of Ontario agrees to negotiate a claim, there are no mechanisms, other than further discussion or the courts, for resolving the disagreements that will inevitably follow.

> M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at p. 49.

223. Numerous independent reviews of the land claims processes have taken place since 1978, including a detailed analysis of the Specific Claims process in 1978 by Mr. Justice Gerard LaForest, the 1988 report of the Canadian Bar Association Special Committee on Aboriginal Rights, the 1990 ICO Discussion Paper on Claims, and the 1996 Report of the Royal Commission on Aboriginal Peoples. Each of these reviews concluded that the current processes create an unacceptable conflict of interest for the governments because governments adjudicate claims in which they are also a defendant. Each of these reviews calls for the creation of an independent tribunal to assist the negotiation process.

> M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at pp. 50, 56.

224. Various proposals have been made in order to bring greater independence and fairness to the negotiation process. The Commission has invited the parties to comment on several proposals, such as Treaty Commissioners and Promise Keepers. Treaty Commissioners or Promise Keepers would hold an independent public office or

commission with the responsibility of assisting First Nations and the Crown to resolve disputes over land. Some versions of these proposals include an adjudicative role for an independent tribunal.

> Memorandum from Nye Thomas, "Discussion Paper on Treaty and Aboriginal Rights" (June 2006) at pp. 8-9.

225. The Royal Commission on Aboriginal Peoples, which conducted an in-depth examination of these issues, recommended the creation of both Treaty Commissions and independent Lands and Treaty Tribunals. The proposed Treaty Commissions would be established by Canada or the provinces as permanent, neutral and independent bodies designed to facilitate and oversee negotiations in treaty processes. These Commissions and Tribunals were proposed in order to overcome the difficulties in the application of interpretive principles, the assumptions underlying the growth of Crown land use, and the presumptions about the diminishing nature of First Nations' land use. It was thought that without such neutral and independent institutions, the courts, Crown, Parliament and provincial legislatures would continue to subjugate First Nations within their structures.

> J. Borrows, "Domesticating Doctrines: Aboriginal Peoples after the Royal Commission" (2001) 46 McGill Law Journal 615-661 at para. 28, 30.

226. In general, it is submitted that the Governments of Canada and Ontario should put into place whatever administrative processes are required to ensure that these governments take the steps that are necessary to carry out treaty obligations and redress their failures to do so in the past. Such an administration may look like a "Promise Keeper" or a "Treaty Commissioner".

227. However, any such administrative body would, by definition, be created by the Crown, would be funded by the Crown, and would exist within the political structure of the Crown. By definition, then, these proposals all suffer from the problems of a conflict of interest and negation of the nation-status of First Nations that exist in the current system.

228. The settlement of Canada was premised on a relationship with the First Nations peoples who lived here, and who were never conquered. The treaties represent international agreements between independent nations setting out how that settlement could occur in a manner that would allow for peace, friendship and the respect for the peoples who lived here first.

229. When the relationship between the Crown and First Nations is understood in that manner, it is clear that it is not for one party to that relationship to control the resolution of disputes – particularly when that partner (in this case the Crown) has shown itself to completely disrespect the agreements that predicated that partnership.

230. Thus disputes that arise with respect to Aboriginal and/or treaty rights are international disputes. First Nations should not be forced to subjugate their claims to the processes set out by the Crown. Rather they should have option to resolve them in the international arena.

231. Therefore the Aazhoodena and George Family Group recommends:

Recommendation No. 14
The current processes in place to address disputes between the Governments of Canada and Ontario and First Nations over land claims, Aboriginal rights and treaty rights should be replaced.

Recommendation No. 15
The Governments of Canada and Ontario should ensure that the following six principles guide the design of an effective process for resolving land claims and disputes over Aboriginal and treaty rights:

- **it should be timely;**
- **it should be fair and perceived by all parties to be fair;**
- **it should address the underlying grievances behind the claim and contribute to reconciliation between First Nations and the Crown;**
- **it should take into account the division of responsibilities between the federal and provincial governments, without allowing that division to cause delays in the settlement of claims;**
- **it should protect the interests of the general public; and**
- **it should address systemic disincentives that discourage governments from negotiating settlements in a timely manner.**

Recommendation No. 16

Negotiation between equally resourced parties should be the primary method for resolving disputes between First Nations and the Governments of Canada and Ontario over land claims or the assertions of Aboriginal and/or treaty rights, with access to a fully independent tribunal to assist the negotiation process where impasses arise between the parties.

Recommendation No. 17
Recognizing that First Nations in Canada are nations that have not lost their sovereignty, and that the colonizing of Canada was based on a partnership with First Nations peoples, the Governments of Canada and Ontario should agree that any dispute with a First Nation over a land claim or the assertion of an Aboriginal and/or treaty right can, should the First Nation so request, be adjudicated by an international body or organization, such as the International Court, the United Nations or the Organization of American States.

Recommendation No. 19
The design and implementation of new processes to address disputes between the Governments of Canada and Ontario and First Nations should be done with equal participation and partnership with First Nations.

Recommendation No. 20
To demonstrate their commitment to honouring First Nations' rights, at the final settlement of a claim, the Governments of Canada and/or Ontario should offer a public apology to the First Nation in relation to the events giving rise to the claim.

Recommendation No. 23
In recognition of the fact that the Supreme Court of Canada (in the cases of *Haida Nation, Taku River* and *Mikisew*) recognized a duty requiring the Governments of Canada and the Provinces to consult with First Nations when the Crown has knowledge of an Aboriginal rights or title claim and is considering actions that might negatively affect those claimed rights or title, the Governments of Canada and Ontario should develop, in consultation and partnership with First Nations, a detailed policy to guide decision-makers in assessing and accommodating Aboriginal and treaty rights in order to ensure that First Nations' rights to land and to harvest, amongst others, are not interfered with.

B. Reliance on Canadian law to determine the validity of claims

232. Another problem that becomes apparent once it is recognized that disputes with First Nations are international matters, is the reliance which is placed on Canadian law in adjudicating and negotiating claims.

233. In his paper prepared for Part II of the Ipperwash Inquiry, Michael Coyle posed (without answering) the following questions: why should land claims be defined by their foundation in Euro-Canadian law, when the settlement of this country involved the coming together of peoples governed by Aboriginal laws as well as peoples governed by what has come to be Canadian law? Does defining land claims in terms of Canadian law not risk perpetuating colonialism?

M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005)(Part II Paper) at p. 3.

234. These questions deserve serious consideration, particularly given the state of Canadian law as it relates to First Nations rights. While it is certainly the case that Canadian courts, particularly the Supreme Court of Canada, have become far more open to recognizing Aboriginal and treaty rights, Canadian law continues to be premised on the principle that Aboriginal and treaty rights can be extinguished or limited where these rights are incompatible with the "sovereignty of the Crown." Thus the development of Canadian "aboriginal law" has served the purpose of submitting First Nations sovereignty to the sovereignty of the Crown. The Supreme Court euphemistically refers to this as achieving "the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown."

J. Borrows, "Domesticating Doctrines: Aboriginal Peoples after the Royal Commission" (2001) 46 McGill L.J. 615-661.

G. Christie, "Law, Theory and Aboriginal Peoples" (2003) Indigenous Law Journal at pp. 67-115.

M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at 25-26.

Haida Nation v. B.C. (Minister of Forests), 2004 SCC 73 at para. 17.

235. Thus Canadian law fundamentally denies the "nation" status of First Nations.

236. In its dealings with the Crown and the creation of treaties, the First Nations did not agree to submit to Canadian law. First Nations laws, legal perspectives and other Indigenous frameworks have been present throughout the entire span of the treaty-making process in Canada. Canadian courts have occasionally recognized the continuity of First Nations laws:

> Will it be contended that the territorial rights, political organization such as it was, or the laws and usages of Indian tribes were abrogated – that they ceased to exist when these two European nations began to trade with [A]boriginal occupants? In my opinion it is beyond controversy that they did not – that so far from being abolished, they were left in full force, and were not even modified in the slightest degree.
>
> *Connolly v. Woolrich* (1867) 17 R.J.R.Q. 75, 1 C.N.L.C. 70 (Que. S.C.). at 79.
>
> J. Borrows, "Crown and Aboriginal Occupations of Land: A History and Comparison" (October 15, 2005).

237. More recently, the British Columbia Supreme Court recognized that the division of powers between the federal government and the provinces at the time of Canadian Confederation did not extinguish First Nations' powers of self-government:

> …aboriginal rights, and in particular a right to self-government akin to a legislative power to make laws, survived as one of the unwritten "underlying values" of the Constitution outside of the powers distributed to Parliament and the Legislatures in 1867. The federal-provincial division of powers in 1867 was aimed at a different issue and was a division "internal" to the Crown.
>
> *Campbell v. British Columbia (Attorney General)* 2000 BCSC 1123 at para. 12.

238. The crisis that arose in Ipperwash Provincial Park involved just such a clash between Canadian law and First Nations law. The Stoney Point people believed they had a formal obligation to protect the burial grounds of their ancestors. Given the importance of burial grounds in Anishnaabeg culture, this obligation is properly characterized as a legal obligation. Yet to the Government of Ontario and the Ontario Provincial Police, the "occupation" of Ipperwash Provincial Park was an illegal act (from a Canadian legal perspective). During the days that followed the commencement of the occupation, government actors and the police repeatedly took the position that even if there was a burial ground in the park (which was denied) that would not give the Stoney Point people any legal right to occupy the park or affect the "title" to the park.

> D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) at p. 25.
>
> Testimony of Deb Hutton, 21 November 2005 at p. 223.

239. First Nations do not accept that Confederation stripped them of their authority to protect burial grounds and other sacred sites located off-reserve.

> D. Johnston, "Aboriginal Burial and Other Sacred Sites in Ontario (Draft)" (November 28, 2005) at p. 34.

240. Canadian actors – be they governments, police services, the military and non-native communities – could benefit from attempting to understand the First Nations' perspective on the occupation of their lands based on their traditional laws. Such perspectives are clearly relevant to both determining the reasons for an occupation and also for attempting to resolve them.

> J. Borrows, "Crown and Aboriginal Occupations of Land: A History and Comparison" (October 15, 2005) (Part II Paper) at p. 111.

241. Given the fact that the relationship between the Crown and First Nations is a relationship between nations, there is clearly also a role for international law in resolving disputes over rights. The highly respected Royal Commission on Aboriginal Peoples, a Commission that was called in response to the Oka crisis, recognized that Canada must be attentive to the international legal principles that outline its responsibility for recognizing and protecting First Nations' rights, lands and resources.

> J. Borrows, "Domesticating Doctrines: Aboriginal Peoples after the Royal Commission" (2001) 46 McGill Law Journal 615-661 at para. 4.

242. John Borrows saw the Royal Commission's recognition of international legal principles as an extremely significant and promising development. He noted that

> the Commission cited the *Draft Declaration on the Rights of Indigenous Peoples* to argue that "international legal principles also specify that governments are under extensive obligations to protect Aboriginal lands and resources."…The Commission's willingness to draw on international sources of law and apply them in a domestic context contributed to its wider view of Aboriginal land and resource rights. Parliament, legislatures, and the judiciary could take significant guidance from the Commission's approach in this respect. Instead of treating Aboriginal peoples as municipal concerns, both governments and courts could see indigenous peoples as nations that have a right to pursue objectives that may differ from those states of which they are a part.
>
> J. Borrows, "Domesticating Doctrines: Aboriginal Peoples after the Royal Commission" (2001) 46 McGill Law Journal 615-661 at para. 63.

243. The *Draft Declaration on the Rights of Indigenous Peoples* that was referred to by the Royal Commission on Aboriginal Peoples was developed at the United Nations Human Rights Committee (UNHCR). This historic document, which has been in development for 26 years, explicitly recognizes that indigenous peoples have the right of self-determination, which includes the right to self-government. It recognizes that Indigenous peoples have the right to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired. It requires States to establish fair and independent processes for adjudicating the rights of indigenous peoples – and requires these processes to give due recognition to indigenous peoples' laws, traditions, customs and land tenure systems. Significantly for the Stoney Point people, Article 32 recognizes that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.

> UNHCR, "United Nations Declaration on the Rights of Indigenous Peoples", Annex 1 to E/CN.4/2006/79, articles 3, 26, 32, 39.

244. The Preamble to the *Draft Declaration* specifically notes that in some situations, treaties between States and indigenous peoples are matters of international concern, interest, responsibility and character.

> UNHCR, "United Nations Declaration on the Rights of Indigenous Peoples", Annex 1 to E/CN.4/2006/79.

245. On June 29, 2006, the UNHCR adopted the *Draft Declaration* and recommended it be brought forward for possible adoption by the UN General Assembly later this year. Canada voted against the *Draft Declaration of Indigenous Rights*. Russia was the only other country on the United Nation's Human Rights Committee to vote against the draft.

> Assembly of First Nations, "Draft Declaration of Indigenous Peoples moves forward despite Canadian Government interference."

246. Thus, international legal principles recognize that both international law and indigenous law have a place in determining ongoing rights and obligations with respect to indigenous claims to land.

247. The Aazhoodena and George Family Group recommends:

Recommendation No. 18
The negotiation and adjudication of disputes between First Nations and the Governments of Canada and Ontario over land claims, Aboriginal rights and treaty rights should be based on the principle of the continuity of First Nations' laws.

C. Bias in favour of non-native occupation and land use

248. First Nations peoples are distrustful of a system which seems biased against them. There is a long and sorry history that demonstrates that ultimately the Crown will always sacrifice that land-related interests of First Nations people to majority interests in settlement or development.

> J. Teillet, "The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario" (March 31, 2005) (Part II Paper) at p. 13.

249. It is the First Nations asserting claims that most often bear the burden of proving their claims to rights pursuant to treaties. Yet, the Crown does not bear any similar burden to account for the benefits that it has received from these treaty agreements. Although none of the treaties speak to this issue, the Crown's position is unaccountably the default position.

> J. Borrows, "Domesticating Doctrines: Aboriginal Peoples after the Royal Commission" (2001) 46 McGill Law Journal 615-661 at para. 8.

250. Although the First Nations bear the burden of proving their claims, it is most often the Crown that is in possession and control of the documents that the Crown requires in order to justify a claim.

251. Given the well-documented historic Crown treatment of First Nations, which includes the suppression of First Nations' institutions of governments, the denial of land, the forced taking of children, the criminalization of traditional practices, the negation of the rights of religious freedom, association, due process and equality, and more generally, the wholesale failure to abide by solemn treaty promises, it is astonishing that the burden to prove claims should fall upon the most aggrieved party.

252. The Aazhoodena and George Family Group recommends:

Recommendation No. 24
Given the well-documented, historical violations of the rights of First Nations in Canada, when a First Nation raises a grievance with respect to a claim to land, or the violation of Aboriginal and/or treaty rights, by way of either a formal or informal process, all parties should act upon a presumption that there is validity to the claim. Such a presumption should also guide the actions of police services in Ontario that respond to First Nations blockades and occupations. This presumption would replace what appears to generally be the current assumption, that First Nations claims lack validity.

Recommendation No. 25
When a First Nation raises a grievance with respect to a claim to land, or the violation of Aboriginal and/or treaty rights, all relevant levels of government should make every effort to quickly locate and share archival evidence with respect to that claim with the First Nation.

D. Failure to address claims in a timely manner

253. One of the most widely known problems with the land claims processes in Canada is the length of time involved in settling claims. The fact that it can take decades to resolve a claim brings the entire process into disrepute, as First Nations are forced to watch the lands and resources that they are claiming continue to be occupied and destroyed by non-Natives.

254. Both the Federal and Ontario governments have witnessed a significant rise in the number of unresolved land claims in recent years. The number of outstanding land claims in Ontario is rising, not falling.

> M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at p. 49.

255. Michael Coyle summarized in chart form the status of all claims that have been received by the Federal government since 1973 and the Ontario government since 1976.

Ontario Land Claims received by the Federal Government since 1973	
Settled	31

Rejected	14
Under review	116
In negotiation	21
Before the courts/ISCC	41/3
Administrative remedy	6
Closed	10
Total	242

Land Claims received by Ontario since 1976	
Settled	11
Settlement Awaiting Ratification	2
Inactive	12
Closed	2
Under review	48
In negotiation	11
Before the courts	30
Total	116

M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper), p. 35.

256. In Ontario, there are 48 claims currently in the "review" stage – that is, a claim has been received and is being subjected to a historical and legal review prior to a decision with respect to whether Ontario is prepared to negotiate the claim. The average length of time that these First Nations have been waiting to learn whether Ontario will negotiate their claim is six years and ten months. The 11 claims that are in the negotiation stage, have spent an average of 19.6 years in the process. The claims that reached a negotiated settlement spent an average of 15 years in the system.

M. Coyle, "Aboriginal Land and Treaty Rights in Ontario" (March 31, 2005) (Part II Paper) at p. 48, 51-52.

257. These timelines are clearly completely unacceptable, and yet, according to the Ontario Secretariat for Aboriginal Affairs (formerly the Ontario Native Affairs Secretariat), such timelines are simply unavoidable:

> Ontario's experience is that, with rare exceptions, claim negotiations take years to reach fruition not because of impasses at the negotiation table, or because one of the parties is dragging is feet, but because successful claim negotiations, with their complex mix of legal obligation, long-standing

> grievance, emotion, and once-and-for-all nature are very time-consuming undertakings.
>
> ONAS, "The Resolution of Land Claims in Ontario: A Background Paper (April 27, 2005) (Part II Paper) at p. 35.

258. However, the status quo cannot continue. First Nations that are faced with such lengthy and uncertain processing times, and no assurances that their claims will be protected in the interim, should be forgiven for rejecting the land claims process as fruitless. They could also be forgiven for taking matters into their own hands.

259. The timelines involved in resolving claims must be addressed. Absent a timely and fair manner for resolving land claims, blockades, occupations and direct action by First Nations peoples will continue to escalate.

260. One of the contributing factors to delay are disputes between the Governments of Canada and Ontario with respect to which government is responsible for dealing with a claim. First Nations will often present their claim to the Federal government, only to be told – sometimes years later – that the claim should have been directed to the Ontario government. The reverse is also true. A great deal of time is lost in these jurisdictional squabbles.

261. It is not the responsibility of the First Nations to settle these jurisdictional disputes. Rather, Canada and Ontario must work together to ensure that they can resolve questions of jurisdictional responsibility quickly.

262. The Aazhoodena and George Family Group recommends:

> **Recommendation No. 21**
> **To avoid delays in the settlement of claims, the Governments of Ontario and Canada should develop a process, whether of negotiation or arbitration, whereby they can efficiently resolve disagreements between them about their share of responsibility for past actions of the Crown in relation to a claim.**
>
> **Recommendation No. 22**
> **Pending the implementation of new processes for resolving disputes between First Nations and the Governments of Canada and Ontario, the**

Governments of Canada and Ontario should immediately introduce, with respect to the current processes, binding deadlines for these Governments to review claims and conduct the various stages of the negotiation process for claims, with an option for extensions of time with the consent of the First Nations party(ies).

E. Refusal to negotiate with "unrecognized" First Nations

263. The Stoney Point people have struggled for many years to reclaim their land. One of the many barriers they have faced has been the refusal on the part of the Governments of Canada and Ontario to recognize that they are a separate First Nation.

264. Instead, they are repeatedly referred to as a "splinter group" that refuses to follow the leadership of the elected chief of the Chippewas of Kettle and Stony Point.

Testimony of Michael Harris, 14 February 2006 at pp. 71-72.

Testimony of Deb Hutton, 21 November 2005 at pp. 219-221.

265. After the Stoney Pointers reclaimed Ipperwash Provincial Park, Ontario government authorities repeatedly commented upon their failure to have initiated a formal claim to the park.

266. However, according to provincial government policy – both in 1995 and today – any formal claim asserted by the Stoney Point people would not be accepted because they are not a recognized *Indian Act* Band. Both in 1995 and now, the Ontario government is only willing to enter into discussions with the Chief and Council of the Kettle and Stony Point First Nation – a First Nations' government that the Stoney Pointers assert does not represent them.

ONAS, "The Resolution of Land Claims in Ontario: A Background Paper (April 27, 2005) (Part II Paper) at pp. 12 and 25.

267. In light of this policy, the Stoney Pointers can hardly be criticized for failing to initiate a formal land claim.

268. The situation faced by the Stoney Point people is not unusual. The former Acting Legal Director of the Ontario Native Affairs Secretariat, Julie Jai, testified that there are many situations where the formal Band Council does not support the occupation or blockade of a group of activists.

Testimony of Julie Jai, September 14, 2005 at p. 9.

269. A policy of simply refusing to acknowledge the claims of groups that are asserting Aboriginal and/or treaty claims will necessarily lead to conflict, as it did in this case. For example, the Stoney Point people will clearly not accept a resolution that is negotiated and finalized with the Kettle Point Band Council. Frustration on the part of Stoney Point people will only continue to grow.

270. The Aazhoodena and George Family Group recommends:

Recommendation No. 25
Where a First Nations group asserts that it is an independent First Nation with an interest in a land claim or assertion of an Aboriginal or treaty right, the Governments of Canada and Ontario should treat these claims as they would any other formal land claim or assertion of an Aboriginal or treaty right, even if the said First Nations group does not have formal status in Canadian law at the time.

10. Jurisdiction of this Inquiry to make findings and recommendations affecting the Federal government.

271. The terms of reference for this Inquiry grants the Inquiry the following mandate:

> The commission shall:
>
> (a) inquire into and report on events surrounding the death of Dudley George; and
>
> (b) make recommendations directed to the avoidance of violence in similar circumstances.
>
> Order in Council 1662/2003.

272. Dudley George was killed by an Ontario Provincial Police officer over a dispute involving land alleged to belong to the Ontario government, and amid allegations that provincial politicians improperly influenced OPP actions. Thus, without a doubt, the

primary purpose of the Ipperwash Inquiry is to inquire into matters that are within the constitutional jurisdiction of the Province of Ontario.

273. It is not uncommon, however, for provincial inquiries to impact on other levels of government. As the Supreme Court has noted, there is nothing novel about a provincial inquiry submitting a report in which it appeared that changes in federal laws would be desirable. For example, changes to the *Criminal Code* might seem warranted, "in which event one would expect the Attorney General to act in liaison with the federal government, as is done daily."

Di Iorio v. Montreal (City) Common Jail, [1978] 1 S.C.R. 152.

274. Thus, there is nothing improper about a provincial commission of inquiry investigating or making findings of fact, so long as these are necessary to fulfill the purpose of the inquiry as it is described in the terms of reference.

Consortium Developments (Clearwater) Ltd. V. Sarnia (City), [1998] 3 S.C.R. 3.

Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada – Krever Commission), [1997] 3 S.C.R. 440.

Jakobek v. Toronto (Computer Leasing Inquiry), [2004] O.J. No. 2889.

275. As all parties at the Ipperwash Inquiry quickly learned, the circumstances that lead to the tragic death of Dudley George cannot be limited to the events that occurred on September 4-6, 1995. Dudley George died fighting for the return of the Stoney Point lands. By necessity then, to fully understand what occurred this Inquiry has quite properly attempted to place his death into a wider context involving almost 200 years of history. Both the Government of Canada (which holds solemn treaty obligations, appropriated the Stoney Point reserve, and accepted the surrender of lands that became the provincial park) and the Provincial government are implicated in this story.

276. The Government of Canada is the level of government with the constitutional jurisdiction over "Indians and Lands Reserved for Indians."

Constitution Act, 1867 (U.K), 30 & 31 Vict., c. 3, s. 91, reprinted in R.S.C. 1985, App. II, No. 5.

277. There are many other Stoney Points in Canada. The conflicts at Six Nations, Big Trout Lake and Grassy Narrows are but recent examples. In order to make recommendations designed to avoid violence in similar circumstances, it is necessary to understand the common historical reasons for these conflicts that arise out of a history of dispossession and oppression. It is necessary to understand what systems are in place currently to resolve those conflicts, and why those systems appear to be failing to do so.

278. Thus, in fulfilling its mandate to report on the events surrounding the death of Dudley George and to make recommendations to avoid violence in similar circumstances, this Inquiry will by necessity have to make findings of fact and recommendations directed to the Federal government.

Part III: The Government

279. It is submitted that Mike Harris' failure to listen to the advice of more experienced civil servants, and his desire to be seen as "actioning", were significant contributing factors to the tragedy at Ipperwash.

280. Mike Harris and his Conservative party came to power in Ontario only weeks before the crisis erupted at Ipperwash. Elected on a "Common Sense Revolution", Mike Harris promised to bring a "lean and mean" approach to governing.

281. The Conservative party policy documents of the time expressed a priority of ensuring that First Nations did not have "special rights" when it came to hunting and fishing. They expressed a desire to ensure that non-First Nations had input into treaty and land claim negotiations.

> Exhibit P-924: Document "Bringing Common Sense to Community Development".
>
> Exhibit P-925. "A voice for the North" – A report of the Mike Harris "Northern Focus" tour, Jan/95.

282. The first month of governance did not bode well for the relations between First Nations and government in Ontario. The lengthy negotiations over lands at Temagami with the Teme-Augama Anishnabai were abruptly terminated and the Mike Harris government lifted the cautions against the land.

> J. Teillet, "The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario" at p. 50 (March 31, 2005).

283. The government ignored the Statement of Political Relationships that had been signed in August 1991, a statement that expressly set out a framework for government to government relationships between the First Nations and the Ontario government. The mandate of the Ontario Native Affairs Secretariat was narrowed to that of "supporting self-sufficiency" of First Nations.

> D. Nashkawa, "Anishnabek Perspectives on Resolving Rights Based Issues and Land Claims in Ontario" at p. 11 (August 30, 2005)

284. Ontario ceased to adhere to the "Interim Enforcement Policy", a policy that was supposed to ensure that First Nations' constitutionally protected rights to hunt and fish were respected. The Harris government ceased virtually all dialogue with First Nations related to resource management.

> D. Nashkawa, "Anishnabek Perspectives on Resolving Rights Based Issues and Land Claims in Ontario" at p. 28 (August 30, 2005)

285. If anything, the Harris government became openly hostile to First Nations assertions of their right to hunt fish. Conservative MPP Bill Murdoch was centrally involved in a confrontation at the Owen Sound Farmers' Market, in which a mob of local sportsfishers confronted a First Nations woman selling fish. When fishing boats from the Chippewas of Nawash were destroyed by arsonists, Bill Murdoch blamed the First Nation. Mr. Murdoch was the Parliamentary Assistant to the Minister of Natural Resources, Chris Hodgson.

> D. Nashkawa, "Anishnabek Perspectives on Resolving Rights Based Issues and Land Claims in Ontario" at p. 12 (August 30, 2005)

286. All of these actions demonstrated that the government wished to run roughshod over the progress that had been made in recognizing First Nations' rights in Ontario.

287. When the Stoney Point people reclaimed their land in Ipperwash Provincial Park, they may not have realized that they were on a collision course with a new, inexperienced and hostile government.

1. The Interministerial Committee on Aboriginal Emergencies

288. The Interministerial Committee on Aboriginal Emergencies [hereinafter, "the IMC"], informally also known as "the Blockade Committee," was a committee consisting of representatives of several ministries within the provincial government. At the material times, Ms. Julie Jai, the Legal Director of the Ontario Native Affairs Secretariat, chaired the Committee.

> Testimony of Julie Jai, August 5, 2005, p. 114.

289. The role of the IMC was to quickly gather information about any aboriginal blockade or occupation and to try to find an alternative process that would end the direct action by providing another means for resolving the underlying issue.

Testimony of Julie Jai, 5 August 2005, pp. 114-116.

290. To help to develop such a process solution, the IMC would generally appoint a person likely to be respected by the protestors as "facilitator/negotiator." One of the main goals was the prevention of violence.

Testimony of Julie Jai, 5 August 2005, pp. 119-120; p. 134.

291. The Stoney Point people entered the Ipperwash Provincial Park late in the afternoon of Labour Day, September 4, 1995. The IMC met on September 5 and 6 for the specific purpose of trying to resolve the occupation of Ipperwash Provincial Park.

2. The role of Ms. Deb Hutton

292. Ms. Deb Hutton served as Mike Harris' Executive Assistant for Issues Management throughout his time as Premier of Ontario.

293. Ms. Hutton attended the IMC meetings of September 5 and 6, 1995 as the representative of Premier Harris. She emphasized the Premier's view that the Stoney Pointers should be removed from Ipperwash Park by charging them with trespass to property and/or violations of the *Criminal Code*. She asserted that the Harris government wanted "to be seen as actioning." The IMC meeting of September 6 ended with the OPP being asked to "remove trespassers."

Testimony of Ron Fox, 18 July 2005, pp. 191-195.

294. On September 5, 1995, Deb Hutton advised the IMC Committee that the Premier was "hawkish" on the occupation of Ipperwash Park. In her handwritten notes, Julie Jai recorded Ms. Hutton as stating, "[the] Premier is hawkish on this issue. Feels we're being tested on this issue."

Exhibit P-536, Handwritten Notes of Julie Jai, September 5, 1995, p. 4, (Inquiry Document 1012579).

295. Similar words are ascribed to Ms. Hutton in the notes of ONAS lawyer Eileen Hipfner, taken at the same meeting on September 5, 1995: "The Premier is hawkish on this issue. Will set tone how we deal with these issues over the next four (4) years."

> Exhibit P-510, Handwritten Notes of Aboriginal Emergencies Committee by Eileen Hipfner Sep 5/95 of Eileen Hipfner, p. 4, Inquiry Document 1011739.

296. Ms. Hutton stated to the IMC that she was speaking on behalf of Premier Mike Harris at the meeting. At one point, she even left the room to telephone the Premier. Ms. Hipfner had never before witnessed a person leaving such a meeting to contact the Premier directly.

> Testimony of Eileen Hipfner, 15 September 2005 at p. 93.

297. Ms. Jai commented:

> …Deb Hutton was at the meeting and was again extremely forceful and was a very, kind of, major presence. Somebody who, when she walked into the meeting, you could really feel that she was there, you know, sort of very, very assertive and very assertive in her views.
>
> Testimony of Julie Jai, 31 August 2005 at p. 71.

298. Ms. Hipfner said that Ms. Hutton:

> … seemed to me – … to regard the situation as much more urgent. And it was both her demeanor and – and the things that she said …
>
> Testimony of Eileen Hipfner 15 September, 2005 at p. 85.

299. Ms. Hutton was recorded as saying, "This is a clear cut issue of Ontario's ownership of the property," and that "this is the time and place to move decisively."

> Exhibit P-510, Handwritten Notes of Aboriginal Emergencies Committee by Eileen Hipfner Sep 5/95, p. 4, Inquiry Document 1011739.

300. Ms. Hipfner testified that these comments:

> …suggested to me that Ms. Hutton – that Ms. Hutton might believe that the decision about – about moving decisively was one that could be made by somebody other than the OPP.
>
> Testimony of Eileen Hipfner, 15 September 2005, p. 92.

301. When queried on what the term "hawkish" meant to her at the time it was used by Ms. Hutton, Ms. Hipfner stated:

> I understood it to mean aggressive. I have heard it used, largely in relation to well – as meaning war-like as opposed to dove-like, which is often the word it's contrasted with. And so certainly I understood it to mean – I understood it to mean aggressive, wanting to be proactive about – about dealing with the matter.
>
> Testimony of Eileen Hipfner, 15 September 2005 at p. 72.

302. Further comments attributed to Ms. Hutton were recorded by Julie Jai:

> The Premier does not want anyone involved in discussions other than the OPP and possibly MNR (doesn't want the chief or others involved, doesn't want to get into negotiations).
>
> Exhibit P-536, Handwritten Notes of Julie Jai, September 6, 1995, p. 1, Inquiry Document 1012579.

303. When asked what she understood the above comment to be referring to, Ms. Jai stated:

> I think that that refers to the fact that the Premier wants this viewed as a policing issue, a law enforcement issue; not a land claims issue or an Aboriginal issue; that's why he doesn't want other people, like from other ministries involved like ONAS and that he doesn't want to get into negotiations with the occupiers.
>
> Testimony of Julie Jai, 31 August 2005 at p. 71.

304. Ms. Anna Prodanou noted that, throughout the meeting, "there was an impatience on the part of the political staff, considerable impatience to – to deal with this effectively and quickly."

> Testimony of Anna Prodanou, 20 September 2005 at p. 147.

305. Ms. Prodanou, reflecting on the behaviour of Ms. Hutton, further observed that:

> …it was apparent from the comments that she made – she and several other staff, political staff, is that they were frustrated with the way the Committee was trying to get at the issues very slowly, asking questions, raising a lot of different angles, basically talking about it as opposed to doing something.
>
> Testimony of Anna Prodanou, 20 September 2005 at p. 186.

306. Ms. Prodanou's interpretation of Ms. Hutton's behaviour is supported by the notes of Elizabeth Christie, who recorded, as a direct quote from Ms. Hutton at the September 5 meeting, "If ever we need to act, it is now."

> Exhibit P-742, Ms. E. Christie's handwritten notes from IMC meeting, 5 and 6 September 1995 at p.8 , (Inquiry Document 1011749).

307. Ms. Hutton, on behalf of the Premier, expressed the intention of the government to "…treat non-Aboriginal people and Aboriginal people the same."

> Testimony of Elizabeth Christie, 26 September 2005 at p. 110; Exhibit P-742, Ms. E. Christie's handwritten notes from IMC meeting, 5 and 6 September 1995 at p.11 , Inquiry Document 1011749.

308. Ms. Christie commented that this desire of the government to treat Aboriginals and non-Aboriginals the same:

> demonstrated…an unnerving ignorance of constitutional law and – and the laws of Canada because, as a lawyer, my understanding and sort of knowledge was that – that based on the Constitution and the *Charter* and – and jurisprudence, that we don't necessarily treat Aboriginal and non-Aboriginal people the same. There are good reasons and – and laws that require that we do treat them differently in certain circumstances.
>
> Testimony of Elizabeth Christie, 26 September 205 at pp. 110-111.

309. Ms. Christie testified that she recalled one or two people making the point that there are circumstances in which the government needs to treat First Nations people differently from non-First Nations people. In response to these comments, Ms. Hutton

stated that there was a “strategic imperative” to treat non-Aboriginal people and Aboriginal people the same.

> Testimony of Elizabeth Christie, 26 September 205 at p.111.

310. Ms. Christie’s interpretation of Ms. Hutton’s comments was:

> That they were – I – I sort of interpreted them as being fairly, I don't know, aggressive or they were certainly assertive. Very assertive statements and – and the tone – the tone to me demonstrated some level of frustration**.**
>
> Testimony of Elizabeth Christie, 26 September 205 at pp.112-113.

311. Ms. Prodanou agreed that Ms. Hutton’s attitude portrayed her impatience and came off as aggressive. When asked whether her attitude was imperious, Prodanou replied:

> She was haughty, yeah. Very haughty and very self-confident and somewhat, sort of, dismissive of what was going on. She had sort of a sense of – I – yeah, dismissive and haughty, hmm hmm, would be the best way to describe it.
>
> Testimony of Ms. Anna Prodanou, 25 September 25 2005 at pp. 17-18.

312. At the end of the September 6 meeting, Eileen Hipfner heard Ms. Hutton remark that “This is the most useless meeting I have ever attended. It was a complete waste of my time.”

> Testimony of Eileen Hipfner, 20 September 2005 at p. 44.

313. Anna Prodanou also testified that she heard Ms. Hutton make a similar comment at the end of the September 6 meeting. Specifically, she testified that Ms. Hutton stated, “I can't believe I just wasted so much time at this meeting.”

> Testimony of Anna Prodanou, 20 September 2005 at p. 168.

314. Anna Prodanou, in reference to Ms. Hutton’s comments, went on to testify:

> Well, it really stuck in my mind because at that time we were all looking for signals from the Government as to what our role would be at ONAS. We knew that that role might be changing. We were looking for signals

and to have the work of the committee dismissed so casually was to me a signal and a very disappointing one.

Testimony of Anna Prodanou, 20 September 2005 at p. 168.

315. Much of the above information about the role of Deb Hutton at the IMC meetings was confirmed by Inspector Ron Fox, whose testimony included, in particular:

Q: "D. Hutton, Premier last night, OPP only maybe MNR out of Park only, nothing else." Now that appears to be a summary that your colleague wrote of remarks that Ms. Hutton said towards the beginning of this meeting; is that correct?

A: Correct.

Q: So she was reporting that she had spoken to or gotten information from the Premier just the night before and she was reporting on that information to the meeting?

A: It's the way I took it, sir.

Q: And so that was information she would have gotten after the September 5 meeting and prior to the September 6 meeting of the Interministerial Committee?

A: I can only assume that to be correct, yes.

Q: And in particular, that included, she transmitted what the Premier wanted was, "out of Park only, nothing else," right?

A: Yes, sir.

Q: And then if we turn the page, please. On the next handwritten page approximately a third of the way down, again it says:

"D. Hutton, [something], re-releases."

And then the third line there is:

"Want to be seen as actioning."

Q: Is that correct?

A: Yes, sir.

Q: And just to refresh your memory that Ms. Hutton indicated that they wanted to be seen as "actioning"?

A: Yes, sir.

Q: And you – you took that, did you not, as they wanted something to be done, something visible to be done; right?

A: I – I took that, sir, that they wanted something to be done and as I recall, from the context of others' notes that I've referred to and been referred to, that it spoke to the first term of new government and they had to be seen to be actioning or taking action on a given issue

Q: Right. Thank you. And then, at the bottom of the – that page, it says, "PMO," that would have stood for Prime Minister's Office; would it?

A: I'm assuming so, yes.

Q: "And the longer they occupy a major crisis, what about Criminal Code?" Now, am I correct in understanding that you would have taken that as meaning that the Prime Minister's Office was saying, We don't want this to go on very long, what about just using the Criminal Code to deal with this?

A: And I believe that was being said, yes.

Q: And that – and that's what was said, in fact?

A: Yes.

Q: And on the next page, in the middle of the page, it says – well, first at the top of the page it says, Ron, that's – that's you?

A: Yes.

Q: And this is a fairly accurate although incomplete summary of what you said; is that correct?

A: Yes, sir.

Q: And in particular, you said, among other things, that you appreciate the premier's concern, but – but should we rush in – I – I presume you meant that we should not rush in, we should take it step by step, or something to that effect; is that correct?

A: That's correct.

Q: And there's an indication there was a discussion of opposing views and then, if we continue towards the next page, the next page appears to be the last notes from this meeting and presumably therefore towards the very end of the meeting, a few lines down it reads:

"Discussion re – re removal of trespass."

Right? See that, sir?

A: Yes, sir.

Q: That was, again, a discussion about removal based on the *Trespass to Property Act* as opposed to an injunction?

A: Yes, it circled back to that, sir, yes.

Q: I'm sorry?

A: The meeting circled back to that, yes.

Q: Yes. And then, at the end of the notes, it says:

"Seeking injunction. [And then] OPP asked to remove trespassers."

Correct?

A: Yes, correct.

Q: So that's the way the meeting ended, more or less, on September 6 just before you – or a couple of hours before you went to the dining room meeting?

A: Correct.

Q: Now it appears that at the September 5 and September 6 meetings there was much discussion about the propriety of using only the *Criminal Code* and *Trespass Act* versus an – waiting for an injunction; much discussion about whether the OPP could be directed by politicians or only asked to do things by politicians and so on; right?

A: That's – that's fair, a fair assessment.

Q: And I – I gather that you were of the view that there should have been other things discussed such as what possible real negotiations could be entered into to solve this problem in a more meaningful way; isn't that fair?

A: That's reasonable.

Q: And you mentioned, for example, I believe in your testimony the possibility of offering co-management of the Park or considering something like that; right?

A: Yes, I did.

Testimony of Inspector Ron Fox, 18 July 2005 at pp. 191-196.

316. Since Ipperwash Park was closed for the season, and since any possible freezing of water pipes was at least two months away, there was no need to deal urgently with the Stoney Pointers in the Park. It would have been appropriate to learn more before selecting any course of action. However, the politicians and political staff created a sense of urgency because they wanted to show people that they acted quickly and decisively with protestors of this type.

Testimony of Ron Vrancart, 27 October 2005 at pp. 197 – 198 and p. 205.

317. Ms. Hutton's view was that the government could request that the OPP remove the people from Ipperwash Park, although how and when they accomplished the removal

was up to them. She wanted that request to be part of a "communication message." She understood that such a message would create a public expectation that the OPP would remove the people from the Park.

Testimony of Deb Hutton, 23 November 2005 at pp. 11-15.

318. Ms. Hutton regarded this as a test of how the government would respond to any group that used illegal actions to further its goals.

Testimony of Deb Hutton, 23 November 2005 at p. 16.

319. Some of the people at the meeting wanted to simultaneously pursue both an injunction and the possibility of charging the Stoney Pointers with criminal offenses.

Testimony of Julie Jai, 14 Sept 2005 at pp 60-63.

320. There was continued discussion at the IMC about criminally charging the Stoney Pointers.

Testimony of Julie Jai, 14 Sept 2005 at pp. 73-77.

321. The Ministry of Natural Resources served a trespass notice on the Stoney Pointers and asked the police to treat them as trespassers and remove them.

Testimony of Ron Vrancart, 27 October 2005 at pp. 202-203.

3. The possibility of a negotiated resolution

322. The IMC was unable to appoint a facilitator/negotiator because of the information that they got from Deb Hutton that the Premier wanted the people out of the park within a day or two and also that the Premier did not want this situation viewed as an "aboriginal issue."

Testimony of Julie Jai, 14 September 2005 at pp. 24-25.

Testimony of Elizabeth Christie, 27 September 2005 at pp. 182-183.

323. The fact that the OPP had been asked to remove the Stoney Pointers would have made it difficult for an OPP officer to serve as negotiator/facilitator.

Testimony of Julie Jai, 14 September 2005 at p. 154.

324. Nonetheless, Deb Hutton insisted that the Premier did not want anyone except the OPP and possibly MNR involved in discussions with the Stoney Pointers.

Exhibit P-536, Handwritten Notes of Julie Jai, September 6, 1995, p. 1, Inquiry Document 1012579.

325. The insistence that no one have discussions with the Stoney Pointers except the OPP and possibly MNR was one of the aspects of Deb Hutton's instructions to the IMC that Mike Harris acknowledged that he and Ms. Hutton specifically concurred on.

Testimony of Mike Harris, 15 February 2006 at pp. 267-268.

326. One of the important goals of appointing a facilitator/negotiator would be to try to avoid violence.

Testimony of Julie Jai, 14 September 2005 at p. 45

327. A facilitator/negotiator would be a go-between who would talk to the occupiers and to the police so that there would not have to be direct dealings between the occupiers and the police. A facilitator/negotiator would increase understanding and might avoid misunderstandings between the two groups. In particular, such a person might ask the people in the park to change locations if the police had a concern about them being in some particular place.

Testimony of Julie Jai, 14 September 2005 at pp. 46-47.

328. It is submitted that it should be found that one way that Premier Harris and Deb Hutton contributed to the killing of Dudley George was by precluding the possibility that the IMC appoint a facilitator/negotiator who could have prevented the violent confrontation.

329. Even if Deb Hutton had allowed for the possibility of the IMC appointing a facilitator/negotiator, that might have taken some time. As it would obviously be desirable that such a person be able to be appointed quickly, Ms. Jai recommended that a roster of suitable facilitator/negotiators be maintained.

Testimony of Julie Jai, 14 September 2005 at pp. 47-48.

330. Thus the Aazhoodena and George Family Group recommends:

Recommendation No. 54
The Government of Ontario and the Government of Canada should be prepared to consider the merits of the substance of any land claim in the course of negotiating a resolution of an First Nations occupation or blockade.

Recommendation No. 61
The Ontario Ministry for Relations with First Nations should maintain a roster of qualified facilitators/negotiators who are well regarded by First Nations communities to be available to be called upon to assist in the resolution of First Nations occupations or blockades.

4. The dining room meeting

331. Mid-day on September 6, 1995, there was a meeting in a room colloquially referred to as "the Premier's dining room." Premier Harris, several cabinet ministers and their political staff, some civil servants, and two OPP officers who had been seconded to the Ministry of the Solicitor General attended the meeting.

332. The only substantial contemporary account of the dining room meeting is the one given by OPP Inspector Ron Fox to Inspector Carson and Chief Superintendent Coles in a telephone call made shortly after the meeting. It is submitted that all the statements of fact contained in that telephone call should be found as facts by the Commissioner.

333. In particular, it should be found that then Premier Harris told the dining room meeting that the occupation of Ipperwash Park was not an issue of native rights, and that he proclaimed, "We've tried to pacify and pander to these people [i.e., First Nations people] for too long."

Exhibit P-444A, Transcript of Audio Logger Volume 1, Tab 37 at p. 274.

334. Mr. Harris acknowledged that, by the evening of September 5, he certainly came to view this as a law and order issue, not an issue of native rights.

Testimony of Mike Harris, 15 February 2006 at p. 248.

335. Although Mr. Harris stated that he didn't recall saying "we've tried to pacify and pander to these people for too long," he did acknowledge that that might have been Inspector Fox's interpretation of something he did say. He also indicated that he thought that there were some examples where governments had yielded too much to First Nations people.

Testimony of Mike Harris, 15 February 2006 at p. 211-212.

336. As Inspector Fox entered the meeting, Premier Harris said words to the effect "The OPP in my opinion made mistakes. They should have done something right at the time. I'm sure that will all come out in an Inquiry some time after the fact."

Exhibit P-444A, Transcript of Audio Logger Volume 1, Tab 37 at pp. 263- 264.

337. Ron Vrancart, who at the time was the Assistant Deputy Minister for the Operations Division of the Ministry of Natural Resources, attended the dining room meeting. He testified that there was certainly discussion about getting the police to act quickly to get the occupiers out of the park. He also said

> … it was certainly clear that this government had as a plank in its election platform law and order. And this was an opportunity to demonstrate their commitment to their policy platform.

Testimony of Ron Vrancart, 27 October 27 2005 at p. 200.

338. Deputy Attorney General Taman's testimony included the following:

> Q: But it was your understanding that the Premier was instructing everyone in the room to do their part in trying to get the people out of the Park as soon as possible?
>
> **A: [by Larry Taman]: Yes.**

Q: And you also told us that the tenor of the meeting was that the police should be acting to get those folks out of the Park, correct?

A: Yes. The – the Premier did, as I recall, say words to the effect that if this were in any other country or any other setting that the police would have acted more quickly.

Q: So now the people who were being told to exercise their professional judgment to try to achieve the Government's aim of getting the people out of the Park as soon as possible, included OPP officers Fox and Patrick, who were in the room; is that not fair?

A: That's true.

Testimony of Larry Taman, 15 Nov 2004 at p. 183.

339. There was contradictory evidence about whether Premier Harris told the dining room meeting "I want the fucking Indians out of the park." Former Attorney General Charles Harnick, who was in the room at the time, was adamant that Premier Harris made that assertion in a loud voice. He recalls the statement very well because of his shock that the Premier would make such a comment. Mr. Harnick testified that he had just walked into the dining room when he heard the statement, and that after the words were spoken the room went silent. Mr. Harnick assumed that Mr. Harris has realized the inappropriateness of his statement.

Testimony of Charles Harnick, 29 November 2005 at pp. 124-126.

340. Dr. Elaine Todres, the Deputy Solicitor General, testified that she heard MNR Minister Chris Hodgson make a similar comment towards the end of the meeting: "Get the fucking Indians out of my Park."

Testimony of Elaine Todres, 1 December 2005 at p. 18.

341. There has been some further evidence, in the form of rumours circulated amongst some of the ONAS staff, that the Premier said words to the effect of "Get those fucking Indians out of the Park and use guns if you have to".

Testimony of Leslie Khosed-Currie, 17 October 2005.

342. There is a difference between a witness saying that they "do not recall" making a particular statement and a witness denying making the statement at all.

343. When asked about whether he had ever said "Get those fucking Indians out of the Park and use guns if you have to" or words to that effect, Mr. Harris has consistently given a definitive "No." He is certain that he did not say that.

Testimony of Mike Harris, 15 February 2006 at p. 182.

344. However, it appears that Mr. Harris has been less definitive with respect to the statement "I want the fucking Indians out of the Park." One of Mr. Harris's counsel at these proceedings, Peter Downard, said the following when Mr. Harnick first made his revelation about this statement:

> Now, as you can imagine, when I became aware, very recently, of your evidence regarding the inappropriate statement of the Premier in the dining room that you've described, I informed Mr. Harris of that, and I have to tell you that he tells me that does not and that he'll testify that he does not recall saying anything like that in the meeting.
>
> Statement of Peter Downard, 28 November 2005 at p. 52.

345. Mr. Harris agreed that he "may have" told his counsel that he did not remember making that statement at the meeting, though he maintained during his testimony at the Inquiry that he was quite certain that he had not told the participants at the Dining Room meeting that he wanted "the fucking Indians out of the Park." However, in his earlier testimony he had suggested that the reason that he was so certain that he did not make the statement was because he would not make that kind of statement at a meeting of that nature. In other words, he had no clear recollection that he had not said the words, but assumed that was so based on the nature of the meeting.

Testimony of Mike Harris, 14 February 2006 at pp. 153-154.

Testimony of Mike Harris, 15 February 2006 at pp. 185-186.

346. In fact, Mr. Harris admitted that he had used the word "fucking" in a public place on at least one well-documented occasion: the advance polling with respect to the Conservative Party Leadership Convention in September of 2004. On that occasion Mr. Harris told the female worker handing out ballots to "Just give me the fucking ballot" and grabbed the ballot from her hands. A male Conservative Party worker intervened and said

to Mr. Harris, "What's going on here." Mr. Harris turned around and said "You can challenge my fucking ballot, you jackass." The man told Mr. Harris, "Don't be an asshole." Mr. Harris responded, "You're the biggest asshole of them all."

Testimony of Mike Harris, 15 February 2006 at pp. 191-193.

347. It is submitted that both the content and the manner of Mr. Harris' evidence casts doubt on his credibility. On the other hand, both the content and the manner of Charles Harnick's evidence that Mr. Harris did say "I want the fucking Indians out of the park" make it very unlikely that Mr. Harnick's evidence is inaccurate.

348. Mr. Harnick described the agonizing nature of his decision to give that evidence: he did not want to damage a man he respected and regarded as a friend, and, on the other hand, he felt an obligation to tell the truth under oath. When Mr. Harnick gave that evidence, he branded himself as a liar (because he had said the opposite on numerous occasions in the legislature) and a fink (for exposing his friend and former colleague). As Mr. Harnick said, he would not have testified to that effect if he was not very sure that he was giving accurate testimony.

Testimony of Charles Harnick, 29 November 2005 at p. 125.

349. Mr. Harris testified that he was not aware of any reason that Mr. Harnick may have been lying when he testified that Mr. Harris had said "I want the fucking Indians out of the park." Mr. Harris also agreed that he was unaware of any bias that Mr. Harnick may have against him and he also said that, from everything Mr. Harris knew, Mr. Harnick respected him.

Testimony of Mr. Harris, 16 February 2006 at pp.168-169.

350. Some confusion has arisen as a result of Dr. Todres' report that Chris Hodgson made a similar comment towards the end of the dining room meeting.

351. The statement "I want the fucking Indians out of the park," which is attributed to Mr. Harris, is quite similar to the statement "Get the fucking Indians out of my park," which is attributed to Mr. Hodgson. It might be suggested that it is likely that only one of

those statements was made by one of those people, and that the other statement is attributed to the other person in error. However, it is submitted that there is compelling evidence that both attributions are correct: Mr. Harris said "I want the fucking Indians out of the park" at the beginning of the dining room meeting and Mr. Hodgson said "Get the fucking Indians out of my park" towards the end of the meeting.

352. As argued above, Mr. Harnick's evidence about Mr. Harris' remark is compelling. Moreover, Dr. Todres' evidence that Mr. Hodgson said "Get the fucking Indians out of my park" was extremely credible. She explained how she was struck by the possessive aspect of Mr. Hodgson's description of it as "my park." Her testimony was careful and measured. There would appear to be no reasonable argument that Dr. Todres was either mistaken or dishonest in her testimony about what Mr. Hodgson had said.

353. It is therefore submitted that it should be found that Mr. Harris did say "I want the fucking Indians out of the park" at the dining room meeting, and also that Mr. Hodgson said "Get the fucking Indians out of my park". Both comments are consistent with the evidence of the general attitude of the Harris government towards First Nations' people. It is submitted that these comments, the other comments attributed to Mr. Harris, Ms. Deb Hutton and Mr. Chris Hodgson, and the overall actions of the Harris government in response to the Ipperwash events demonstrate an antipathy to First Nations people that should properly be characterized as racist.

5. The involvement of Marcel Beaubien

354. It is submitted that Marcel Beaubien exerted direct pressure on the OPP to take action against the Stoney Pointers, and that he did so with at least the tacit approval of then Premier Harris and other members of the Harris government.

355. Marcel Beaubien began to exert pressure on the OPP to take action against the First Nations people in the Ipperwash area almost immediately after his election in the

summer of 1995. Mr. Beaubien was a newly-elected MPP, but had served as a local politician in municipal matters for many years.

356. Marcel Beaubien wrote a letter to Attorney General Harnick on July 31, 1995. The letter was copied to the President of the West Ipperwash Property Association, to the Mayor of Bosanquet and to the Solicitor General. One of the points that Mr. Beaubien made in that letter was, "Law enforcement is basically non-existent and the OPP does not seem too keen in getting involved." Marcel Beaubien wrote that letter to the Attorney General and Solicitor General in the hopes that they would improve the situation from his perspective.

> Testimony of Marcel Beaubien, 24 January 2006 at p. 291.
>
> Exhibit P-534: Letter to Hon. Charles Harnick, Attorney General from Marcel Beaubien MPP re: Residents of Ipperwash Beach Tension with Kettle and Stony Point Community (Inquiry Document1000918).

357. Mr. Beaubien also expressed his concerns about his perceived lack of adequate policing at a meeting of the Progressive Conservative caucus prior to September 1995. Then-Premier Harris was among the persons who directly heard his concerns.

> Testimony of Marcel Beaubien, 24 January 2006 at pp. 297–298.

358. On August 14, 1995, Mr. Beaubien wrote a letter to the Attorney General. That letter described a meeting that he had held on August 11, 1995 with Inspector Carson, Inspector Linton, Superintendent Parkin and Staff Sergeant Lacroix. Mr. Beaubien used the word "consensus" in that letter. He understood that to mean "we're on the same wavelength".

> Testimony of Marcel Beaubien, 25 January 2006 at p. 12.
>
> Exhibit P-418, Letter from Marcel Beaubien to Hon. Charles Harnick, Attorney General Aug 14/95 re: the Chippewas of Kettle and Stony Point (Inquiry Document 1012239).

359. Marcel Beaubien believed that he had reached a consensus with the OPP on the following issues:

- As the Ipperwash Campground is provincially owned, we should be in a position to legally uphold this property.

- Enforcement is only a short term solution.
- Ministeries involved have to give the OPP clear guidelines for law enforcement.
- The long term solution is a negotiated settlement.

Exhibit P-418, Letter from Marcel Beaubien to Hon. Charles Harnick, Attorney General Aug 14/95 re: the Chippewas of Kettle and Stony Point (Inquiry Document 1012239).

360. Of obvious interest to this Inquiry was the apparent consensus on the fact that the "Ministries involved have to give the OPP clear guidelines for law enforcement." Marcel Beaubien testified that he did not know what aspect of the situation had led him and the OPP to agree that there should be such "clear guidelines".

Testimony of Marcel Beaubien, 25 January 2006 at p. 13-14.

361. While Deputy Commissioner Carson disputed some of what Marcel Beaubien had described as the consensus, he agreed with most of it. A summary of his evidence on this point is:

> Q: So, there was consensus on some issues and there may be a difference of opinion as to the exact nature of the consensus with respect to others; is that a fair summary?
>
> **A: Yes, that's fair.**

Testimony of John Carson, 9 June 2005 at p. 253.

362. It is submitted that it is unacceptable for the OPP to reach consensus with an MPP on any of the issues listed in Mr. Beaubien's letter, as they all relate directly to OPP operations.

363. Once the Stoney Point people reclaimed the Park on September 4, 1995, Mr. Beaubien became involved in passing on "high level government concerns about the Indian Occupation of Ipperwash Provincial Park to police working at the scene." He was in constant contact with the police on a daily basis.

Testimony of Marcel Beaubien, 24 January 24 2006 at pp. 267 and 269.

364. Mr. Beaubien's main OPP contact was Staff Sergeant Wade Lacroix. Staff Sergeant Wade Lacroix was a "good acquaintance" of Marcel Beaubien's for a period of twenty years prior to September of 1995. On September 4, 5 and 6 1995, Beaubien was briefed a number of times by Wade Lacroix.

Testimony of Marcel Beaubien, 24 January 2006 at pp. 259 – 261, 288.

365. In his communications with Mr. Harris's Caucus Liaison, Bill King, Mr. Beaubien came to the understanding that the Premier was "on top of the situation." Mr. Beaubien viewed his role as acting as the pipeline between Queen's Park and his Constituents.

Testimony of Marcel Beaubien, 24 January 2006 at pp. 271 – 272.

366. Staff Sergeant Lacroix telephoned Incident Commander Carson at approximately 8:20 in the morning of September 5, 1995. Staff Sergeant Lacroix informed Inspector Carson that Mr. Beaubien wanted to be briefed. He also indicated that Beaubien was going to call the Premier and say, "This is ridiculous" and "I want something done." Carson told Lacroix that he wanted Lacroix to brief Beaubien because "He knows you". Inspector Carson also wanted to have some idea of what Mr. Beaubien was looking for before Carson spoke to him. Inspector Carson told Staff Sergeant Lacroix that he was interested in Beaubien's "feelings" about this.

Testimony of Marcel Beaubien, 25 January 2006 at pp. 8, 9, 12 and 13.

Exhibit P-444A, Transcript of Audio Logger, Volume 1, Tab 4 at p. 9.

367. It is submitted that there is no reason to doubt that Inspector Carson did have the interest he asserted in Beaubien's "feelings", and the expression of that interest to Staff Sergeant Lacroix is evidence that Inspector Carson's approach to the Ipperwash situation was influenced by Mr. Beaubien.

368. In his testimony at the Inquiry, Mr. Beaubien refused to acknowledge or deny most of the information that Staff Sergeant Lacroix had attributed to him in the above-described phone call. Mr. Beaubien did, however, admit that it was "quite possible" that

he communicated to Lacroix the notion that he was going to call the Premier to say that there was something wrong.

Testimony of Marcel Beaubien, 25 January 2006 at p. 23.

369. At approximately 4:24 p.m. on September 5, 1995, Inspector Carson followed up with Staff Sergeant Lacroix. Staff Sergeant Lacroix asked Inspector Carson, "Did you get a call or anything from the Ministry side?" Inspector Carson responded that he had not. Staff Sergeant Lacroix informed Inspector Carson that Mr. Beaubien had gotten briefed half an hour earlier and was "gonna get briefed again in five". Staff Sergeant Lacroix further explained that Mr. Beaubien informed him that, "this is not an Indian but an MNR issue."

Exhibit P-444A, Transcript of Audio Logger, Volume 1, Tab 22 at p. 183.

370. Staff Sergeant Lacroix also told Inspector Carson that Premier Harris was himself involved and was "quite uptight about it." Staff Sergeant Lacroix further informed Inspector Carson that Mr. Beaubien had given him the information that there was to be a press release soon saying that: "The law will be upheld no matter who is involved."

Exhibit P-444A, Transcript of Audio Logger, Volume 1, Tab 22 at p. 183.

371. Staff Sergeant Lacroix suggested "The signal is that we're going to end up evicting," to which Inspector Carson replied "I would suspect." Staff Sergeant Lacroix also informed Inspector Carson that Mr. Beaubien was going to call Staff Sergeant Lacroix in the morning to tell him anything else that happened. Staff Sergeant Lacroix concluded: "It sounds like the government is on side" to which Inspector Carson responded, "Oh good."

Exhibit P-444A, Transcript of Audio Logger, Volume 1, Tab 22 at p. 183.

372. With respect to the phone call described above, Mr. Beaubien agreed that Staff Sergeant Lacroix was correct in informing Inspector Carson that he had received communications from a Ministry. He confirmed that the Ministry would have been one of the Premier's office, the Solicitor General, the Attorney General or the Ministry of Natural Resources.

Testimony of Marcel Beaubien, 25 January 2006 at p. 34-35.

373. Mr. Beaubien also agreed that he had told Staff Sergeant Lacroix words to the effect that it was "The government's position that it's not an Indian issue but an MNR issue and a government issue."

Testimony of Marcel Beaubien, 25 January 2006 at p. 34–35.

374. Mike Harris testified that he did not believe that such information would make the Incident Commander fear that his decisions were being reviewed directly by the Premier. Mr. Harris testified that he did not believe such information would affect the Incident Commander's operational decisions.

Testimony of Mike Harris, February 16, 2006, pp. 115-116.

375. Marcel Beaubien met with Inspectors Carson and Linton at the Command Post at 6:42 p.m. on September 6, 1995, about four hours before Dudley George was killed. The Scribe Notes, taken contemporaneously, state the following:

> Inspector Linton, Inspector Carson, Les Kobayashi, and Member of Parliament Marcel Beaubien meeting in Command Trailer. Marcel Beaubien advised that he has sent a fax to the Premier advising of his intentions and that he wanted a return phone call regarding his intentions.
>
> Insp. Carson advised that there is a court hearing for an injunction at 9:00 a.m., 07 SEP 95. Marcel Beaubien (sic) aware of situation…
>
> …
>
> Marcel Beaubien advised that property owners are very concerned. They are frustrated and feel that they are not being treated equally. John Carson states that there is not a land claim. There has been no legal claim to the land.
>
> Insp. Linton questioned if there was anything from the Solicitor General. Marcel Beaubien (sic) advised that they were meeting today.
>
> …John Carson states they are using women and children and it puts us in a tough position. John Carson advised Marcel Beaubien that he understands the residents (sic) concerns. John Carson reported to Marcel Beaubien that we have 30 people on the ground at all times having the members talk to the residents to let them know of our presence. Foot patrols are being completed around the residences.

> Marcel Beaubien states that he doesn't mind taking controversy, if situation can't be handled by police services, something has to be done to handle the situation. John Carson states that we want it resolved, but we don't want anyone to get hurt, wants everything that be done to stress the point of no one getting hurt. John Carson also stated that we have a lot of good people, 2 teams on ground at a time. Officers doing a great job.
>
> Dale Linton advises Marcel Beaubien (sic) that we appreciates (sic) everything that he has done. Marcel Beaubien (sic) talked to Chief Chris Coles and suggested MNR contact Chief Coles.

Exhibit P-426, Scribe Notes, Tab 4 at pp. 69-70.

376. Omitted from the typed version of the Scribe Notes but recorded in the handwritten version is Marcel Beaubien's having informed the officers present that "Premier is in constant touch, good communications."

Exhibit P-427, Handwritten Scribe Notes at p. 472.

377. Marcel Beaubien was very evasive in much of his testimony at the Inquiry. For example, he often answered questions of the form "Do you have any reason to deny X?" by saying, "I do not recall." Unless someone has no capacity to remember anything for more than a few seconds, it is not possible that the person could "not recall" whether he or she had any reason to doubt something.

See, in particular, Testimony of Marcel Beaubien, 25 January 25 2006 at pp. 21-94.

378. It is submitted that Marcel Beaubien was evasive because he did not want to acknowledge his role in pressuring the OPP to take action against the Stoney Point people.

379. Mr. Beaubien was adamant that the government officials and the police officers that he interacted with during this period did not indicate that there was anything wrong with his interaction. Also, as far as he could understand, they seemed to appreciate his interaction and to appreciate the information and questions he was bringing to them.

Testimony of Marcel Beaubien, 24 January 2006 at p. 284.

380. It is submitted that the only reasonable conclusion from all of the evidence at the Inquiry, including the content and manner of Mr. Beaubien's and Inspector Carson's testimony as well as Mr. Beaubien's involvement with Staff Sergeant Lacroix, is that Mr. Beaubien brought substantial political pressure to bear on the OPP. Moreover, the lack of any coherent legitimate explanation for the OPP's confrontation of the Stoney Pointers is compelling evidence that the political pressure exerted by Mr. Beaubien and others was one of the causes of that confrontation.

6. Other political pressure in addition to Marcel Beaubien's

381. Inspector Ron Fox conveyed the attitude and the wishes of the Harris government to Incident Commander John Carson and Chief Superintendent Coles in the telephone calls described above. It is submitted that, on balance, the evidence implies that Premier Harris and Deb Hutton were aware that Inspector Ron Fox was an OPP officer who would transmit their messages to the OPP.

382. Deputy Chief Carson testified that he understood that it was the Premier talking through Deb Hutton and Ron Fox to him.

Testimony of John Carson, 9 June 2005 at p. 178.

383. Between Inspector Ron Fox and Marcel Beaubien (including the information that Staff Sergeant Lacroix attributed to Beaubien), Incident Commander John Carson got unequivocal messages that:

- Premier Harris and his government were critical of the OPP's having allowed the Stoney Pointers to re-occupy Ipperwash Park;
- that Premier Harris and Marcel Beaubien wanted the Stoney Pointers out of the Park as soon as possible; and that
- the Harris government wanted the OPP to charge the Stoney Pointers with criminal offences and/or trespassing.

7. Recommendations concerning interaction between politicians and police officers

384. It would be very difficult to devise precise guidelines restricting interaction between politicians and police officers. Some have proposed that politicians not ever be permitted to interfere in police operational matters. However, if police officers were, for example, systematically abusing First Nations people it would be hoped that politicians would act to restrain such behaviour. If the OPP was not recognizing the Treaty rights of a group of First Nations people, it would be expected that there would be political direction requiring them to recognize those rights.

385. Maintaining a bright line between government and police operational decisions may not always be possible in the context of disputes over Aboriginal and treaty rights. These types of conflicts raise public policy and legal issues that are beyond the scope of police forces. In virtually all such cases, only political intervention can resolve the dispute. For governments that wish to avoid recognizing Aboriginal and treaty rights, such as the Harris government represented, failing to intervene has the indirect (but perhaps intentional) effect of forcing police to carry out the government's wishes: that is, using force to end the protest.

386. One requirement for any proper interaction between politicians and police is clear: it cannot be kept secret from the public. While it may not be desirable to immediately make any interaction public because of the possibility of endangering an operation, there is no reason that it should not be publicly disclosed once any such danger has passed. It should not be required that there be a public inquiry before the public learns of interactions between politicians and police officers.

387. For municipal police forces in Ontario, there are police services boards that monitor their activities. Although police services boards generally have some members who are politicians, they do serve as a "buffer" between the municipal government and the police. There is no police services board that serves as such a buffer between the OPP

and the provincial government. The Ministry of the Solicitor General plays that role to some extent but is, of course, directed by a politician, the Solicitor General of the day.

388. In this case, the line between the politicians and the OPP was somewhat blurred by Inspector Fox having the position of liaison officer to the Solicitor General.

389. It is submitted that a police services board for the OPP would have helped to lessen the political interference that took place in September 1995 and is likely to be of similar benefit in the future.

390. Thus the Aazhoodena and George Family Group recommends:

Recommendation No. 38
The Province of Ontario should amend the *Police Services Act* to provide that there be a police services board for the Ontario Provincial Police.

Recommendation No. 62
The Province of Ontario should enact a regulation requiring that any substantive interaction between a politician or civil servant and any police officer concerning any police operation must be fully and permanently documented by the all the parties to the interaction, and that such documentation must be made public as soon as such disclosure would not interfere with the operation.

8. Protection of civil servants

391. After the killing of Dudley George, many of the civil servants employed by the Government of Ontario were afraid to talk about the surrounding events because of fear of retribution by the Government of Ontario.

Testimony of Eileen Hipfner, 20 September 2005 at pp. 60-61.

392. One of the civil servants who had felt constrained from speaking out testified that she did not know if Ontario had any “whistleblower legislation” to protect civil servants.

Testimony of Anna Prodanou, 21 September 2005 at p. 47.

393. There does not appear to be any such legislation in effect in Ontario.

394. There is legislation protecting Federal civil servants from reprisals for disclosing wrongdoing within the Government of Canada.

Public Servants Disclosure Protection Act, R.S. 2005, c. 46.

395. Although there has been little evidence on this topic at the Inquiry, it does appear that whistleblower legislation might have encouraged some of the civil servants to speak out about the political improprieties with respect to the Ipperwash Park matter. In any event, whistleblower legislation is generally accepted as being useful in exposing governmental wrongdoing.

396. Thus the Aazhoodena and George Family Group recommends that:

Recommendation No. 60
The Province of Ontario should ensure that it enacts appropriate "whistleblower" legislation that would protect civil servants from reprisals for revealing wrongdoing by politicians or by political staff.

9. A Separate Ontario Minister for Relations with First Nations?

397. The Director of Policy and Research for the Ipperwash Inquiry, Nye Thomas, has raised the question of whether there should be a separate Ministry of Aboriginal Affairs, and points put that there is such in British Columbia.

Memorandum from Nye Thomas, "Discussion Paper on Treaty and Aboriginal Rights" (June 2006), pages.21 and 20.

398. With respect to Ipperwash in 1995, Charles Harnick was both the Minister of Native Affairs and the Attorney General. While wearing the first hat, he had the responsibility of protecting the rights of First Nations people, but while wearing the second he had the responsibility of prosecuting them. It is submitted that these two responsibilities were obviously in conflict.

399. Of course, no minister of a government with the views of the Harris government towards First Nations is likely to protect the interests of First Nations people, whatever hat such a Minister wears. However, it is submitted that, under most governments, it would offer some protection to have a separate Ministry concerned solely with the rights of First Nations people.

400. Scott Hutchison testified that it has traditionally been a sore point to try to find a ministry within which the Ontario Native Affairs Secretariat could be located without there being some kind of inherent conflict. He recommended a separate ministry. Julie Jai also testified that that might be useful.

Testimony of Scott Hutchison, 20 August 2005, pp. 42-43.

Julie Jai, 14 September 2005 at p. 84.

401. Thus the Aazhoodena and George Family Group recommends that:

Recommendation No. 52
The Government of Ontario should re-name the "Ontario Secretariat for Aboriginal Affairs" the "Ontario Ministry for Relations with First Nations."

Recommendation No. 53
The Government of Ontario should create a separate Ontario Minister for Relations with First Nations who does not head any other ministry.

Part IV: The Ontario Provincial Police

1. Events prior to the reclamation of the Park

402. After many years of attempts to get the federal government to return their land, some Stoney Point people reclaimed a portion of their territory in May 1993 by re-occupying a portion of what was then the army camp. For the next two years there was an uneasy but basically peaceful co-existence of Stoney Point people and military personnel.

403. On July 29, 1995, the Stoney Point people re-occupied the barracks area of the Army Camp. The few soldiers present simply left the area, so the Stoney Pointers regained all the land that had been taken under the *War Measures Act*. Stoney Pointers have been living there ever since, although the Federal Government has still not formally returned the land to them.

404. Throughout the Inquiry, the OPPA has tried to emphasize reports of alleged violence and alleged sightings of firearms in the hands of the Stoney Point people who reclaimed their territory on the military base. For example, the OPPA has sought to introduce statements and reports from military police officers who were stationed at Camp Ipperwash between 1993 and 1995.

405. A number of Stoney Point people who testified acknowledged that possession of guns was not uncommon, as many Stoney Pointers hunt for food, and see hunting as one of their rights.

Testimony of Marcia Simon, 28 September 2004 at p. 34.
Testimony of Marlin Simon, 28 September 2004 at p. 142.
Testimony of David George, 19 October 2004 at pp. 101-103.

406. Virtually all of the military police situation reports concerning First Nations use of guns are mere hearsay and were not confirmed by direct evidence from the alleged witnesses. The statements from the military police involved in alleged altercations, were obtained by OPP investigators after Kenneth Deane had been convicted, when the OPP

was desperately seeking new evidence to submit at the appeal. These statements are of questionable objectivity and reliability.

Testimony of Trevor Richardson, 9 June 2006 at pp. 36-37.

407. The reports of incidents between military police and the Stoney Point people are not relevant to this Inquiry. Deputy Commissioner Carson himself has testified that he placed little weight on these reports and confirmed that they played no role in any decision that he made during September 4-7, 1995.

> Q: And during the period when you first became Incident Commander in 1993, and the period 1993 to 1995, there were – there was various frictions, sometimes, between some of the army personnel and some of the Stoney Pointers who were on, what they considered, their land; is that correct?
>
> **A: Fair enough.**
>
> Q: And you got some incident reports from time to time about some of that friction?
>
> **A: Oh, yes.**
>
> Q: And I gather that at least to some extent – you felt that perhaps some of the army people were not as understanding as they should have been of the Stoney Point people in their situation and tended to exaggerate things a bit; is that fair to say?
>
> **A: I wouldn't say exaggerate. I think the terms I've used is maybe – how did I describe that?**
>
> Q: I think –
>
> **A: Antagonize one another.**
>
> Q: I think in answer to a question of Mr. Millar's at one point, you said you – you then also fumbled for the right term, but you said something – I'm not sure if the term "overreaction" is the right term but maybe overly sensitive or being overly dramatic or something like that, sometimes. Is that fair to say?
>
> **A: Yeah, sure.**
>
> Q: But in any event, as a result of that or whatever, is it fair to say that your actions on September 4, 5, 6, 1995 were not influenced by those incident reports, particularly?
>
> **A: Which incident reports?**

Q: From ’93, ’94. The whole – the previous history of altercations with army personnel in the – in the course of the reclamation of the land prior to that time didn’t prejudice you against the Stoney Pointers?

A: No, no.

Q: And in fact – and – and you – you took those with something of a grain of salt. It didn’t – it didn’t influence the way you behaved on September 4, 5, 6; is that fair to say?

A: Well – well, we always try to maintain a – a neutral position. If there was a –

Q: Yes.

A: - criminal act of any nature, we attempted to investigate it and – and follow through –

Q: Sure.

A: - with it.

Q: Right, but I – I’m more interested in – it didn’t – you weren’t thinking of those particular instances as you acted on September 4, 5, 6, 1995?

A: No, no.

Testimony of John Carson, 9 June 2005 at pp. 140-142.

408. Thus, we do not consider the events at Stoney Point between May 1993 and September 3, 1995 in this submission.

2. The Reclamation of the Park

409. On Monday September 4, 1995, Labour Day, Ipperwash Provincial Park was to close for the season. Late in the afternoon, when almost all visitors had left, some Stoney Point people re-occupied Ipperwash Provincial Park. Their action was motivated by the knowledge that there were burial sites of their ancestors located on that property, as well as by their belief that the land in the park rightfully belonged to the Stoney Point people. As Stewart George movingly put it: “It’s our land. We were – wanted to make – let the people know that – that we’re home.” When asked why the Stoney Point people decided to move into the park and take it back, Warren George replied: “Because burial grounds had been desecrated and I believe there was a – that was a part of the original Aazhoodena.” Mike Cloud called the park “the heart of Stoney Point.”

Testimony of Marlin Simon, 28 September 2004 at pp. 214-217.

Testimony of David George, 19 October 2004 at pp. 146-148.

Testimony of Stewart George, 2 November 2004 at p. 62.

Testimony of Clayton George, 4 November 2004 at pp. 207-211.

Testimony of Mike Cloud, 8 November 2004 at pp. 191-193.

Testimony of Mike Cloud, 9 November 2004 at pp. 35-36, 146-151.

Testimony of Glen Bressette, 9 November 2004 at pp. 170-172.

Testimony of Stacy George, 22 November 2004 at pp. 60-63.

Testimony of Roderick George, 23 November 2004 at pp. 73-78.

Testimony of Kevin Simon, 1 December 2004 at pp. 141-142, 148-151.

Testimony of Cecil Bernard George, 6 December 2004 at pp. 194-196.

Testimony of Warren George, 8 December 2004 at pp. 127-128.

410. There were several OPP officers present at the time of the reclamation. However they withdrew following an altercation that resulted in damage to one of their cruisers.

Testimony of Stan Korosec, 6 April 2006 at pp. 35-37.

Testimony of Mark Gransden, 30 March 2006 at pp. 91-92.

411. The Stoney Point people were happy to have their homeland back.

Testimony of Mike Cloud, 9 November 2004 at p. 36.

412. That evening, Constable Vince George and park superintendent Les Kobayashi made two attempts to serve a "Notice of Trespass" on the people in the park. The Notice ordered the occupants to leave the Ipperwash Provincial Park. Although they were not successful in serving the "Notice of Trespass" on anyone, it would have been obvious to the people they spoke with that Constable George and Les Kobayashi intended to give them a document that would identify them as trespassers. In fact, Vince George told Bert Manning that he had a "Notice of Trespass" for him. Bert Manning left to try to find someone to accept the notice, and returned saying that an elder had not yet been appointed to accept the notice but that they should try again in the morning.

Exhibit P880: Letter from L. Kobayashi to "whom it may concern", Re: Order to leave Ipperwash and Pinery Prov. Park under the Trespass to Property Act." (September 4, 1995) (Inquiry Document No. 1012252).

Testimony of Les Kobayashi, 24 October 2005 at pp. 228-235.

413. After withdrawing from the park, the OPP set up checkpoints in at least four different locations, which they maintained up until the evening of September 6, 1995.

414. OPP policy at the time restricted the setting up of road blockades and checkpoints to very narrow circumstances: for use as an investigative aid to assist in the early apprehension of persons responsible for the commission of a crime, where there was a reasonable opportunity of apprehension.

Exhibit P1224: Part 10, Police Orders, Operations, s. 1243.2-1243.3, 1244.1-1244.2.

415. However, OPP officers acknowledged that the purpose of the checkpoints at Ipperwash did not coincide with the permitted purposes. Rather, the checkpoints were set up in order to prevent people from joining the protest in the park and to gather intelligence on those people who may be attempting to join the people in the park.

Testimony of Larry Parks, 2 March 2006 at pp. 14-16.

Testimony of Stan Korosec, 6 April 2006 at pp. 91-92.

416. One of the checkpoint officers, Constable Larry Parks, could not identify any legal authority on which he could rely to support the vehicle stops that he conducted over the period of September 5 through September 6, 1995. He could not identify a legal authority that allowed him to ask for the names and identifications of passengers in the vehicles. There is no such legal authority.

Testimony of Larry Parks, 2 March 2006 at p. 19.

417. The people in the park viewed the police checkpoints as a form of harassment and intimidation that contributed to escalating the situation.

Testimony of Les Kobayashi, 25 October 2005 at p. 231.

Testimony of Chris Coles, August 17, 2005 at pp. 116-118.

418. On the evening of September 5, 1995, OPP officers were involved in a bizarre and extremely reckless operation in the sandy parking lot. The people in the park had placed a number of picnic tables in the sandy parking lot that was immediately adjacent to the park property. In response, an OPP officer with no warning drove his cruiser into the

parking lot and into the picnic tables. Some of the Stoney Point people were either sitting on the tables or standing nearby. Some of the Stoney Point people threw picnic tables, rocks and other objects at the cruiser, as well as at the cruisers that attended to provide back up. The windshields of three different cruisers were damaged in the melee.

Testimony of Kevin Simon, 1 December 2004 at pp. 172-177.

Testimony of David George, 20 October 2004 at pp. 13-17.

419. It was almost certainly Constable Neil Whelan who was responsible for driving the cruiser into the picnic tables. He admitted as much during his testimony, though he claimed that there were no First Nations people nearby when he did so and that the OPP officers present were attacked with no apparent cause.

Testimony of Neil Whelan, 2 March 2006 at pp. 274-291.

420. Constable Whelan's evidence was extraordinary for its inconsistencies. Constable Whelan's own police notes contain no reference to striking picnic tables with his cruiser. Constable Whelan said that he drove his cruiser at an approximately 10 foot high stack of picnic tables, but only after approximately five other cruisers had arrived to provide backup. However, the notes of his partner that evening, Constable Japp, state that Constable Whelan struck the picnic tables *before* any back up arrived. Constable Parks described seeing a cruiser in among the picnic tables when he arrived at the scene.

Exhibit P1237: Handwritten Notebook entries of Neil Whelan, September 5, 1995 (Inquiry Document No. 2003958).

Handwritten notes of Constable Japp for September 6, 1995, p. 6 at 22:15 hours (Inquiry Document No. 100502)

Testimony of Neil Whelan, 2 March 2006 at pp. 274-291.

Testimony of Larry Parks, 28 March 2006 at pp. 255-258.

Testimony of Larry Parks, 29 March 2006 at p. 21.

Testimony of Mark Gransden, 30 March 2006 at pp. 103-104.

421. Most astonishing (apart from the claim that the Stoney Point people were able to stack picnic tables 10 feet high by hand) was the continuously shifting explanations Constable Whelan provided for the damage to his cruiser:

> Q: Now, you told Mr. Millar originally that the table fell from the pile you were pushing onto your hood.

A: Hmm hmm.

Q: But then I believe you agreed that later on you had said in other statements that someone had thrown a picnic table, right?

A: It's possible. I mean, there was a lot of different things happening down there at different times.

Q: Sir, I'm concerned about the consistency of your evidence. Didn't you tell Mr. Millar that one (1) person threw the table by himself?

A: I did, yes.

Q: Yeah. But you originally said nobody threw the table. How can you tell us, a couple of hours after you said, Nobody threw a table, it fell off, how can you shortly afterward you remember someone –

A: Well –

Q: - throwing a table?

A: - like I said, ten (10) years ago I remember one (1) table toppling off the – the pile onto the front of the cruiser.

Q: You were quite –

A: I mean, there could have been another time that a table got thrown on it when I wasn't, you know, wasn't around there at that – that particular time, I don't know.

Q: You told Mr. Millar that you were certain it was one (1) person who threw the table. Don't you remember Mr. Millar asking you, Isn't that a pretty heavy – heavy table for one (1) person?

A: Yeah. But one (1) person could throw it.

Q: And you said that one (1) person did throw it.

A: Yeah. I agree with you.

Q: Your partner says two (2) people threw it.

A: That's his notes. That's his rendition.

Q: But then you told us it just fell of the pile

A: Well, there were tables falling off the pile too.

Q: So what's the truth, sir? Can you take your mind back and tell us the truth as best as you can tell us?

A: The best I can tell you from ten (1) years is what I just told you.

Q: Is what?

A: Is what I just told you.

Q: Did it fall off, as you first told us, or was it thrown?

A: I remember a table falling off.

Q: And another one thrown?

A: And I remember a table being thrown.

Q: So there were two (2) tables that hit your cruiser?

A: Yes.

Testimony of Neil Whelan, 2 March 2006 at pp. 286-288.

422. Constable Whelan's testimony was inconsistent, self-serving and fantastic and should not be accepted. The evidence of the First Nations people in the parking lot that evening, such as Kevin Simon, should be preferred.

423. Several Stoney Point people also report that they heard an OPP officer directly threaten Dudley George in and around this time. There are differences between the accounts, which is not surprising given the length of time that has passed and the fact that the Stoney Point people, unlike the OPP, did not have notes to refresh their memories about the events of 11 years ago.

424. The descriptions of David George, Kevin Simon and Marlin Simon were entirely consistent on the following facts: A group of police officers came up to the fenceline. One of the officers said something like "Welcome to Canada" in a jeering tone. That same officer pointed out Dudley George and said something like "Dudley, you're going to be the first." Stoney Point people took the remark as a threat.

Testimony of David George, 19 October 2004 at pp. 180-182.

Testimony of Kevin Simon, 1 December 2004 at pp. 175-177.

Testimony of Marlin Simon, 29 September 2004 at pp. 58-62.

Testimony of Leland White, 10 February 2005 at pp. 33-35.

425. After hearing the threat, Marlin Simon picked up a handful of sand and threw it in the OPP officer's face. The OPP officer responded by attempting to pepper spray Marlin Simon.

Testimony of David George, 19 October 2004 at pp. 180-182.

Testimony of Kevin Simon, 1 December 2004 at pp. 175-177.

Testimony of Marlin Simon, 29 September 2004 at pp. 58-62.

426. Dudley George later reported this threat to his sister Carolyn George.

Testimony of Carolyn George, 3 February 2006 at pp. 113-115.

427. The police officers subsequently left the scene. The clearing away of the picnic tables was wisely left until the next morning when two Emergency Response Teams returned in daylight and removed the picnic tables from the sandy parking lot without incident.

428. The OPP attended the area on two further occasions, apparently in attemptd to enter into negotiations with the people in the park. Acting Detective Staff Sergeant Mark Wright attended on both occasions. He claims that his role was to introduce the OPP negotiators, not to act as a negotiator himself.

Testimony of Mark Wright, 22 February 2006 at p. 136.

429. The first attempt was on September 5, 1995. Mark Wright arrived at the park fence with Sergeant Brad Seltzer and Les Kobayashi of the MNR. Sergeant Seltzer was wearing a full police uniform and was armed. Les Kobayashi was wearing a bulletproof vest marked "OPP". Les Kobayashi understood that the purpose of their attendance was to attempt to serve the notice of trespass.

Exhibit P912, London Free Press, "Police playing waiting game at Ipperwash" (September 6, 1995) (Inquiry Document No. 1000662) [for picture of L. Kobayashi standing near fence].

Exhibit P913: Sarnia Observor, "Three natives at park charges" (September 6, 1995) (Inquiry document No. 2001840) [for picture of L. Kobayashi standing near fence].

Testimony of Les Kobayashi, 24 October 2005 at pp. 235-237.

Testimony of Les Kobayashi, 25 October 2005 at pp. 32, 40

430. After Wright failed to get anyone to talk to him, Wright, Seltzer and Kobayashi went to the main entrance to the former army base. Again, park superintendent Kobayashi understood that the purpose of attending at the army base was to attempt to serve a Notice of Trespass. At that point, Mark Wright was successful in engaging in conversation with Bert Manning.

Testimony of Mark Wright, 7 March 2006 at pp. 42-44.

Testimony of Les Kobayashi, 24 October 2005 at pp. 237-238.

431. Mark Wright told Bert Manning that there would be no negotiations and that the occupiers were trespassing on the park. Mark Wright told Bert Manning that MNR was going to be applying for a Court injunction to stop the occupation of the park.

Testimony of Les Kobayashi, 25 October 2005 at p. 230

Exhibit P426: Typed Scribe notes for September 5, 1995.

Exhibit 464: Telephone conversation between Mark Wright and Tim McCabe, September 6, 1995 at 20:19 hours at p. 17 (Inquiry Document No. 2000604).

432. At the conclusion of the discussion, it was agreed that the OPP would return at noon the next day to speak with Bert Manning, as that would give him time to consult with the elders. Acting Detective Staff Sergeant Mark Wright spoke with reporters, and told them that the OPP were not prepared to negotiate anything.

Exhibit P913: Sarnia Observor, "Three natives at park charges" (September 6, 1995) (Inquiry document No. 2001840) [for picture of L. Kobayashi standing near fence].

433. Although Acting Detective Staff Sergeant Mark Wright claims his role was to introduce the real negotiators, he did not even introduce Brad Seltzer at that time. Nor does it appear that he informed Brad Seltzer that Bert Manning had offered to meet again the next day.

Testimony of Brad Seltzer, 13 June 2006 at pp. 234-237.

434. Surprisingly, given that the OPP claim they greatly desired to speak to one of the occupiers, the OPP did not attend at this arranged meeting. Instead, on September 6, 1995, Mark Wright attended at the park fence with the negotiator, Sergeant Marg Eve, at approximately three o'clock in the afternoon, three hours after the arranged meeting. Sergeant Marg Eve was in full police uniform. The OPP had no success in getting any of the park occupiers to speak to them.

Testimony of Mark Wright, 7 March 2006 at pp. 143-145.

Testimony of Mark Wright, 21 March 2006 at p. 160.

435. Mark Wright agreed that, from his perspective, there was really nothing for him to negotiate in any event. The OPP was not in a position to negotiate with respect to the land claim. If the people in the park refused to leave, there was "nothing to negotiate."

Testimony of Mark Wright, 21 March 2006 at pp. 154-155.

436. Thus, from the evening of September 4, 1995 up until the early evening of September 6, 1995, the consistent message to the Stoney Point people was that the OPP considered them trespassers and wanted them to leave the park.

437. Nonetheless, the situation was peaceful. When John Carson left the Forest Detachment at approximately 7:30 p.m. for dinner on September 6, the situation was calm and there were no plans to take any OPP action that evening. The OPP were waiting for a court injunction before taking action to evict the people in the park.

Testimony of John Carson, 19 May 2005 at pp. 115-116.

438. Less than half an hour later, the situation had changed dramatically.

439. The trigger for this change was a very minor incident. Gerald George, a Kettle Point Band councilor, drove his car to the intersection of Army Camp Road and East Parkway Drive. Gerald George was a fairly provocative individual, who had recently written an extremely hostile letter to a local newspaper condemning the actions of the Stoney Point people, referring to them as "jerks" and "animals."

Testimony of Gerald George, 13 January 2005 at pp. 82-92.

Exhibit P-73: Gerald George's Letter to the Editor Forest Standard Aug 30, 95.

440. When Gerald George stopped at the intersection, he became involved in a shouting match with Stewart George, who was angry about the letter. Stewart George slapped Gerald George in the face and threw a rock at Gerald George's car as the car pulled away. Some minor damage was caused to the vehicle, which belonged to Gerald George's sister.

Testimony of Gerald George, 13 January 2005 at pp. 82-92.

Exhibit P-123: OPP Interview Report – Sept 6, 95 – (Gerald George Statement) (Inquiry Document No. 2000549).

441. Gerald George proceeded to the next OPP checkpoint and reported the incident.

Testimony of Gerald George, 13 January 2005 at pp. 82-92.

Exhibit P-123: OPP Interview Report – Sept 6, 95 – (Gerald George Statement) (Inquiry Document No. 2000549).

442. The story that eventually made its way through the chain of command to Inspector John Carson that night was an extraordinary exaggeration of the truth: that five to eight First Nations people had attacked a female resident driving by the sandy parking lot with baseball bats.

Exhibit P-444B, Tab 51, Transcript of call between Dale Linton and John Carson Sept 6, 1995 at 20:13:27 hours.

443. A few hours later, Inspector Carson sent the Crowd Management Unit, accompanied by the TRU team, to confront the Stoney Point people.

3. The deployment of the Crowd Management Unit and Tactical Rescue Unit

444. The reasons that Carson sent the officers down the road and the nature of what happened when the CMU reached the corner of East Parkway Drive and Army Camp Road have been the subject of intense scrutiny for over a decade. The broad outline of events is not in dispute.

445. In response to the CMU approach, those First Nations people who were in the sandy parking lot returned to the park side of the fence. The CMU formation moved forward and back several times. At each retreat, some First Nations people re-emerged into the sandy parking lot.

446. The CMU used “shield chatter” to intimidate the people in the park.

Testimony of Wade Lacroix, 8 May 2006 at pp. 107-109 and p. 223.

447. No OPP officer communicated the message to the First Nations people that they simply wanted them to stay on the park side of the fence. In fact, given the repeated message conveyed to the Stoney Point people that they were seen as illegal trespassers

and should leave the park, they would simply would have had no way of understanding this sometimes claimed wish of the OPP. It would have been reasonable for them to assume that the mass of OPP officers had gathered to evict them from the park.

448. The First Nations people threw projectiles at police officers, including rocks and sticks.

449. Cecil Bernard George was knocked to the ground and was severely injured by OPP officers.

450. Nicholas Cottrelle drove a school bus out of the park and down the road towards the CMU officers. Warren George followed in a car. The car struck several police officers on the roadway. Wade Lacroix, Kevin York, Mark Beauchesne, William Klym and George Hebblethwaite fired shots at the car. Wade Lacroix and Constable Brian Sharp fired at the bus.

451. Kenneth Deane fired three shots at Dudley George, one of which was the fatal shot.

452. The bus and car then retreated to the park and the OPP fled the area.

453. Many aspects of this violent and traumatic encounter are in dispute. Some of the key areas of controversy include the beating of Cecil Bernard George, the allegation that First Nations people fired at OPP officers, and the claim that Dudley George was armed. There is also considerable dispute about why the officers confronted the Stoney Pointers and what orders were given to the CMU. These aspects are dealt with below.

4. The Beating of Cecil Bernard George

454. There is substantial evidence that once the first “punch out” was ordered, Cecil Bernard George turned to run back into the park. Realizing that he would not be able to

make it back safely, and seeing that the officers were continuing to advance, he turned and took a defensive stance.

Testimony of Robert C. Huntley, 27 April 2006 at p. 205.

Testimony of Wade Lacroix, 10 May 2006 at p. 307.

455. Mr. George's own recollection of the event is as follows:

> All I could see were these police officers in front of me. I can see their eyes right through the shield. I seen the eyes. I wanted to run, I had nowhere to go. My friends were there, my family was there, I had to defend them. I had to defend myself. And they charged. They came forward. I couldn't hear the people that were behind me anymore. I heard one voice saying punch out. When I heard that voice say punch out I knew they were coming to punch me and punch everyone else that was in their way because they had no feelings. They were full of fear, they were scared of the Indians. The Indians had sticks and stones and they had guns.

Testimony of Cecil Bernard George, 7 December 2004 at p. 63.

456. Mr. George stated in his testimony that he swung at the officers with a pipe. He further explained:

> I – I knew I did wrong by picking up that pipe and hitting – striking at those officers. But yet I did it to protect what I felt needed to be protected. My sister was behind me, like I mentioned.

Testimony of Cecil Bernard George, 7 December 2004 at p. 101

457. This fact, however, does not justify the force subsequently applied by OPP officers, and the extensive injuries this excessive force caused. Cecil Bernard George was surrounded by officers who beat him with their batons and kicked him with their boots. During this beating, Cecil Bernard George was flailing on the ground, defenseless.

Testimony of James Root, 17 May 2006 at pp. 2, 4.

458. Dr. Marr, who treated Mr. George at Strathroy Hospital, testified that he had suffered at least 28 distinct blunt force injuries, and that these injuries were consistent with "being hit with something or by something."

Testimony of Dr. Marr, 26 April 2005 at pp. 100 and 113.

459. Mr. George described the beating as follows: “I seen shadows around me, hitting at me, trying to kill me.”

Testimony of Cecil Bernard George, 7 December 2004 at p. 64

A. The TRU Team Paramedic

460. A paramedic attached to the TRU team, Ted Slomer, was the person who performed the initial assessment and gave initial care to Cecil Bernard George.

461. Mr. Slomer appeared to have destroyed his “rough notes” of his assessment of Cecil Bernard George. His inconsistent, improbable testimony regarding the timing and reason for destroying his notes strongly suggests he was being dishonest. It is submitted that Slomer destroyed his notes to hide evidence of the severity of the police beating of Cecil Bernard George.

Testimony of Ted Slomer, 5 June 2006 at pp. 24-29.

462. At Warren George’s trial, Mr. Slomer said that Cecil George had a Glasgow Coma Scale score of “a thirteen or a fourteen” when he knew that he had never evaluated Mr. George as high as fourteen. A higher score on the scale would suggest a less severe injury.

Testimony of Ted Slomer, 5 June at pp 31-34.

463. In fact, there is some suggestion that Mr. Slomer should have evaluated Mr. George as “a twelve” on the scale because he indicated he thought he had deducted a point for motor response. That deduction would have lowered the score from thirteen to twelve.

Testimony of Ted Slomer, 5 June at pp. 34-35.

464. Mr. Slomer did not indicate to the Warren George trial his “rather firm conclusion” that no alcohol was involved in Cecil George’s condition.

Testimony of Ted Slomer, 5 June at pp 40 – 412.

465. Mr. Slomer refused to be interviewed by the SIU in the subsequent investigation. He understood why some people might have a problem with a health care provider refusing to be interviewed by the SIU about a beating of their patient.

Testimony of Ted Slomer, 5 June at pp. 51-53.

466. Mr. Slomer's lawyer was Norm Peel, the lawyer for Sergeant Deane and many other police officers. In fact, Mr. Slomer was made an auxiliary constable of the OPP in the days following the shooting, formalizing his allegiance to the OPP.

Testimony of Ted Slomer, 5 June at p 53.

467. Although he refused to be interviewed by the SIU, Slomer was quite content to be interviewed by the OPP.

Testimony of Ted Slomer, 5 June at p 55

468. It is submitted that his testimony makes it very clear that his pro-police attitude led to his failure to assist the SIU investigation of the police beating of Mr. George and led to his minimizing Mr. George's injuries at the criminal trial of Warren George, at which the extent of Cecil George's injuries was a central issue. It is therefore submitted that medical personnel who render assistance to victims of police should, if possible, be independent of the police.

469. The Aazhoodena and George Family Group recommends that:

Recommendation No. 47
The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that persons (other than police officers doing first aid) who provide medical assistance at the request of or by arrangement with police officers must be paramedics or other medical personnel who are independent of the police.

Recommendation No. 45
The Province of Ontario should enact a regulation pursuant to the Police Services Act making it an offence for a police officer to use a vehicle marked as an ambulance (or otherwise marked so as to indicate that it is a vehicle

used for the provision of medical services) for any operational purpose other than rendering of medical assistance.

B. The SIU Investigation into Cecil Bernard George's Injuries

470. The SIU undertook an investigation into the beating of Cecil Bernard George to ascertain whether excessive force had been used by OPP officers. In his July 11, 1996 report, the, Acting Director of the SIU stated he was of the view that:

> …the injuries suffered by Cecil Bernard George were the result of a violent confrontation between Mr. George and the OPP, where some officers apparently applied excessive force. Unfortunately, the investigation into this event is frustrated by the fact that neither Mr. George, nor any other protestor, can identify the officers involved.
>
> Exhibit 626, Ipperwash 95-PFD-130 Master File, Director's Report in custody injury of Cecil Bernard George, Sep 6/95, Inquiry Document 1005368.

471. On June 17, 1997, at the urging of then OPP Commissioner Thomas O'Grady, a reinvestigation by the SIU into the injuries of Cecil Bernard George was initiated. The investigation was severely hindered by the lack of cooperation from OPP officers.

> Exhibit 626, Ipperwash 95-PFD-130 Master File, Director's Report in custody injury of Cecil Bernard George, Sep 6/95, Inquiry Document 1005368.

472. In a letter to OPP Commissioner Gwen Boniface, Peter A. Tinsley, Director of the SIU, explained the difficulty SIU investigators faced while trying to conduct their investigation:

> I believe it to be necessary and only fair to inform you that in reaching the above noted decision, I was struck, in review of all the available evidence, by the discontinuity of the statements of the OPP officers who were interviewed as to the level of force applied to Mr. George and the injuries that he was clinically observed to have suffered. I concluded that the level of force actually applied against Cecil Bernard George by various OPP officers during the confrontation which caused his injuries, bore little relation to the picture that emerged from the officers' account of level of force used against Mr. George.
>
> Exhibit P-1535, SIU Letter to Commissioner Boniface, Feb. 20/99, p. 2 Inquiry Document 1005305.

473. In this letter, Tinsley also explains that his conclusions are based on lack of evidence:

> … my decision is based on a lack of credible and reliable evidence going to the identity of any individual officer or officers, and a similar lack of evidence to establish that the injuries, in fact, and in all of the circumstances, resulted from the use of excessive force by the involved officers.
>
> Exhibit P-1535, SIU Letter to Commissioner Boniface, Feb. 20/99, Inquiry Document 1005305.

474. Because individual officers could not be identified by either police witnesses or First Nations witnesses, the investigation was stymied and the file was closed.

475. The Inquiry has also been stymied by the continued stonewalling of the OPP officers who either took part in or witnessed the beating of Cecil Bernard George. However, this Inquiry has seen clear examples of OPP officers who mislead SIU investigators.

476. In his testimony at the Inquiry, Constable Leblanc stated that he observed one to three officers around Cecil Bernard George and that he witnessed George being stuck twice.

> Testimony of Dennis Leblanc, 23 May 2006 at pp. 169 and 171.

477. This evidence, however, was not provided to the SIU during their investigation. When asked why he did not provide this information during his SIU interview, Constable Leblanc replied:

> When I entered into the interview it was agreed upon by the SIU as well as myself and counsel that I would answer every and all questions to the best of my ability. I was never asked if I saw Mr. Cecil Bernard George hit by any of the members of the CMU.
>
> Testimony of Dennis Leblanc, 23 May 2006 at p. 176.

478. However, the SIU did ask Constable LeBlanc if he had any information to assist the investigation into how Cecil Bernard George received his injuries. In response, Constable LeBlanc stated that from what he saw, the injuries appeared to be trivial. He

did not report any of the information that the SIU was truly interested in – what he saw of the beating of Cecil Bernard George.

Exhibit 1558, SIU Interview of Dennis LeBlanc, 17 December 1992 (Inq. Doc 2005714).

479. Constable LeBlanc also told the SIU that he believed Cecil Bernard George was extremely intoxicated. This allegation was completely baseless and was intended to undermine Cecil Bernard George's credibility with SIU investigators. Mr. George was barely conscious when LeBlanc dealt with him and Constable LeBlanc admitted that he could detect no smell of alcohol. Constable Leblanc had seen Cecil Bernard George struck at least twice with a baton and involved in a "fight" with police in which police were "on top of him." Constable LeBlanc observed injuries to Cecil Bernard George's face. All these observations pointed to head trauma and shock as the reason for Cecil Bernard George's semi-conscious state.

Testimony of Dennis LeBlanc, 23 May 2006 at pp. 179-182.

480. In reply to the suggestion that he had intentionally withheld information from the SIU, Constable Leblanc stated:

> I never held any information. When I watched this fight, and that's what it was, I didn't see anything or any officer do an action or something that raised me a concern beyond the fact that it was officers fighting with a person on the ground trying to get control of him and he was fighting back. I saw what I thought was to be a baton strike. To me it appeared to be totally appropriate to fighting somebody who's on the ground; that's the best I can tell you.
>
> Testimony of Dennis Leblanc, 23 May 2006 at p. 177.

481. Constable Chris Cossitt's statements and testimony regarding Cecil Bernard George is consistent for its inconsistency but nothing else. He also withheld important information with respect to the beating of Cecil Bernard George.

482. At this Inquiry, Constable Cossitt initially testified that in the course of the full CMU "punch out," he ran forward with his squad. As he went forward, an "occupier" with a two by four stick held up over his left shoulder ended up in front of him. Constable Cossitt made contact with that person and they both fell to the ground. As he was falling,

Constable Cossitt "may have" made contact with the person's leg as the person was kicking out at him. Constable Cossitt then continued forward, but looked over his shoulder and saw that some other officers were coming up to the individual that he had knocked down. The person he knocked down was subsequently arrested.

Testimony of Chris Cossitt, 25 May 2006 at p. 51-60.

Exhibit P-1576: Transcript of evidence of Chris Cositt, R. v. Kenneth Deane, (Pages 167-210 of Transcript) April 09/97 at p. 198 (Inquiry Document No. 1005296).

483. Given the timing of these events, and the fact that Constable Cossitt saw officers engaging in the arrest of the person he knocked over, it is certain that the person Constable Cossitt was referring to was Cecil Bernard George. Cecil Bernard George was the only person arrested in the sandy parking lot, and he was the only person who was knocked to the ground in that manner.

484. Yet, at the trial of Cecil Bernard George, Constable Cossitt testified that he was "not sure which officer had contact" with Cecil Bernard George and that he did not know how the Native came to fall down. Constable Cossitt testified that he was eight to ten metres behind when the Native went down.

Exhibit P-1573: Transcript of evidence of Chris Cossitt, R. v. Cecil Bernard George, July 15/96 at pp. 23-231 (Inquiry Document No. 1004660).

485. Constable Cossitt admitted that he did not tell the truth at the trial of Cecil Bernard George in that respect:

> Q: Now, sir, did you tell the Court then: "I'm not sure which officer had contact with him?"
>
> **A: Yes, sir.**
>
> Q: But you knew you were the officer who had contact with him, right?
>
> **A: Yes.**

Testimony of Chris Cossitt, 24 May 2006 at p. 143.

486. Constable Cossitt therefore perjured himself in a court of law. His inconsistent testimony likely mislead and confused the SIU investigation.

487. The SIU did not have the benefit of hearing the extensive first hand and fulsome evidence that has been heard throughout the Inquiry. The extent of Cecil Bernard George's injuries and the evidence that he was beaten mercilessly while lying helplessly on the ground leads inevitably to the conclusion that OPP officers used far more force than was necessary to place Cecil Bernard George under arrest. It is therefore submitted that this Commission can and should make a factual finding that OPP officers used excessive force when arresting Cecil Bernard George.

5. The people in the park did not have firearms that evening

488. All of the First Nations witnesses who were in the sandy parking lot that evening that testified at this Inquiry were consistent in their evidence that they did not have any firearms.

Testimony of David George, 20 October 2004 at pp. 8-9, 36.
Testimony of Kevin Simon, 1 December 2004 at pp. 189, 208-209.
Testimony of Kevin Simon, 2 December 2004 at pp. 50-51, 172-173.
Testimony of Marlin Simon, 29 September 2004 at pp. 24-25, 42, 77-80.
Testimony of Marlin Simon, 30 September 2004 at pp. 19-21, 24, 61-62, 73, 138-140.
Testimony of Roderick George, 23 November 2004 at pp. 79-81, 151.
Testimony of Roderick George, 25 November 2004 at pp. 151-152, 163-164.
Testimony of Glenn George, 3 February 2005 a pp. 50.
Testimony of Carolyn George, 3 February 2005 at pp. 12-128.
Testimony of Carolyn George, 7 February 2005 at pp. 20.
Testimony of Stewart George, 2 November 2004 at pp. 66.
Testimony of Elwood George, 3 November 2004 at pp. 45-57, 74-77, 101.
Testimony of Elwood George, 4 November 2004 at pp. 25-26.
Testimony of Glen Bressette, 9 November 2004 at pp. 199-200, 262.
Testimony of Cecil Bernard George, 6 December 2004 at pp. 214-215.
Testimony of Warren George, 8 December 2004 at pp. 86-87, 140, 194-195.
Testimony of John Thomas Cousins, 12 January 2005 at pp. 16-17, 49, 162.

489. Only one OPP officer testified at the Inquiry that they saw a firearm in the hands of any of the First Nations people during the altercation: Chris Cossitt. Of course, Kenneth Deane undoubtedly would have testified as he did at his criminal trial, that he

saw Dudley George with a long gun. Both of these officers have been separately found by a court of law to have perjured themselves with respect to these claims. Several other officers testified to hearing gunshots that they attributed to First Nations firing at police officers. It will be shown that these officers did not have good grounds for that attribution; they undoubtedly actually heard gunshots fired by other officers.

A. Chris Cossitt

490. Constable Chris Cossitt claims to have seen a firearm discharged from the car that Warren George drove towards OPP officers on the roadway.

491. A court of law has already found that Constable Chris Cossitt perjured himself with respect to the events that took place in the sandy parking lot on the evening of September 6, 1995. In the Deane trial, the Honourable Mr. Justice Fraser stated:

> And at this point perhaps I will comment on the testimony of Constable Cossitt. The Crown called his testimony amusing, which is one word; I might choose others. Rather than scrutinize Constable Cossitt's testimony for any grains of truth that might fall out, I have dismissed it as being clearly fabricated and impossible.
>
> Exhibit P484: Judge H. Fraser's reasons for judgment against Kenneth Death, April 28, 1997 at Sarnia, Ontario at p. 168 (Inquiry Document No. 1005301).

492. Despite this clear finding of perjury, the OPP did not discipline Constable Cossitt and concluded that the allegation of perjury was unfounded, in part due to the Professional Standards Branch's puzzling and erroneous view that Justice Fraser did not "state any specific concern about Cossitt's testimony".

> Exhibit P1053: Discipline file relating to Constable Cossitt.

493. As is clear from Constable Cossitt's testimony referenced above regarding his encounter with Cecil Bernard George, the *R. v. Deane* trial was not the only one in which he perjured himself.

494. In addition, Constable Cossitt's statements over the years and his testimony at the Inquiry with respect to the allegation of a gun in Warren George's car were riddled with inconsistencies and improbabilities.

495. At the Inquiry, Constable Cossitt claimed that he saw the car run into several officers. He stated that he then ran forward to the open driver's side window and raised his baton to strike the driver. At that point he saw approximately four inches of the barrel of a 12-gauge shotgun emerge from the window. The weapon discharged. He could see the muzzle flash extending about twelve to fifteen inches out of the barrel and heard a "loud thunderous bang" consistent with a shotgun. He felt the heat from the shot. He threw his body away from the car and sought to find a position of safety.

Testimony of Chris Cossitt, 24 May 2006 at pp. 79-85.

496. Constable Cossitt's tale broke down under further examination.

497. The five officers that fired their weapons at the vehicle were staring directly at the car during the same time period. The Inquiry also heard from Constable Dennis Leblanc and Sergeant Huntley who testified that they were watching the car closely. None of these seven officers saw a gun. The blast of a shotgun firing would have been hard to miss, yet no other officers report hearing it. This absence of corroboration is fatal to Constable Cossitt's claim that a shotgun was fired from the car.

Testimony of Robert Huntley, 27 April 2006 at p. 134-135.

498. Moreover, Constable Cossitt's testimony contradicted his prior testimony and statements in several important respects.

499. First, Constable Cossitt has given inconsistent statements with respect to whether or not he was able to see any of the features of the driver of the car. During his testimony at the Inquiry, Constable Cossitt stated that he did not recall seeing anyone inside the vehicle, though he assumed that someone must have been driving the vehicle. During his SIU interview on December 7, 1995 he stated that he could see a "black silhouette" but

nothing more. During his interview on September 9, 1995, he described the driver as a "male Native." Constable Cossitt could not account for these three contradictory descriptions of what he could observe of the driver of the car.

Testimony of Chris Cossitt, 24 May 2006 at pp. 87, 315-325.

Exhibit P1575: Statement of Chris Cossitt to SIU, December 7, 1995 at p. 15.

Exhibit P1574: Statement of Chris Cossitt, September 8, 1995 at p. 6.

500. A person who is incapable of consistently stating what they did or did not see of their assailant is an extremely unreliable witness, to say the least.

501. Second, Constable Cossitt has given many different descriptions of the firearm he claims he saw sticking out of the car window. At the Inquiry he was categorical that it was consistent with a 12-gauge shotgun. In prior statements he referred to the firearm as "shotgun style," "a four inch barreled firearm" and "a weapon." Other officers reported that Constable Cossitt had described seeing a "sawed-off shotgun," a "long gun," "a shotgun coming up from behind the driver's seat" and that he had "seen a gun barrel stuck out of the *back window of the car* and had seen gunfire out the window" (emphasis added). Constable Cossitt did not deny that he made any of these contradictory statements.

Testimony of Chris Cossitt, 24 May 2006 at pp. 81-82, 186-193.

Exhibit P1570: Handwritten notes of Chris Cossitt for September 6, 1995 at pp. 59-60.

Exhibit P1574: Statement of Chris Cossitt, September 8, 1995

Exhibit P1581: Statement of Ron Piers, p. 8 (interview with Jamie Stirling and Jeff Thorne and Chris Cossitt)

Exhibit P1582: Affidavit from David Smith in R. v. Deane, August 1, 1998 (2005347).

Exhibit P1583: Affidavit of Myra Rusk in R. v. Deane, August 3, 1998 (2005345).

502. Third, the Inquiry was the first recorded statement in which Constable Cossitt claimed that he could actually feel the heat from the shotgun blast. It is inconceivable, given the fact that he was wearing a full Crowd Management Unit uniform that completely covered his skin and included both a hand held shield and a visor over his face, that Constable Cossitt could have felt the heat from the alleged shotgun blast. This was a further improbable detail that he added to his testimony.

Testimony of Chris Cossitt, 24 May 2006 at pp. 83, 307-313.

503. Finally, Constable Cossitt testified at the Inquiry that, as he took a position of cover to escape the shotgun fire from the car, the bus came back down the road and he heard gunshots coming from the area of the bus. In early statements, he claimed that the gunshots he heard came *from* the bus. In his statement to the SIU, he went so far as to say that he heard gunfire coming from the rear of the bus. However, by the time of his testimony at the Deane trial, Constable Cossitt was taking the same position that he took at the Inquiry – that he heard gunshots coming from the area of the bus but could not be more precise about their source. As there were officers who fired at the bus at that time, it was OPP gunfire that he heard, if he heard anything at all.

Testimony of Chris Cossitt, 24 May 2006 at pp. 102-103, 172-173.

Exhibit P1570: Handwritten notes of Chris Cossitt for September 6, 1995 at p. 61.

Exhibit P1575: Statement of Chris Cossitt to SIU, December 7, 1995 at p. 21.

Exhibit P1576: Testimony of Chris Cossitt in R. v. Deane pp. 181-182.

504. Constable Cossitt was unable to account for these many inconsistencies.

505. It is submitted that the findings of this Inquiry should follow those of the Honourable Mr. Justice Fraser in concluding that Constable Cossitt has perjured himself and, "rather than scrutinize" Constable Cossitt's testimony at this Inquiry for any "grains of truth that might fall out", his testimony should be rejected as being clearly fabricated and impossible.

Exhibit P484: Judge H. Fraser's reasons for judgment against Kenneth Death, April 28, 1997 at Sarnia, Ontario at p. 168 (Inquiry Document No. 1005301).

B. Kenneth Deane

506. Kenneth Deane was not able to testify at this Inquiry due to his unfortunate death earlier this year.

507. Prior to his death, Kenneth Deane never retracted his allegation that Dudley George was armed when he shot him. He claimed that, after the bus and car had driven

out of the park, he saw an individual cross Army Camp Road and hide by the three posts at the intersection. This individual left the intersection area and half walked, half ran, to approximately the crown of the roadway. Deane claimed that he saw this individual shoulder a rifle in a half-crouched position. The individual scanned Deane and the CMU's position with his rifle, and Deane discharged three rounds to stop the firearm threat. He saw the individual falter, go down on one knee and then get back up. As the individual turned, he threw the rifle into the ditch of nearby field.

> Summary of Kenneth Deane's Testimony taken from civil and criminal proceedings, as prepared by Commission Counsel.

508. The judge who heard to the Deane trial did not accept this version of events. Justice Fraser commented as follows:

> The defence evidence just summarized requires the Court to accept the following points. First, that Dudley George left an area of safety to go to an open area on the roadway. Secondly, that the accused either was unable to or chose not to use his sure light flashlight device or laser light features before or after Dudley George was shot. That immediately after seeing Dudley George assisted back into the park, he turned to his right and spoke to Sergeant Hebblethwaite with regard to the head count. Further, that Sergeant Deane walked 20 meters but did not have time to get the message over the communication system, re: the muzzle flashes or danger from the sand berm. Further that Sergeant Deane watched Dudley George move from the position where he was shot to a location in closer proximity to the CMU still carrying the rifle in his hand and still, according to Doctor Spitz's evidence, with the ability to fire a rifle. And not knowing how seriously he had injured Dudley George from posing any further threat. Further that Dudley George having just sustained a bullet wound to his chest, which fractured his clavicle completely, punctured his left lung, partially fractured his left eighth rib, completely fractured his left ninth rib, tore a number of blood vessels, that he established as his next priority, the disposal of the weapon he was allegedly carrying. Furthermore that having made this decision Dudley George moved towards the police officers to dispose of the rifle, rather than heading immediately towards the park where his friends and relatives were. Further that Dudley George having sustained the injuries described above was able to throw the rifle into the field or ditch. Further that Dudley George threw the rifle into an area where Constable Klym and Constable Beauchesne happened to be. Also that after the threat was over he sent a message over the communication system but that message did not include any reference to shooting a man with a rifle, or the rifle having been thrown in the ditch. Also that someone with the responsibility to

> insure the security of his fellow officers and the CMU members would not warn them about the rifle. The Court would also have to accept that Constable Beauchesne having been involved in the Grassy Narrows incident which resulted in the death of one OPP officer and wounding of two other officers, having been involved in tracking a suspect through the woods until he was arrested; having received a commissioners citation for his efforts, was nevertheless not the least bit concerned when Sergeant Deane asked him if he had seen the guy with the gun. Also that Constable Beauchesne who gave the impression to the Court of being an intelligent, highly competent member of this elite team, suddenly became disinterested in the subject of a native with a gun because of some telepathic message given to him by Sergeant Deane. Further that Sergeant Deane chose not to say anything to Sergeant Hebblethwaite no more than 15 seconds after he saw Dudley George being helped into the park. Further that Sergeant Deane decided to save this question for his meeting a short time later with Constable Beauchesne.
>
> …
>
> I find that Anthony O'Brien (Dudley) George did not have any firearms on his person when he was shot. I find that the accused Kenneth Deane knew that Anthony O'Brien Dudley George did not have any firearms on his person when he shot him. That the story of the rifle and the muzzle flash was concocted ex post facto in an ill fated attempt to disguise the fact that an unarmed man had been shot.
>
> …
>
> I find sir that you were not honest in presenting this version of events to the Ontario Provincial Police investigators. You were not honest in presenting this version of events to the Special Investigation's Unit of the Province of Ontario. You were not honest in maintaining this ruse while testifying before this Court. I have considered all of the evidence presented in this case, and on the basis of the evidence that I have accepted, I find you Kenneth Deane guilty as charged.
>
> Exhibit P484: Judge H. Fraser's reasons for judgment against Kenneth Death, April 28, 1997 at Sarnia, Ontario at pp. 164-166, 169-170 (Inquiry Document No. 1005301).

509. It is submitted that Justice Fraser's analysis is compelling and convincing and should be accepted by this Commission.

510. Further, additional evidence has emerged at this Inquiry that adds to the strength of the case against Kenneth Deane.

511. As he did at Kenneth Deane's trial, Sergeant George Hebblethwaite confirmed again that Dudley George was not armed. He testified that he heard a couple of shots, and then he saw a person with an object that looked like a pole or a stick. He saw the person turning away in a clockwise motion. The person went to his knee, and then got back up almost immediately, bent over at the waist. He initially thought that the person had been shot, but rejected that idea when he saw how quickly the person got up. He next actions were entirely consistent with someone who had registered the object in the person's hands as a pole or stick:

> Q: And if you had thought that what Dudley George had been carrying was a firearm of any kind at the time, would have reacted differently than you did?
>
> **A: If I had registered as a firearm?**
>
> Q: Yes.
>
> **A: Yes. I – I suspect I would have maintained focus on him and to – to see what was next.**
>
> Q: And – and that would be because you wouldn't turn your – your back on somebody with a firearm?
>
> **A: That's right.**
>
> Q: And instead, you made the call that this person was not posing a risk – a perceivable risk to police officers, and you diverted your attention now to the bus.
>
> **A: There's not as much of a risk as the person driving the bus back through us, yes.**
>
> Testimony of George Hebblethwaite, 11 May 2006 at pp. 249-250.

512. The only support provided to Kenneth Deane's claim that he had shot an armed person on the road was provided by Constable Mark Beachesne, who testified at the trial that Kenneth Deane asked him, "did you see the guy with the gun?" while they were still out on the roadway shortly after the shooting.

> Exhibit P1591: Transcript of Mark Beauchesne's evidence in R. v. Deane, 10 April 1997 at pp. 119, 135-136.

513. However, at the Inquiry, Constable Beauchesne remarked that, upon reflection, he felt that Kenneth Deane conveyed this information and told him "my guy dropped" only

after they had debriefed Staff Sergeant Skinner and information had come in from the hospital. Constable Beauchesne's correction makes sense, since (as Justice Fraser noted) he would surely have taken steps to address a gun threat on the roadway had Kenneth Deane advised him of such:

> Q: If he had reported to you on the roadway, as you originally testified in the Deane trial, and as you now are somewhat retracting, I put it to you sir, you would have notified other people, too, that there was a gun. That would be the only evidence you would have had of a gun in First Nations people's hands, and you would have certainly taken that very seriously, would you not, sir?
>
> **A: Yes, sir.**
>
> Testimony of Mark Beauchesne, 25 May 2006 at pp. 88-90, 140.

514. It is clear from a number of sources that the officers most directly involved in the SIU investigation – that is the Incident Commander, his second-in-command Mark Wright, and the officers who had fired their weapons – initially believed that Dudley George must have been the driver of the car. There appears to have been no awareness until much later by these officers that Kenneth Deane claimed to have shot an armed man who was not in a vehicle, providing further evidence that Deane did not fabricate his story until some signifcant period after the events.

> Testimony of Mark Wright, 21 March 2006 at p. 36.
>
> Exhibit P444B: Transcript of telephone conversation between John Carson and Anthony Parkin, September 7, 1995 at 02:37 hours.
>
> Exhibit P737: Transcript of proceedings before Justice Daudlin, September 7, 1995 (Inquiry Document No. 3000504).
>
> Exhibit P1063: Transcript of telephone call between Anthony Parkin and Mark Wright, September 7, 1995 at 04:31 hours.

515. Even by late on the day on September 7, 1995, when Wade Lacroix called Staff Sergeant Brian Deevey, Lacroix believed that Dudley George had been shot in the car and was quite concerned that he may have fired the fatal bullet.

> Testimony of Wade Lacroix, 9 May 2006 at pp. 92-94, 214-215.
>
> Exhibit P1361: Telephone call between Wade Lacroix and Staff Sergeant Brian Deevey, September 7, 1995, 18:45 hrs from Mobile Command Unit Logger Tape #7 Track 1 Disc 3 of 3, pp. 2-3.

516. The evidence leads to only one conclusion beyond any reasonable doubt: Kenneth Deane shot an unarmed man and lied about it.

C. Other officers who claimed to have heard or seen gunfire

517. Other officers who had claimed in the past to have heard or seen gunfire that they attributed to First Nations people were forced to acknowledge at this Inquiry that what they saw and heard was consistent with OPP officers firing their weapons.

518. There were seven different officers firing weapons and they were firing different types of firearms. The Inquiry has heard evidence that the following types of firearms were fired by OPP officers on the roadway: HK MP5 9 mm, HK 33E3 .223, HK MP5 SD, Smith & Wesson .38 special, and .40 caliber Sig Sauer. These firearms would produce varying sounds and varying types of muzzle flashes. The firing of these different weapons fully accounts for the difference in sounds that several officers testified to hearing.

> Handwritten chart and notes re: officers who discharged their weapons during incident, written by Inspector Linton, September 8, 1995 (Inquiry Document No. 1002400).
>
> Testimony of Kevin York, 18 May 2006 at pp. 90-91.

519. Staff Sergeant Wayde Jacklin testified that the muzzle flashes he saw on the east side of East Parkway Drive were probably from an officer firing. More than that, he assumed at the time that the muzzle flashes were from a police officer firing a weapon.

> Testimony of Wayde Jacklin, 26 April 2006 at pp. 206-207.

520. Staff Sergeant Wade Lacroix testified that he saw muzzle flashes in the area of the car on the roadway, but he did not know where they came from. He acknowledged at this Inquiry that the muzzle flashescould have been a reflection from his own weapon on the windshield. He did not see any firearm extending from the car window.

> Testimony of Wade Lacroix, 9 May 2006 at pp. 31-32.
>
> Testimony of Wade Lacroix, 10 May 2006 at pp. 271-272.

521. Although Constable Leblanc initially concluded that the different shots he heard were a result of an "exchange" of gunfire, upon learning the variety of weapons fired by OPP officers that night he agreed that "it is conceivable that the rounds I heard were police rounds then, yes." He testified that he saw muzzle flashes in the vicinity of the car, but was unable to identify the source. Constable Leblanc did not report seeing these muzzle flashes until well after the events in question – after Kenneth Deane had been convicted. He testified that he did not know the source of the muzzle flashes. Given the number of officers who fired at the car, it is not surprising that Leblanc reports seeing muzzle flashes, if in fact he saw any.

Testimony of Dennis Leblanc, 23 May 2004 at pp. 190-195, 210.

522. Constable James Irvine was a member of one of the TRU observation teams. His main task that evening was to scan for any firearm threat. He had a night vision scope on his rifle to assist him with this job. He did not see any First Nations person with a firearm.

Testimony of James Irvine, 25 May 2006 at pp. 290, 295, 306-307.

523. Constable Irvine was also of the view that the different types of gunshots he heard reflected an exchange of gunfire between First Nations people and the OPP. However, Constable Irvine was also forced to acknowledge that what he heard was consistent with weapon fire from OPP officers only. He was also forced to agree that what he heard could be consistent with OPP officers firing from different positions on the road.

Testimony of James Irvine, 26 May 2006 at pp. 98-105.

524. It is striking, after all these years of police claims that the Stoney Point people fired at OPP officers, that the only serious injuries were to the Stoney Point people themselves. Cecil Bernard George was badly beaten. Nicholas Cottrelle had glass embedded in his back as a result of shots fired at him through the bus's windows, and, most tragically, Dudley George was killed by a sniper's bullet. Yet approximately 40 OPP officers stood in the middle of a road without protection and none of them were shot.

525. Thus, the vicious allegations that First Nations people fired upon OPP officers and that Dudley George was armed must be conclusively laid to rest by this Inquiry. It is respectfully requested that the final report of this Commission contain strong language to correct the decade of misinformation and lies. The First Nations people were not armed.

6. Pursuit and arrest of Marcia Simon and Melva George

A. Factual Overview

526. Dudley George, Cecil Bernard George and Nicholas Cottrelle were not the only victims of police brutality that evening.

527. Upon hearing reports that OPP officers had shot at and wounded some Stoney Pointers, Marcia Simon and her elderly mother Melva George attempted to drive to a telephone booth to call for ambulances. Marcia Simon was particularly concerned that her son, Kevin Simon, may have been injured.

528. Marcia Simon took care to drive at or below the speed limit and to come to a full stop at all stop signs. As she drove down Highway 21 towards Northville and a functional public telephone, she realized that police cruisers were following her with their lights flashing. Constable Steven Lorch confirmed that Marcia Simon was not driving in a dangerous or erratic manner, and that apart from not pulling over for police officers she appeared to be following the rules of the road.

Testimony of Marcia Simon, 23 September 2004 at pp. 167-168.
Testimony of Steven Lorch, 12 June 2006 at p. 179.
Testimony of Mark Gransden, 30 March 2006 at p. 222.
Testimony of Mike Dougan, 3 April 2006 at p. 162.

529. Marcia Simon explained that she “had mixed feelings about whether to turn to them [the OPP] for help since they had just shot up our people.”

Testimony of Marcia Simon, 23 September 2004 at pp. 167-168.

530. There were two police cruisers following Marcia Simon. Constables Lorch and Bell were in the cruiser that was immediately behind Marcia Simon and her mother. Constables Gransden and Dougan were in the second cruiser. Constable Bell radioed the Command Post to advise that they were pursuing a vehicle. He was instructed to deactivate the flashing lights, which was done immediately.

Testimony of Constable Steven Lorch, 12 June 2006 at p. 183.

531. Although Constable Lorch was prepared to state that Ms. Simon ought to have known to pull over when their lights were flashing, he was reluctant to agree to the converse: that she ought to have known by virtue of the deactivation of the flashing lights that she was no longer required to stop. Despite the reluctance of this officer, it is obvious that the deactivation of the cruiser's lights would have sent a confusing signal to Marcia Simon with respect to whether or not the OPP officers following her wanted her to pull over. In fact, Constable Dougan, as opposed to his colleague, did acknowledge that the deactivation of the lights would have confused the driver.

Testimony of Constable Steven Lorch, 12 June 2006 at pp. 183-184.

Testimony of Mike Dougan, 3 April 2006 at p. 166.

532. Ms. Simon pulled into the parking lot at a restaurant in Northville called MacPherson's. Both Ms. Simon and her mother exited their vehicle. Marcia Simon ran to the payphone that was attached to the side of the wall and dialed "0" for the operator. The two police cruisers pulled in behind her, and turned their cruisers' lights on the scene for illumination.

Testimony of Constable Steven Lorch, 12 June 2006 at p. 185.

Exhibit P1266: Handwritten notes of Mike Dougan for 6 September 1995 at pp. 53-54 (Inquiry Document No. 2003459).

533. As Ms. Simon was describing the need for ambulances to the operator, the four OPP officers pointed long guns at both her and at her mother. Constable Mark Gransden then approached Ms. Simon with his handgun drawn. He pulled her roughly away from the phone.

Testimony of Constable Steven Lorch, 12 June 2006 at pp. 186-187.

Testimony of Mark Gransden, 30 March 2006 at pp. 238-244.

Testimony of Mike Dougan, 3 April 2006 at pp. 176-178, 240-241.

Exhibit P1266: Handwritten notes of Mike Dougan for 6 September 1995 at pp. 53-54 (Inquiry Document No. 2003459).

534. Some of the altercation was captured in a recording of Marcia Simon's telephone call to the operator:

> OPERATOR: Police, Fire and Ambulance.
>
> (in the background) don't make a move lady.
>
> I'm just talking on the phone, get the gun out of here.
>
> OPERATOR: Do you need the police, fire or ambulance.
>
> CALLER: Ambulance.
>
> OPERATOR: Okay, I'm going to patch you through, okay.
>
> OPERATOR: Okay, what's your address there?
>
> (in the background) get on the ground.
>
> OPERATOR: What's your address. Okay this is the operator you're talking to now.
>
> OPERATOR: What is the address there, do you know.
>
> OPERATOR(1): I don't know, I've only got a phone number
>
> OPERATOR: Alright what's the phone number?
>
> OPERATOR(1): It's 243-8953.
>
> AMBULANCE: There's ambulance there now, and another ones been called.

Exhibit P48: Recording of Marcia Simon's telephone call to the Operator, September 6, 1995.

535. Constable Gransden and Constable Lorch forced Marcia Simon to the ground where she was roughly placed under arrest and handcuffed. Marcia Simon could hear her mother yelling in the background about Ms. Simon's recent bone graft, but the officers paid no attention.

Testimony of Marcia Simon, 23 September 2004 at pp. 167-168.

Testimony of Mark Gransden, 30 March 2006 at pp. 244-245

536. Once she was in an upright position, Ms. Simon saw a terrifying sight:

> I was aware of [my mother] right down on the ground trying to pray. She had her medicines with her and they wouldn't allow her to use them and

> they had shotguns levelled right at her head, yelling at her to put her hands in the air and she was pleading that she couldn't because she had arthritis.
>
> And I thought they were going to blow her away and I pleaded with them. I said, Leave her alone. She's been just riding with me. She didn't do anything wrong.
>
> I asked them if that's how they were trained to treat old, grey-haired widows and they seemed to calm down a little. They couldn't answer that question.
>
> Testimony of Marcia Simon, 23 September 2004 at p. 172.

550. The audio recording of the telephone call to the operator captures Marcia Simon screaming "leave her alone," terrified for her mother's safety.

> Exhibit P48: Recording of Marcia Simon's telephone call to the Operator, September 6, 1995.

551. Marcia Simon and her mother were placed in the back of Constables Lorch and Bell's cruiser, and transported to Ravenswood. Ms. Simon was then taken to the Forest Detachment, and her mother was escorted to Kettle Point. The car, Marcia Simon's purse and her glasses were left in the parking lot. By this time, the OPP officers were aware that Ms. Simon had been attempting to get an ambulance for someone who had been shot on the base. Yet, they did not consider whether, in light of this explanation for her behaviour, it was appropriate to continue the arrest.

> Testimony of Marcia Simon, 23 September 2004 at p. 178-179.
>
> Testimony of Mike Dougan, 3 April 2006 at p. 246-248.

552. Although Ms. Simon clearly communicated to the OPP officers who dealt with her that she was seeking an ambulance for possible gunshot injuries, none of the OPP officers sought further information from her with respect to the location of possibly injured parties. None of the OPP officers who dealt with Ms. Simon took any steps to ensure that an ambulance was dispatched to deal with her particular concern. Marcia Simon explained to Constable Dougan that evening that she wouldn't ask for police help in getting an ambulance because the police "have never helped before". Everything about her interaction with the OPP that evening reinforced her lack of trust in the OPP.

> Testimony of Constable Steven Lorch, 12 June 2006 at p. 187.
>
> Testimony of Mike Dougan, 3 April 2006 at p. 189-190.

Exhibit P1266: Handwritten notes of Mike Dougan for 6 September 1995 at p. 54 (Inquiry Document No. 2003459).

553. Ms. Simon spent several hours in custody at the Forest Detachment. The old military jacket that she was wearing was forcibly taken from her and she was told that she could be charged with impersonating a military officer for wearing it. Her jacket was never returned to her possession. She was not permitted to use a telephone to speak to her cousin and lawyer, Ron George, for several hours.

Testimony of Marcia Simon, 23 September 2004 at p. Testimony of Marcia Simon, 23 September 2004 at p. 181-182.

554. Finally, in the early morning hours of September 7, 1995, Ms. Simon was taken in an OPP cruiser to the Indian Hills Golf Course and turned over to the custody of two Kettle Point police officers: Chief Miles Bressette and Constable Wally Kaczanowski. These officers drove her to her mother's home at Kettle Point.

Testimony of Marcia Simon, 23 September 2004 at pp. Testimony of Marcia Simon, 23 September 2004 at pp. 183-185

Testimony of Miles Bressette, 25 February 2005 at pp 17-18.

555. The incident was obviously extremely traumatic for both Marcia Simon and her mother. Pictures taken on September 7, 1995 show the deep bruises on her arms that were sustained during her struggle with the police.

Exhibit P49: Binder of documents for Marcia Simon, Tab 7.

556. Marcia Simon described the impact that the events of the evening of September 6, 1995 and early morning hours of September 7, 1995 had upon her:

> **A: I – I suffered from a period of time with excruciating pain in the right groin and I don't know whether it was like a pinched nerve in my back that – I was very reluctant to go anywhere for help but eventually I saw a doctor in London that just called sciatica. I think that sort of is – is another term for the same thing.**
>
> **And I just had to rest – rest my back for an extended period of time with my knees up and give it time to heal. I – I tried to carry on working and I wasn't able to hang onto things very well because I had prior to that already just being going through occupational therapy to get the hand working.**

And that aggravated it and I had to start back over again with getting back up to where I was prior to this in terms of what I could do with the range and the exercises I did.

…

Q: All right. And I've asked you about the physical impacts of this event. What about emotional impacts?

A: Well you can still see how difficult it is to talk about that night and it was a long time before I felt safe enough to even come back into the town of Forest. Memories of how I was used in that garage at the police station I don't think will ever go away, that night, at Northville.

When I see policemen coming I – I really have a difficult time with that and I'm working on it. I have – I just had a session last night with my counsellor to help me, this many years later, where I am undergoing counselling to try to cope and I'm getting better. I can come into Forest without feeling terrorized.

Testimony of Marcia Simon, 23 September 2004 at pp. 190-193.

557. Testifying about a traumatic event is obviously difficult for any witness. However, Ms. Simon's trauma was compounded when she learned that there were documents prepared in response to a civil suit brought by Marcia Simon and her mother that suggested that Kettle Point officers who took her home from the Indian Hills Golf Course were claiming that she was intoxicated and that she had been arrested for driving under the influence.

558. Of course such a claim is completely incredible, particularly given the fact that none of the OPP officers who dealt with Ms. Simon that night either testified or recorded in their notes that Ms. Simon was under the influence of any substance.

559. Former Kettle Point police chief Miles Bressette confirmed during his testimony that Ms. Simon was completely sober while she was in his custody and, moreover, that she was known as someone who never drank alcohol. He agreed that any allegation that Marcia Simon was intoxicated that night "is obviously, definitely false."

Testimony of Miles Bressette, 25 February 2005 at pp. 17-18, 49.

560. Only Kettle Point Constable Kaczanowski repeated this slanderous allegation during his testimony at the Inquiry. However, his own handwritten and contemporaneous notes make absolutely no reference to Ms. Simon being intoxicated or being arrested for driving under the influence. They state only "Marcia Simons [sic] requested ride home from Forest. Met her Indian Hills Golf Course. OPP officers brought her to this point. 04:30 she was dropped off at her residence, Rawlings Road."

Handwritten notes of Wally Kaczanowski, September 6, 1995.

561. Therefore, Constable Kaczanowski's testimony was entirely inconsistent with the approximately five other officers who dealt with Marcia Simon that night. It is submitted that Constable Kaczanowski's testimony was clearly a complete fabrication and should be given no weight. **Further, it is requested that the final report of this Commission of Inquiry include:**

(a) a clear and unambiguous statement that Marcia Simon was completely sober and did not drive under the influence on the evening of September 6, 1995

(b) a clear and unambiguous finding that Constable Kaczanowski's testimony to the contrary was fabricated.

E. The officers lacked "reasonable and probable grounds" for arresting Marcia Simon

562. At no point did an OPP officer advise Marcia Simon of the reason for her arrest or of any charge that she faced. In fact, Marcia Simon was never charged with any offence as a result of any of the events of the evening of September 6, 1995.

Testimony of Marcia Simon, 23 September 2004 at p. 179.

550. An officer must have "reasonable and probable grounds" to make a lawful arrest. The right to liberty is a central democratic principle. For that reason, police officers must have more than a suspicion of guilt before making an arrest without a warrant. Police officers must establish that they subjectively and objectively have reasonable and

probable grounds for believing an offence has been committed, although they are not required to establish a *prima facie* case for conviction.

R. v. Storrey, [1990] 1 S.C.R. 241.

551. In determining whether reasonable and probable grounds exist, officers must take into account all of the available information available at the time of the arrest. Depending on the circumstances, this may require investigating evidence and following leads to establish reasonable cause to make an arrest.

Chartier v. Attorney General of Quebec, [1979] 2 S.C.R. 474.

Beckstead v. Ottawa [1997] O.J. 5169, 37 O.R. (3d) 62 (Ont. C.A.).

552. Three of the officers involved in the pursuit and arrest of Marcia Simon testified in the course of the Inquiry: Mark Gransden, Mike Dougan and Steven Lorch. All were asked about the grounds on which they relied for the pursuit and subsequent arrest. None of these officers were directly involved in the altercation in the sandy parking lot. They were staffing checkpoints close to the intersection of Army Camp Road and Highway 21 and heard shots fired over their police radios.

553. Constable Gransden claimed that Marcia Simon was arrested because she failed to stop for police when they pursued her down Highway 21:

> Q: Yes. And what do you say were your grounds for stopping her in the first place? Simply that there was a car leaving from the Army Camp; is that right?
>
> **A: Well, at that time, we believed it may have been involved in a – an involved shooting – or a shooting that had occurred.**
>
> Q: Yes. But your grounds for that belief was simply the fact that this car was leaving, at the time that you saw it, the Army Camp, right?
>
> **A: Well, from an area that was connected to the area that the shooting took place; the access from the Army Camp to the beach area or from the beach area to the Army Camp.**
>
> Q: Yes. Your grounds were this car was driving away from an area three to four kilometers in your estimate, from the scene of the shooting shortly after the shooting, right?
>
> **A: Yes.**
>
> Q: Nothing else, right?

A: And that was the initial reason for the – for the traffic stop to determine that.

Testimony of Mark Gransden, 30 March 2006 at pp. 252-253.

554. Constable Dougan attempted to distance himself from any responsibility for Marcia Simon's arrest, repeatedly stating that he only played a back up role to other officers. When asked what his understanding of the reason for the pursuit was, he replied as follows:

Q: And you can't be sure that this was one (1) of the vehicles that you saw driving up the road inside the Army Camp, correct?

A: No.

Q: And is it fair to say that you believed at the time that the reason the vehicle was being pursued was because of a possible connection with the shots that you had heard over the radio?

A: Yes.

Q: And that was the only reason that it was being pursued as far as you were aware?

A: As far as I was aware.

Q: And you had absolutely no knowledge at that time of the circumstances of the shooting that you had heard?

A: That's right.

Q: And you had no knowledge that this vehicle was involved in that incident?

A: I just assumed that's where it was coming from.

Q: Right, that was an assumption that you made?

A: Yes.

Q: And you understood that the Park and the sandy parking lot area was two to three – sorry three to four kilometers down the road?

A: That's – that possible distance, yes.

Testimony of Mike Dougan, 3 April 2006 at p. 168.

555. Constable Lorch claimed that he had reasonable grounds to believe that the occupants of Marcia Simon's vehicle had been involved in the shooting because he saw the vehicle coming from the direction of the park mere seconds after he heard the

shooting. In his mind, he associated the car with the shooting, though he knew nothing about the circumstances of the shooting apart from his belief that it happened in the area of the sandy parking lot.

Testimony of Steven Lorch, 12 June 2006 at pp. 163-177.

556. This assumption was unreasonable. It would not have been possible for Marcia Simon's vehicle to have driven from the sandy parking lot area to Constable Lorch's position at the checkpoint on Army Camp Road within a matter of a few seconds.

557. None of the officers took the opportunity during the pursuit to make any inquiries with respect to whether a car matching the description of Marcia Simon's vehicle had been involved in the altercation that the officers had heard over their radios.

Testimony of Mark Gransden, 30 March 2006 at pp. 244-245

Testimony of Mike Dougan, 3 April 2006 at p. 169.

558. The officers did not permit Marcia Simon to simply leave once it was determined that she had no weapons, because it was felt that further investigation into her involvement in the shooting should be carried out. The officers did not carry out any such further investigation or suggest to any other officer that such an investigation take place. She was simply handed over to other police officers with no further instructions.

Testimony of Mark Gransden, 30 March 2006 at pp. 250-251, 255.

Testimony of Mike Dougan, 3 April 2006 at pp. 188-189.

559. It is a basic principle of law that officers are expected to investigate and ascertain that there are reasonable and probable grounds for an arrest *before* making the arrest. The officers had no knowledge of any kind about the circumstances that led to the shots they heard over their radios. They had no information that reasonably linked Marcia Simon's vehicle to the shots over the radio. At its highest, they could have claimed that they had a reasonable suspicion that the occupants of the vehicle were involved in the altercation. However, our legal system does not condone arrests on the basis of a hunch or a suspicion.

560. To justify her arrest for "failing to stop for police," police officers must have had reasonable grounds for ordering her to stop and there was no such reasonable ground.

C. The officers were not required to account for pointing their firearms at Marcia Simon and Melva George.

561. None of the officers who participated in the pursuit and arrest of Marcia Simon and Melva George were subjected to discipline of any kind. In fact, even by the time they testified at the Inquiry, these officers saw nothing wrong with their actions that evening.

Testimony of Mark Gransden, 30 March 2006 at pp. 255-256.

562. Regulation 926, which is a Regulation to the *Police Services Act*, specifically restricts the use of handguns to situations in which an officer has grounds to believe that there is a danger of serious injury or death. If an officer does draw a handgun, that officer must complete a Use of Force report to explain the circumstances, even if the handgun is not fired.

R.R.O. 1990, REGULATION 926

563. Constable Gransden did not complete a Use of Force report relating to his pointing of a handgun at Marcia Simon, although he was required to do so.

Testimony of Mark Gransden, 30 March 2006 at p. 283.

564. There is no corresponding regulation restricting and monitoring the use of a long gun by a police officer. As a result, those officers that pointed long guns at Marcia Simon and Melva George had no obligation to formally justify their actions to any superior officer. Indeed, it is submitted that the officers could not possibly have justified this action.

565. When asked, Commissioner Boniface advised that OPP in-service trainers have recommended that the regulations be expanded to limit the pointing of any firearm, be it a long arm or a handgun, to situations in which the police officer has reasonable grounds to believe that it is necessary in order to protect against the loss of life or serious bodily

harm. Commissioner Boniface testified that she would have no objection at all to such a change to the regulation. She testified that requiring officers who point any type of firearm at a human being to prepare a Use of Force Report had been recommended by the OPP in-service-training, and that such a requirement would help her to properly monitor her force in respect to use of firearms

Testimony of Gwen Boniface, 14 June 2006 at pp. 226-228.

566. Similarly, the TRU team Commander, Kent Skinner, testified that, "it may be useful" to have the regulation restricting the use of handguns by police officers extended so as to apply to any situation where a police officer points any firearm at a human being. He testified that he did not know why the current regulation did not encompass that situation.

Testimony of Kent Skinner, 20 April 2006 at pp. 208-209.

567. The Aazhoodena and George Family Group recommends that:

Recommendation No. 39
The Province of Ontario should amend Regulation 926 to the *Police Services Act* so that it restricts police officer's pointing of any firearm (not only a handgun) at a human being to situations where the officer believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm. More specifically, section 9 of Regulation 926 should be amended so as to read as follows (the proposed amendment is that the italicized words be added):

> **A member of a police force shall not draw a handgun, *point any firearm at a human being*, or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.**

Recommendation No. 40
The Province of Ontario should amend Regulation 926 to the *Police Services Act* to require a use of force report if a police officer points any firearm (not only a handgun) at a human being. More specifically, section 14.5 (1)(a) of Regulation 926 should be amended so as to read as follows (the proposed amendment is that the italicized words be added):

> **s. 14.5 (1) A member of a police force shall submit a report to the chief of police or Commissioner whenever the member,**

(a) draws a handgun in the presence of a member of the public, excluding a member of the police force while on duty, *points any firearm at a member of the public*, or discharges a firearm;

Recommendation No. 46
The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that, whenever a police force is planning a "public order" operation, the force must ensure that there be appropriate medical assistance available in case any civilians or police officers are injured. In addition, in such circumstances the force must ensure that counseling is made available as soon as possible to any civilians who suffer psychological trauma as a consequence of the police operation.

7. The Arrests at the Strathroy Hospital

568. After the shooting, some of the Stoney Pointers frantically transported Dudley George to the army camp part of Stoney Point. They then put Dudley George in a car belonging to his brother Pierre George who, accompanied by Dudley's sister Caroline George and nephew J.T. Cousins, drove towards Strathroy Hospital. En route, one of the tires on the car went flat.

569. After calling an ambulance but then getting discouraged when it failed to arrive after some time, they drove towards Strathroy on the flat tire. The rubber fell off the tire; they continued driving, with sparks flying from the steel wheel of the car. They eventually arrived at Strathroy Hospital.

570. Unbeknownst to them, Acting Detective Staff Sergeant Mark Wright had instructed Detective Constable Mark Dew, Detective Constable George Speck and Detective Sergeant Trevor Richardson to ensure that all of the occupants of the vehicle were arrested for attempted murder at the first opportunity. Neither Mark Wright nor any other police officer made any attempts to assist the transportation of Dudley George to the hospital.

571. Mark Wright testified that, in giving this instruction, he "quickly" explained to Mark Dew what he felt the grounds for the arrests were. Although Mark Wright did not

testify as to what his "quick" summary of the grounds for arrest were, he explained in some detail what he believed the grounds for the arrests for attempted murder were:

> I had the following information: that a bus and a car had driven into a crowd of OPP officers and deliberately tried to run them over. We'll talk about the car, deliberately tried to run them over and shots had been discharged from that vehicle and OPP officers had shot point blank, as far as I was concerned, my information was, into that vehicle.
>
> Shortly thereafter, and I would say contemporaneous with the incident, we get a call from Nauvoo Road which is in very close proximity to the CFB Ipperwash and Ipperwash Provincial Park along with the reports that we have a number of people looking for that there are two (2) people shot as far as we know because of the 911 calls that are coming in.
>
> In any event a vehicle shortly thereafter shows up at – on Nauvoo Road, whatever this day is I can't recall, but – and I'm sitting in the Comm Centre.
>
> So any other gunshots that would take place in the County at that particular time I would be alive to, so, I know there are no other gun – there is no other gunplay. And an individual comes up to the door and says that you know somebody in the vehicle's been shot and they – they're asking for help, they don't wait, and they take off and the – the vehicle, there's a description of the vehicle that's given. That vehicle is then followed, it goes to Strathroy Hospital, and there are a number of individuals in it.
>
> Well, my position is that that string of events based on what's taking place and what I know at the time, and potentially that there may be weapons in that vehicle and all sorts of other things, is that it's reasonable for a police officer to come to the conclusion that those individuals in that vehicle were in that vehicle at the time that – that is the same vehicle that plowed into the officers and exchanged gunfire with the officers down there. And it is reasonable to arrest those people for the attempted murder of those OPP officers.
>
> Now, immediately after that becomes your obligation to begin to investigate that but certainly at that particular point, in my opinion, you'd be in neglect if you did not exercise the arrest.
>
> Testimony of Mark Wright, 23 February 2006 at p. 312.

572. Mark Wright did not know the colour of the car that had been involved in the altercation in the sandy parking lot, though we now know that it was dark in colour. At no point prior to the arrests at Strathroy Hospital did he speak to any of the officers who were in the sandy parking lot to determine the colour of the car that was driven towards

the officers. However, as he knew that the car being driven to the hospital was white, Mark Wright made the assumption that the car involved in the altercation in the sandy parking lot was also white. Mark Wright agreed that if he had known that the car involved in the incident was a different colour from the car being driven to the hospital, he would not have had reasonable and probable grounds for the arrests. Thus, a simple inquiry could have prevented the disgraceful arrests of Dudley George's relatives for having transported him to hospital.

Testimony of Mark Wright, 21 March 2006 at pp. 40-43, 53.

573. In a contemporaneous recording, Mark Wright implied that there were no grounds for the arrest when he told Superintendent Tony Parkin "don't hold your breath for those charges ever sticking," though he disagreed at the Inquiry that was what he meant by those words. It is submitted that the obvious meaning of his comment was that there was little basis for the charges.

Exhibit P1063: Transcript of telephone call between Anthony Parkin and Mark Wright, September 7, 1995 at 04:31 hours.

Testimony of Mark Wright, 21 March 2006 at pp. 56-58.

574. According to Detective Sergeant Trevor Richardson, Mark Wright told him that the occupants of the vehicle were to be arrested for attempted murder because the car appeared to be similar to the one that had attempted to run down officers in the sandy parking lot, and because the car had run a checkpoint when it left the Army Camp. Trevor Richardson testified that these were adequate grounds for an arrest for attempted murder.

Testimony of Trevor Richardson, 8 June 2006 at pp. 198-199.

575. According to Detective Constable George Speck, he was instructed by Mark Wright (through Mark Dew) to arrest the occupants of the vehicle for attempted murder. Detective Constable Speck agreed that he did not know what reasonable and probable grounds Mark Wright had for ordering the arrests of the occupants of the vehicle for attempted murder. Detective Constable Speck testified that his reporting relationship with Mark Wright was such that if Mark Wright told him to arrest the occupants of the vehicle, he would just go ahead and arrest them.

Testimony of George Speck, 22 March 2006 at pp. 267-268.

Testimony of George Speck, 27 March 2006 at pp. 98, 111-112.

576. Detective Constable Speck was asked whether he agreed that when an officer executes an arrest based on the information of other officers, the arresting officer is nonetheless expected to know the grounds for the arrest. He answered: "I can't answer that, sir." It is disturbing that this long-serving officer would not be aware of this very basic principle.

Testimony of George Speck, 27 March 2006 at p. 112.

577. Officers were sent from the Strathroy Detachment to the hospital with instructions to detain all of the people in the white car. Detective Constable Tracy Dobbin's notes say that at 23:55 hours she was "dispatched to Strathroy Hospital to arrest a carload of natives."

Testimony of Tracy Dobbin, 12 June 2006 at p. 338.

Exhibit P1694: Handwritten notes of Tracy Dobbin for September 6, 1995 (Inquiry Document No. 5000017, front 6000228).

578. When the car arrived at the Strathroy Hospital, Trevor Richardson directed that all of the occupants in the white car be arrested. He claims that he was acting on reasonable and probable grounds provided to him earlier by Mark Wright. He did not share these grounds with the other officers at the hospital.

Testimony of Trevor Richardson, 8 June 2006 at p. 203.

579. Pierre George and Carolyn George got out of the car. Given their brother's extremely urgent medical crisis, they were obviously quite upset and were calling out for help. Carolyn George described what happened next:

> **A: He stopped the car, we hopped out, there was an attendant standing by the door and I said, bring a stretcher. And I turned around to – to get the back door and the attendant was still standing there so I got a bit upset and told him to bring a stretcher.**
>
> Q: You can – you can be as – you know as – as –
>
> **A: Use my own words?**
>
> Q: Precise as possible, yes.

A: Bring a fucking stretcher.

Q: And then what happened?

A: I seen the police nod his head

Q: And where was the police standing?

A: He was right up by the – by the hospital doors there and once he nodded his head I noticed the attendant started to move, but – and that's when they grabbed me.

Q: Now tell – tell me, who grabbed you?

A: It was the police because they grabbed my arms and put them – put them behind my back and put me right down on the ground and I'm – my face went right through some shrubs and got my glasses knocked off. And I was trying to ask them to let me see my brother…

Q: And do you recall the number of police officers who – who were in the process of detaining you? The number of police officers around –involved in – in –

A: I don't know how many were behind me. I – I could barely see that Pierre was held up against the – the wall, the cement wall and like his face right up against it. And I don't if that's when they – you know like, Pierre was asking what they were doing and they said we were under arrest for attempted murder. And – and Pierre said something like well for what? And they said the first shot came out of a white car.

Q: And what did you understand that to - to mean if – if –

A: Well I didn't understand why they were arresting me in the first place because we were just taking Dudley to the hospital and then to be handcuffed and they wouldn't even let me see Dudley. I – I didn't know what was going on.....… I never seen Dudley after that.

Testimony of Carolyn George, 3 February 2005 at pp. 165-168.

580. Detective Constable Tracy Dobbin, the officer that arrested Carolyn George, is not even certain today if she knew at the time what charge she was arresting Ms. George for. Therefore, it would be impossible for her to have had reasonable and probable grounds for that arrest. She testified that she was merely following the instructions of a superior officer, Trevor Richardson, and that she believed that gave her sufficient grounds to arrest Carolyn George even with no particular offence in mind.

Testimony of Tracy Dobbin, 12 June 2006 at pp. 338-341.

581. While officers wrestled Carolyn George to the ground, Pierre George was pushed up against a wall by other officers and told he was under arrest for attempted murder.

582. Detective Constable Don Bell, who had accompanied Detective Sergeant Richardson to the hospital, "took charge" of J.T. Cousins, who was in the back seat of the vehicle desperately attempting to conduct rudimentary first aid on Dudley George. J.T. Cousins was only 14 years old at the time. Yet Bell proceeded to question him without advising him that he had the right to have a parent or guardian as well as a lawyer present during any questioning. When Bell was done with his questioning, he handed J.T. Cousins over to another officer to be placed under formal arrest. When asked what the grounds for the arrest were, Bell replied:

> **A: The grounds for arrest were those that were articulated to me by Trevor on the way down. He didn't articulate to me the exact grounds, but it was my understanding that the people involved were going to be arrested for, I believe, conspiracy to – or to commit attempt murder as a result of the incident at the Park.**
>
> Q: All right. But you weren't privy to the factual assumptions underlying that?
>
> **A: No.**
>
> Testimony of Don Bell, 7 June 2006 at pp. 131-132, 324-328.

583. Not knowing what the grounds for arrest were, Bell could not provide them to the arresting officer.

584. Though Pierre George, Carolyn George and J.T. Cousins were obviously upset, they did not resist their arrest. They were not asked their names or for any explanation for their activities prior to being arrested.

> Testimony of Trevor Richardson, 8 June 2006 at pp. 205-206.

585. Pierre George, Carolyn George and J.T. Cousins were taken away in police custody before they had an opportunity to see Dudley George removed from the vehicle and taken into the hospital. No officer appears to have given any consideration to whether or not the doctors assessing Dudley George would wish to speak to the people who

accompanied him. No officer appears to have had the compassion to consider whether the injured man's family should have been permitted to remain with him at the hospital.

Testimony of Trevor Richardson, 8 June 2006 at pp. 208-209.

Testimony of Tracy Dobbin, 12 June 2006 at pp. 341-343.

586. Both doctors who treated the OPP victims at Strathroy Hospital on the evening of September 6-7, 1995 indicated the importance of medical personnel getting information about the nature of injuries and the medical history of people they were to treat.

Testimony of Dr. Alison Marr, 26 April 2005 at pages 170-171.

Testimony of Dr. Elizabeth Saettler, 27 April 2005 at pp. 17-21.

587. Dr. Marr stated that it would be useful for the Commissioner to make a recommendation about the importance of the police trying to get information to emergency medical personnel, and Dr. Saettler said that such a recommendation would be useful if there was evidence that the police had not taken steps to provide information with respect to the Ipperwash victims.

Testimony of Dr. Alison Marr, 26 April 2005 at p. 171

Testimony of Dr. Elizabeth Saettler, 27 April 2005 at p. 21.

588. Pierre George, Carolyn George, and J.T. Cousins were kept in custody overnight, and were in jail when they learned that Dudley George had died. It is impossible to measure how traumatic this entire event must have been for them; they learned of their brother's death after a heroic and desperate attempt to get him to hospital, while in custody for offences they had not committed. They were not released until the next day. They were never charged with an offence.

589. Given the testimony of the officers involved in the arrests of Pierre George, Carolyn George, J.T. Cousins and Marcia Simon, it is clear that these officers had very little understanding of the meaning of the requirement that they have "reasonable and probable" grounds before making an arrest.

590. The Aazhoodena and George Family Group recommends that:

Recommendation No. 48
The Ontario Provincial Police should institute a program of periodically reminding officers that they must have "reasonable and probable grounds" before they place persons under arrest. The reminders should include hypothetical or real examples of situations in which there were not reasonable and probable grounds, such as with respect to the detentions of Marcia Simon, Melva George, Pierre George and Carolyn George on September 6, 1995.

Recommendation No. 55
The Government of Ontario should offer appropriate apologies and compensation (unless such has already been settled) to the First Nations people who were victimized by the Ontario Provincial Police at Ipperwash in 1995, including Marcia Simon, Melva George, Pierre George and Carolyn George.

Recommendation No. 51
As part of their training in first aid, police officers should be taught that it is important that information from family members or others about the circumstances of the injury and the medical history of any victim be made available to medical personnel treating the victim.

8. Credibility of the OPP Investigation

591. The main source of records and information about what occurred in the sandy parking lot on the evening of September 6, 1995 is the OPP itself. It is this record that has been scrutinized for a decade as Ontarians struggled to reconstruct what happened. Although the Special Investigations Unit was called in to investigate, it is clear that the SIU investigation was done in close cooperation with the OPP. The OPP conducted a "parallel investigation" and supplied many of the interview transcripts and reports that the SIU relied upon in its own investigation.

Testimony of Mark Dew, 4 April 2006 at pp. 237-239.

Testimony of Trevor Richardson, 9 June 2006 at pp. 16-18.

592. Unfortunately, there are serious reasons to doubt the objectivity of the OPP investigation.

593. Then-OPP Commissioner Thomas O'Grady acknowledged that the events at Ipperwash were a "highly charged emotional issue" for OPP members and that "members of our Force felt very strongly about it." He further acknowledged with respect to an investigation into Constable Cossitt's possible perjury at the Deane trial, that "perhaps the OPP could not be unbiased in their approach to it." In retrospect, then-Commissioner O'Grady acknowledged that he should have ordered that a different police force to conduct the investigation with respect to Constable Cossitt in order to avoid this possibility of bias.

Testimony of Thomas O'Grady, 15 June 2006 at pp. 343-344.

594. The failure to impose any discipline upon Constable Chris Cossitt is but one example of the OPP bias with respect to the OPP investigation – a bias that extended to the highest levels of the organization.

Testimony of Thomas O'Grady, 15 June 2006 at p. 343.

595. Other factors that call into question the neutrality and reliability of the investigation include the failure to separate witnesses, the role OPP officers played in Ken Deane's defense and the widespread support for Kenneth Deane as evidenced by the creation of a "Ken Deane defense" pin, T-shirts and other such paraphernalia. The credibility of Incident Commander Carson is also a very serious issue.

A. The Failure to Segregate Witnesses

596. It appears that the police officers involved in the incident received no instruction that they were not to discuss what had occurred with other officers prior to being interviewed or doing their notes. Certainly, the need to segregate witnesses is a basic policing principle. All officers would have been aware that discussing the events with each other created a danger of contaminating evidence.

597. It is clear that many of the officers did discuss what occurred in the sandy parking lot with each other before they had been interviewed or written their notes.

Testimony of Chris Cossitt, 24 May 2006 at p. 181.

Testimony of Wayde Jacklin, 26 April 2006 at pp. 218-219.

Testimony of Robert Huntley, 27 April 2006 at p. 143.

599. Staff Sergeant Wade Lacroix was staying at a local hotel with all of the other officers who had identified themselves as having fired their weapons during the altercation.

600. Although these officers still did not know whether they were "subject officers" in the SIU investigation, and had not yet been interviewed, it appears that some or all of them spent time together discussing the incident. A telephone call made by Wade Lacroix confirms that on the evening of September 7, 2995, Wade Lacroix was in his hotel room watching news coverage of the incident with at least two OPP officers: Kenneth Deane and Mark Beachesne.

Testimony of Wade Lacroix, 9 May 2006 at pp. 86, 110-111, 206-215.

601. Although Lacroix testified that he did not discuss the case with other officers, it is clear from the recording of the telephone call with Staff Sergeant Deevey that he, in fact, discussed the "case" with Deevey in the presence of Deane and Beachesne. The telephone recording captures a chilling conversation between Staff Sergeant Wade Lacroix and Barrie TRU leader Staff Sergeant Brian Deevey:

BD: Hello.

WL: Deeve, why are you always talking?

BD: Me?!

WL: Yeah.

BD: Okay.

WL: Listen Buddy…

BD: Yeah?

WL: …I'm here with Tex and the boys.

BD: Yeah – Waddie!

WL: Yeah, it's the Wad!

BD: [*laughs*] How are you Bud?

WL: Sorry to get you into this Deevs

BD: No, that's fine.

WL: Listen Buddy.

BD: Yeah

WL: What's the – we want to know what the injuries are. From the autopsy [*inaudible*].

BD: I don't know – one guy got shot in the ass I understand?

??: [*background*] Yeah.

BD: Do we know spec - specifically what the injuries were on the three -ah – targets – suspects?

??: [*background*] I don't know… [*inaudible*] …shot in the back or the ass

BD: [*speaking to someone on premises]* Oh yeah, that was the guy shot in the ass. [*back to main phone* conversation] I heard that one guy had a – some type of head injury, but I'm not sure if I heard this in the press, or where I heard it. And the other guy I heard got shot in the chest. Umm – the left side of the chest, above the heart. Two - two shots. That's what I heard. Yeah I don't know where I heard it, and it could be a crock of shit.

WL: And you don't know what the autopsy results are or -

BD: I don't know that yet. And – and as far as the type of round or anything, they don't know that yet.

WL: Okay.

BD: You have to wait for that.

WL: We don't – we don't know yet.

BD: We don't know.

WL: Injuries are – to –like we heard – in the chest.

BD: [*interrupting*] That's speculation. Like, that' what I heard, but – I don't I couldn't even tell you who I heard it from.

WL: Yeah, I heard that too. Two in the chest … I heard sucking chest wound and I heard a - You heard an ass shot – I heard a kidney shot. The one guy.

BD: Okay.

WL: Like a crease job.

BD: Like that - some kind of head injury. But that guy got out.

WL: [*inaudible*] …some kind of head injury…

BD: So it couldn't have been that serious.

WL: … got out… [*inaudible*]

BD: He's released. Yeah. Or he's – I guess maybe he's still in the hospital but he's not serious.

WL: The other two are going to live. But then Dudley of course, is gone, right?

BD: Right.

WL: Dudley only had two holes on him? 'Cause I think a lot of us – [inaudible] …I think he was the guy in the car. He got hit by [*inaudible*]

BD: [*interrupting*] Well I heard that - somebody said that he was lit up by a light. And he got shot – a lot. But then, I heard from somebody that there were two rounds in the chest. And then, I saw a native being interviewed, and he said he got shot in the chest, he was really pumping out in the chest area with ah a very serious wound so. I could – I don't know.

…

WL: We took a barrage of rocks, we repulsed a full attack - about fifteen-twenty with clubs. Guy broke my shield right in half with a steel pole. I cold-cocked him.

BD: Good!

WL: Few boys – we hammered – we hammered them – like we cut – cut 'em down – like [inaudible] with the sticks.

BD: Good.

WL: And then I guess we finally realized we got their leader, they're a little choked then. I think they were setting us up. They wanted it – they wanted it.

BD: [interrupting] Sure they did. This – them – I'm sure they're all wailing and everything but this is the best thing – as far as they're concerned – that could ever happen. They've taken the limelight away from Hundred Mile House, squarely on Ipperwash. Ah – one of the guys are saying that his mother-in-law in Florida – its front page news in Florida. Its big news, everywhere. Its what they want. But ummm –

WL: One of the TRU guys stepped in – and you know. They were going to mow us down. And we had to take them out. We took out Dudley George who's a jerk. [inaudible]

Exhibit P1361: Telephone call between Wade Lacroix and Staff Sergeant Brian Deevey, September 7, 1995, 18:45 hrs from Mobile Command Unit Logger Tape #7 Track 1 Disc 3 of 3.

602. Wade Lacroix testified that when he said that "we want to know what the injuries are," the "we" he referred to was all seven of the officers who had fired their weapons.

Testimony of Wade Lacroix, 9 May 2006 at pp. 223-224.

603. It is difficult to overstate the inappropriateness of the above conversation. Apart from the fact that a potential "subject" officer was trying to find out the results of the autopsy and had a conversation that had the potential to taint the evidence of key witnesses, the language used by these two officers indicates utter disdain for the First Nations people and a total absence of empathy for those who mourned the loss of Dudley George. Staff Sergeant Lacroix brags that his men "took out Dudley George".

604. Wade Lacroix testified that he was not actually interested in the autopsy results; he claims that he was seeking the ballistics results to determine who had killed Dudley George. This claim is simply not credible. The recording of the conversation demonstrates a keen interest on Wade Lacroix's part in the physical findings concerning all of the injured parties as well as the cause of death in Dudley George's case.

Testimony of Wade Lacroix, 9 May 2006 at pp. 89-90, 226-235.

605. No action was taken to discipline either Wade Lacroix or Brian Deevey for their participation in this telephone call.

Exhibit P1727: chart of racist remarks captured on OPP recordings and disciplinary response.

606. Given the many conversations between officers that took place over September 6-8, 1995, it is difficult to determine which evidence is untainted and uncontaminated. We do not know the extent to which officers took that opportunity to make sure that they all got their stories "straight." Certainly, the opportunity to do so was there, giving the appearance, at the very least, of impropriety.

B. OPP support for Kenneth Deane's defense

607. Former OPP Commissioner O'Grady's startling admission, referenced earlier, that the OPP might not be unbiased in an investigation relating to its own officers, is borne out by the testimony of other officers.

608. According to Vince George, who was Dudley George's cousin and until recently an OPP officer, OPP officers and the OPPA viewed Kenneth Dean as "some kind of hero for what he did." In October, 2000, well after the conviction and exhaustion of his appeal rights, the OPPA presented Kenneth Deane with a lifetime membership and gold watch.

Testimony of Vince George, 5 April 2006 at pp. 167 and 226-227.

609. Given this widespread bias in favour of defending Deane, it is not surprising to learn that several OPP officers assisted Kenneth Deane in his defense to the charge of criminal negligence in causing the death of Dudley George. This assistance was rendered as part of their paid, official duties as OPP officers. In fact, Detective Constable Mark Dew, one of the officers assigned to the "parallel investigation" into the death of Dudley George, was one of the officers assigned to assist Ken Deane with his defense to the charge of killing Dudley George.

Testimony of Trevor Richardson, 9 June 2006 at pp. 19-32.

610. Detective Constable Mark Dew did not attempt to disguise his support for Ken Deane during his testimony at the Inquiry:

> Q: You felt supportive of Ken Deane, after he was charged; is that correct?
>
> **A: Yeah, that's fair to say.**
>
> Q: That's fair to say. And that support continued even after he was convicted, right?
>
> **A: Yes.**

Testimony of Mark Dew, 4 April 2006 at pp. 251-252.

611. Upon learning that Detective Sergeant Trevor Richardson and Detective Constable Mark Dew had been assigned specifically to the task of assisting Norm Peel

prepare the defense for Kenneth Deane, then Commissioner O'Grady ordered those officers to desist in their efforts.

Testimony of Trevor Richardson, 9 June 2006 at pp. 28-29.

Exhibit P1671: Handwritten notes of project binder of Trevor Richardson, August 30 – September 14, 1995 (1000858) at p. 148.

Testimony of Mark Dew, 4 April 2006 at pp. 239-245.

612. Yet, after Deane was convicted and the trial judge found that he had concocted the claim that Dudley George had been armed, many officers assisted in the preparation of Deane's appeal, also as part of their paid, official duties. Many OPP officers met with investigator Ron Piers in order to provide affidavits for the appeal. Ron Piers is a retired OPP Deputy Commissioner.

Exhibit P-1444: Statement of Ronald E. Piers, May 06/97 to Aug. 07/98 (Inquiry Document No. 2005302).

Testimony of Gwen Boniface, 15 June 2006 at p. 31.

Testimony of Trevor Richardson, 9 June 2006 at pp. 36-37.

Testimony of Mark Dew, 4 April 2006 at p. 246.

Inquiry Document No. 2005315, Affidavit of Mark Dew in R. v. Deane, sworn August 5, 1998.

613. When she was asked about the appropriateness of this widespread effort on the part of the OPP, as part of official OPP duties, OPP Commissioner Boniface agreed that "would be something one should look at."

Testimony of Gwen Boniface, 15 June 2006 at pp. 33-34.

C. The Ken Deane Defense Fund Pin

614. Support for Ken Deane extended long after his conviction and the exhaustion of his appeal routes. In 1997, after the conviction, the OPPA created a pin with the TRU symbol and Kenneth Deane's badge number in order to raise money for his appeal. Many of the officers who testified at the Inquiry purchased the pin, including Deputy Commissioner John Carson. It also appears that these pins may have been sold to recruits at the Ontario Police Academy.

Exhibit P1608: Kenneth Deane Defence Fund Pin.

P1726: MSGCS Issue Note, The Kenneth Deane Defence Fund Pin, August 20, 1997.

Testimony of John Carson, 16 June 2006 at pp. 177, 183.

Testimony of Gwen Boniface, 14 June 2006 at p. 159.

615. T-shirts with the message "I support Ken Deane" were also produced; the T-shirts included a TRU team symbol and the symbol for the Bomb Disposal Unit.

Exhibit P-1638: 2 Colour photographs of "I support Ken Deane" T-shirt.

617. Of course individual officers may feel supportive of Kenneth Deane in his legal appeals. Kenneth Deane was entitled, as are all convicted persons, to seek to appeal a conviction. However, there is a difference between contributing to a defense fund, and publicly demonstrating your support in the form of a pin or a T-shirt.

618. Former OPP Commissioner Thomas O'Grady recognized the appearance of bias that the Ken Deane Defense Fund Pin represents:

> Q: Do you recall today your reasons for … directing that the pin not be worn on a uniform of a police officer?
>
> **A: Well, it was my feeling that an officer wearing that pin, and should they encounter a First Nations person in the course – ordinary course of an investigation and the First Nations person was aware of – of the background for creating the – the pin, or what the pin stood for, would certainly – could certainly form the opinion that they might not get a – an appropriate investigation or assistance or whatever might be required from the OPP at that time, that they could form that – that view that the OPP was biased in that area. And that's why I asked them to not be worn on the uniform.**

Testimony of Thomas O'Grady, 15 June 2006 at p. 338.

619. The "I support Ken Deane" T-shirt would obviously create the same appearance of bias.

620. Such display by OPP officers of support for an officer convicted of criminal negligence for shooting an unarmed man sends a chilling message to the First Nations people in Ontario with respect to the value that OPP officers place on their lives. It is a strong visual display of the loyalty among officers and their willingness to stand by one

another in any circumstances. Such widespread bias in favour of Kenneth Deane calls the integrity of the investigation into question.

621. The Aazhoodena and George Family Group recommends:

Recommendation No. 42
The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that, whenever there is an incident which is likely to be investigated by the Special Investigations Unit (SIU), all police officers who are potential witness or subject officers must be segregated pending their being interviewed by the SIU. During the period proceeding the SIU's completing initial interviews with all such officers, no individual can discuss any aspect of the event with more than one of the officers involved. In particular, if any officer wishes legal advice preceding the officer's being interviewed by the SIU, she or he must obtain it from a lawyer who has not discussed the event with any other officer.

Recommendation No. 43
The Province of Ontario should enact legislation to ensure that Special Investigation Unit investigations are conducted in a free and independent fashion and that "parallel investigations" such as occurred into the death of Dudley George do not occur in the future.

Recommendation No. 50
The Province of Ontario should enact a regulation under the *Police Services Act* creating an offence for police officers to assist a fellow officer's defense to criminal charges as part of their paid duties.

D. John Carson's credibility as a witness at this Inquiry

622. It is submitted that Incident Commander John Carson's testimony at the Inquiry was riddled with numerous indications that he is a man who is capable of making statements that are false and/or misleading, and of reconstructing the events of September 1995 so as to conceal the truth concerning his motivation and involvement. It is not possible to address all the inconsistencies; only the most central areas will be touched.

623. First, at the Inquiry, after it was public knowledge that the "Gerald George incident" had been wildly exaggerated by OPP officers, Deputy Commissioner Carson

would not agree that that vehicle incident was central to the OPP being instructed to march down East Parkway Drive:

> Q: Now, would you agree, sir, that that vehicle incident was central to the OPP being instructed to march down East Parkway Drive that night?
>
> **A: Well, that's – that was the incident that basically brings it to our attention – of – of the activities that were going on that afternoon.**
>
> Q: You wouldn't agree that it was central?
>
> **A: It was – it was one (1) of a number of factors.**
>
> Testimony of John Carson, 9 June 2005 at p. 65.

624. However, eight years earlier, before the truth of the vehicle incident was known to the public, Deputy Commissioner Carson had said the opposite during his testimony under oath in the 1997 criminal trial of Warren George. At that time, Carson testified that the Gerald George incident was central to his decision to employ the Crowd Management Unit. When confronted with the transcript, Deputy Commission Carson was forced to admit that his evidence has changed:

> Q: Now, sir, did you give that answer, to that question, at – at those Proceedings?
>
> **A: Yes, I did.**
>
> Q: You did. And you were under oath at that time, were you, sir?
>
> **A: Correct.**
>
> Q: And at that time, in 1997, you said this was central, you gave a different answer to me a few minutes ago; is that correct?
>
> **A: Correct.**
>
> Testimony of John Carson, 9 June 2005 at p. 67.
>
> Exhibit P-447, Testimony of John Carson in R v. Warren George September 29, 1997 at p. 64 (Inq. Doc 1004972)

625. Deputy Commissioner Carson had no reasonable explanation for the fact that his Inquiry testimony about the "Gerald George incident" differed not only from his previous testimony under oath but also from what he had said in the press release he had written right after the killing of Dudley George:

Q: Now, would you agree, sir, that you said in that press release, as a result of this, meaning the vehicle incident, the CMU was deployed on that evening?

A: Correct.

Q: You didn't mention any other factors –

A: No.

Q: – isn't that right?

A: That's accurate.

Q: You said as a result of this?

A: Yes.

Q: And those were your words; right? You suggested those words for the press release; right?

A: Yes.

Q: No one else suggested them, you did.

A: Correct.

Q: And you also explained to Ms. Murray in a phone call that we perhaps looked at and we can look at again, if necessary, that that was the reason you went to clear them away, because of that incident; right?

A: Correct.

Q: Very different from your testimony in these proceedings; right?

(BRIEF PAUSE)

Q: Is that correct, sir? Do you agree it's very different from your testimony in the last two (2) weeks.

A: I didn't get into all of the details with Ms. Murray.

Q: You said it was as a result of that incident –

A: Yes, that's –

Q: – did you not, sir?

A: – that's what started this incident, yes.

Q: I'm suggesting – I'm suggesting to you, sir, that as you've looked at this over and over again over the past ten (10) years, you've realized that to say that this was a result of that incident, especially given the fact that the incident was very different from the way it was described, would not be a rational statement to make and you've reformulated it in your mind over those years, sir. That's what I'm suggesting to you. And the evidence is clear that – that that's the case, is it not, sir?

A: I don't agree.

Q: You don't agree? At the time, you just said it was a consequence of that, period.

A: Correct.

Testimony of John Carson, 9 June 2005 at pp. 69-73.

Exhibit P-440, OPP Press Release, September 7/95 (Inquiry Document 1009047)

626. In his evidence under oath at Warren George's criminal trial, Deputy Commissioner Carson had substantially exaggerated any possible "danger" caused by Stoney Point people in the sandy parking lot:

Q: This is your testimony in-Chief on that trial. And at about line 12, I'm going to begin in the middle of the line:

> At that time we had discussions about how we would deal with this now. We had approximately, to my understanding, in the area of fifteen (15) people who were out in that parking lot who allegedly baseball bats or those types of equipment.

Q: Did you give that testimony on that occasion, sir?

A: Correct.

Q: Where did you get the number fifteen (15) from?

A: Probably from my memory.

Q: Yes. Well, we've heard – the largest number given by anybody else was eight (8) to ten (10); isn't that correct?

A: Correct.

Q: So would you agree that you were exaggerating the incident at that point, in that trial sir?

A: No, I wasn't exaggerating it.

Q: To say fifteen (15) people with baseball bats was not exaggeration, sir?

A: That's the number I recalled at the time, I may have been mistaken, but I certainly wasn't exaggerating.

Q: And you were testifying at a criminal trial of someone; isn't that correct?

A: Correct.

Q: And that made the incident look worse than the worst estimate of the incident; didn't it?

A: It's more than – that what has been reported.

Testimony of John Carson, 9 June 2005 at pp. 67-69.

627. In fact, the largest number of people reported to have been in the sandy parking lot was eight to ten; no one had suggested that more than half of the people present might have been holding baseball bats or similar weapons. Thus, Deputy Chief Carson's evidence that there were fifteen people with "baseball bats or those kinds of equipment" was multiplying the number of people alleged to have had weapons by at least three. It is submitted that Carson's claim "That's the number I recalled at the time" is not worthy of belief. It is clear that Carson was strengthening the Crown's case against Warren George by exaggerating the allegations of the threat posed by the Stoney Point people.

628. By 1:28 in the early hours of September 7, 1995, Deputy Commissioner Carson knew that the essence of the "Gerald George incident" was that "Worm" (who Carson had previously known) had damaged a vehicle. Yet Carson subsequently approved the wording of the press release that included the claim, "A private citizen's vehicle was damaged by a number of First Nations people armed with baseball bats."

Testimony of John Carson, 9 June 2005 at pp. 91-94.

629. Deputy Commissioner Carson agreed that his use of the phrase "a private citizen's vehicle" in the press release was meant to suggest a totally innocent person driving by.

Testimony of John Carson, 9 June 2005 at pp. 97-98.

630. However, Carson's handwritten notes suggest that he knew the name "Gerald George" early on September 7, 1995. He certainly knew by 1:47 a.m. on September 7, 1995 that the person whose vehicle had been damaged was a band councilor from Kettle Point. Nonetheless, he let the OPP press release go out stating that it had been "a private citizen's vehicle" that had been damaged.

Testimony of John Carson, 9 June 2005 at pp. 99-104.

631. Deputy Commissioner Carson did nothing to correct the false impression the press release created that First Nations people trashed a car in an unprovoked attack.

Testimony of John Carson, 9 June 2005 at pp. 108-109.

632. Another crucial problem with Carson's evidence was his delay in speaking with the SIU in order to allow time to issue the misleading press release.

633. Deputy Commissioner Carson had the understanding that police forces were not supposed to issue statements regarding incidents involving the SIU. He knew that the SIU would not allow the OPP to issue a statement once they invoked their mandate, so he "took advantage" of what he termed "a window of opportunity" to issue the press release.

Testimony of John Carson, 9 June 2005 at pp. 105-106.

634. Deputy Commissioner Carson had no explanation for the fact that he identified the victim as "a private citizen" in the press release but as "a councilor" in his telephone call a few minutes later to the SIU. Although he rejected the explanation that he realized he might have to account for what he said to the SIU but did not expect to be called to account for a press release, it is submitted that that is the only rational explanation.

Testimony of John Carson, 9 June 2005 at p.111.

635. Deputy Commissioner Carson denied that the reason he didn't phone the SIU back right away was because he wanted to first get out the press release.

Testimony of John Carson, 9 June 2005 at pp. 112-113.

636. In fact, there was a request at 1:16 a.m. on September 7, 1995 that Carson phone the SIU. Carson finalized the press release in a phone call that began at 1:40 a.m. He phoned the SIU at 1:52 a.m., at which time the line was busy, and then got through at 1:53 a.m.

Testimony of John Carson, 9 June 2005 at p. 119.

637. When Carson did phone the SIU, he apologized for "being slow getting back" to them but claimed that he "was tied up with the Chief of the Kettle and Stony Point Band."

Testimony of John Carson, 9 June 2005 at p. 127.

Exhibit P-444B, Audio Logger Tapes, Volume 2, Tab 72 at p. 448.

638. It is submitted that it is clear from Deputy Commissioner Carson's evidence that he misinformed the SIU about why he had taken so long to return their phone call. In fact, the reason for the delay was Carson's desire to finalize the OPP press release during what he thought of as a "window of opportunity." In fact, he said in the phone call finalizing the press release "I got a note here – I've got to call the SIU. So this is our one opportunity to discuss this." Carson's attempted explanation is not worthy of belief.

Testimony of John Carson, 9 June 2005 at pp. 135-139.

639. Deputy Commissioner Carson characterized his excuse for not phoning the SIU earlier (that he was involved with Chief Tom Bressette) as an "honest statement;" it is submitted that it can only be characterized as "dishonest."

640. Another crucial problem with Carson's evidence was his shifting descriptions of TRU's role on the evening of September 6. He originally testified that the sniper team was called in to "observe" but not to be "operational:"

> Q: Now you told us that your instructions to the sniper team that you called in was just to make observations, not be operational, is that correct?
>
> **A: Right.**
>
> Q: Now, sir, practically speaking, what does that mean in the sense that if a TRU member under your command following your instruction to just make observations, but not get operational, goes down a highway, is that TRU member then supposed to not do anything other than observe unless you or some other commanding officer gives him a different command?
>
> **A: Well, what we're talking about here is what they're assignment is. Every police officer has the authority to do certain things if they're faced with certain circumstances. However, the assignment was for TRU to move forward and observe the kiosk and provide observation cover for the crowd management team.**
>
> Q: Yes. Now when did you change the command to the TRU team from observe to observe and cover?
>
> **A: In – in a TRU team operation, on an observation assignment, "cover" is implicit in that.**

Q: I see. So then, sir, it appears that your evidence is that there's no difference at all in telling the TRU team, go down there for observation or go down there and do your job?

A: No, no. It's – it's very much different. It's very much different.

Q: Well, how is it different, sir?

A: Well, I could use the example, if there was a barricaded gunman in a residence, you – you deploy a TRU team on the residence. The TRU team will go in and provide the inner secure – inner perimeter security and based on information and direction from the incident commander, they may or may not – I mean, ideally, the individual would surrender and – and walk out of the residence unarmed and surrender to the Tactical Team, but in some cases that isn't û- that isn't the case and for a variety of reasons it may be necessary to actually enter the residence and make a – an arrest. And that is – when I talk about going operational is when they will actually take an aggressive position to do an entry and û- and effect the arrest.

Q: Yes, and for the sniper team, their operation is often shoot, right?

A: Every police officer's in that same position.

[portion deleted]

Q: I see. Well, do you recall saying, acknowledging that the sniper team has special training in situations where it's likely or more – more like than in other situations, that someone might have to be shot?

A: Of course that's the case. That's why they're put in that position because there's a high level of danger there and they're there specific because of the degree of danger.

Q: Of course, and that's what you said the last day, sir, and that's quite different I would suggest to you from your answer two (2) minutes ago here today.

A: And every officer has that same obligation if there isn't a TRU team member in position to do that.

Q: Anyway, let's move on, sir. You told them that their instructions were to observe, is that correct?

A: Correct.

Q: And I would suggest to you that to a naive person, that might suggest, look but don't snipe unless the command is changed. Do you agree that's the meaning of observe but not be operational?

A: That's not – that's not my definition, may be yours.

Q: That's not what you meant by observe but not be operational?

A: I expect them if someone comes into harms way, that they will carry out their duty which they're obliged to do.

[portion deleted]

Q: It was my understanding, sir, and you seem to be denying this, that when you instructed the TRU team, they were to be only doing observation; that was some limitation on what they were supposed to do and, in particular, they were not supposed to carry out their sniper function unless there was a further order that made them tactical or operational.

A: I never said they could not carry out their sniper function.

Q: Yes, sir. You never did change that original order to them, did you, sir?

A: No, sir. Their role never changed.

Q: Well they did kill someone, did they not, sir?

A: They did.

Testimony of John Carson, 20 June 2005 at pp. 57-62.

641. Deputy Commissioner Carson gave contradictory evidence about the central question of whether he had ordered Staff Sergeant Lacroix to clear all the Stoney Pointers from the sandy parking lot. On the one hand, he testified that if people were "just having a campfire" or, more generally, not doing anything that looked dangerous, they should be left in the sandy parking lot. On the other hand, he also testified that his instructions to Staff Sergeant Lacroix were to "clear them all from the parking lot."

Testimony of John Carson, 20 June 2005, especially pp. 99, 150, 173 and 176.

642. Deputy Commissioner Carson did not offer any coherent explanation for any legal basis that there might have been for clearing the Stoney Pointers from the sandy parking lot if they did not possess any weapons.

Testimony of John Carson, June 20, 2005 at pp. 151-17.

643. In fact, Carson's testimony respecting what he sent CMU and TRU down the road to do was contradicted by other witnesses.

644. Throughout his extensive testimony at the Inquiry, Deputy Commissioner Carson did not give any hint of the possibility that Staff Sergeant Lacroix had been ordered to await further instructions before proceeding closer than about 400 metres from the sandy parking lot. As described in greater detail later, the subsequent testimony of Staff Sergeants Skinner and Lacroix and of P.C. Zupancic were in direct contradiction to Carson's claim that Lacroix had been told to march all the way to the sandy parking lot. The lack of clear, consistent evidence reinforces the conclusion that "political heat" was a significant factor in the decision to send the CMU down the road.

645. There is strong evidence that Carson was influenced by an anti-First Nations bias. An August 28, 1995 document entitled "a memorandum to all park wardens" with subject heading "Procedures for dealing with First Nations People" instructed park wardens to contact the OPP whenever they became aware that a First Nations person had contravened a law. This document was prepared by an MNR employee and an OPP command officer. Deputy Commissioner Carson indicated that that document would have been produced in response to concerns about the safety and well being of persons using the provincial park. He testified that this was not with respect to the possible takeover of Ipperwash Park but was with respect to the actual policing of the park itself during July and August of 1995. Deputy Commissioner Carson testified that the OPP would have asked for the cooperation of park wardens concerning the contravention of laws by First Nations people. The OPP officer who assisted in the preparation of the memo would have shared the knowledge of the protocols contained in that document with Deputy Commissioner Carson.

Exhibit P-1051, OPP Discipline files Privileged Documents, Volume I tab 23; Testimony of John Carson, 16 June 2006 at pp. 100-104

646. Deputy Commissioner Carson did not see any problem with respect to such special policing about First Nations people:

> Q: Now, sir, do you see any problem with a directive that Park Wardens ought to be the eyes and ears of the OPP when a First Nations person has contravened the law; a special directive about policing First Nations person?
>
> **A: Well, I think you have to put it into context.**
>
> Q: Yes?
>
> A**: The Park Wardens have a responsibility in regards to enforcing some Provincial Statutes within the Park. That's their role and responsibility.**
>
> Q: Yes?
>
> **A: Given the issues that were occurring relative to the Military Base and the concern for safety around some of the occupiers from the Military Base, it seems to make sense that when those individuals involved in the occupation of the Military Base had issues within the Provincial Park that we would need to know that.**
>
> **So I – I can understand why there would have been – would have been some discussion and a request to be informed when there were issues that come to their attention.**
>
> Q: And you notice that it's not restricted to First Nations people who are occupiers of the Army Camp. It says First Nations people, right?
>
> **A: That's what the directive says, yes.**
>
> Q: Yes. Suppose that there was a directive that said Park Wardens are to be the eyes and ears of the OPP when a Jewish person has contravened the law, would that give you some pause, sir?
>
> **A: When there – when there would be any serious offense, the – the OPP would be notified to investigate. In this particular case, I mean this – this was an outstanding issue that we were attempting to address in the interest of public safety and around the issues that were occurring, so clearly the memo has been written specific to that.**
>
> Q: Now, this was – "contravened a law" would include, for example, contravening the laws against drinking alcohol in parks, for example, too, right?
>
> **A: I'm sorry?**
>
> Q: Contravening a law would include provincial and criminal offences, presumably, right?
>
> **A: Well, that would certainly be a contravention of the law, yes.**

Q: Yes. It generally talks about contravention of law that would include the law governing the use of provincial parks as well as criminal laws, right?

A: Sure. That's – that's fair.

Q: And presumably there are other people who might contravene a law in the Pinery or Ipperwash Provincial Park who are not First Nations people, right?

A: Sure.

Q: And this directive indicates that park wardens should be the eyes and ears of the OPP, only with respect to First Nations people, right?

A: That's what it says. Yes.

Q: And you don't even, in retrospect now, sir, see a problem with that?

A: As I indicated, I think you have to understand the perspective of – of what we – or what we – what the discussion was relative to. There is always a need to be vigilant for any contraventions of the law, regardless of who it is.

Q: Yes.

A: But for the issues that the Detachment Commander was obviously asking for them to report through to us, was specific to the issues relative to the First Nations issues and I would suggest particularly related to the occupation of the military base.

Q: There's no such limitation in the statement?

A: No. And I'm making some assumptions that that is the type of discussion that would have taken place and why the focus on First Nations.

Q: But would you agree that even if that were the basis for it, it is extremely inappropriate, in a multi-cultural society, to have a directive that persons of a particular ethnic group should be specially policed?

A: Well, there's no doubt that different wording could have been used. But it is, I suspect, that they were trying to direct their attention to the occupiers of the military base, which, in likelihood, they would have come to some conclusion were primarily First Nations people.

Q: But even if it were occupiers of the military base, if they were specially policed, with respect to all laws, that would be offensive, wouldn't it?

A: I don't see where there is a suggestion of there being a specialty police. It's being asked, where there are contraventions of the law in

relation to those people, to be brought to the OPP's attention.

Q: You don't see this as special policing of First Nations people, sir?

A: No, sir.

Q: I see. In spite of the fact that it says: "Park wardens are to be the eyes and ears for the OPP when a First Nations person is contravening the law." And that, to you, does not imply special policing of First Nations people?

A: We placed undercover officers in the Provincial Park, as you, I'm sure, are aware, specific to the concerns raised by the Ministry of Natural Resources. And it was around the issues of behaviours that had been taking place around Matheson Drive, the Military Base and some activity that occurred onto and in conjunction with people who were using the Ipperwash Provincial Park. This – this here particular type of direction would be in relation to working cooperatively with the Ministry of Natural Resources, sir.

Testimony of John Carson, 16 June 2006 at pp. 105-110.

647. It is submitted that the failure of a Deputy Commissioner of the OPP to appreciate the racist character of special policing of First Nations people such as he and his fellow officers initiated in the summer of 1995 is incompatible with his continuing to serve in that position.

648. Further evidence of Carson's lack of sensitivity to First Nations people is provided by his involvement with post-shooting souvenir T-shirts.

649. Deputy Commissioner Carson received a T-shirt in the parking lot adjacent to the Forest Detachment of the OPP. A picture of the T-shirt is reproduced as exhibit P-458; the front of the T-shirt shows a feather lying on its side. The officer who gave Carson the T-shirt had been selling them to other officers but gave it to Carson as a gift.

Testimony of John Carson, 16 June 2006 at pp. 115-116.

650. Deputy Commissioner Carson was asked to speak to Deputy Commissioner Boose about his possession of the T-shirt. Deputy Commissioner Carson insisted that the discussion could not be interpreted as "counseling by the Deputy Commissioner" and that he was assured that "in no uncertain terms, it wasn't discipline." He was further assured that it had "no discipline connotation to it whatsoever."

Testimony of John Carson, 16 June 2006 at pp. 117-118.

651. When Deputy Commissioner Carson was asked, “you had told the investigator earlier that you saw nothing wrong with the T-shirt that we just looked at a photograph of, right?” he replied “at the time I hadn’t really turned my mind to it, quite frankly.”

Testimony of John Carson, 16 June 2006 at p. 119.

652. The culture of racism revealed by the distribution of the T-shirts is assessed in greater detail below. Suffice it to say at this juncture that it is unacceptable for a high-ranking officer to state that he had not turned his mind to the propriety of creating a T-shirt with a feather on its side in commemoration of an event in which an OPP officer had killed a First Nations person.

653. It is apparent that Deputy Commissioner Carson is, at best, completely insensitive to OPP racism towards First Nations people. This is intolerable in such a high-ranking officer in a Force that does such extensive policing of First Nations people.

654. It is submitted that the totality of the evidence at the Inquiry supports the conclusion that Deputy Commissioner Carson allowed his officers to attack the Stoney Point people without any justification, and that his testimony was calculated to attempt to obscure that fact.

655. As Incident Commander, John Carson must bear overall responsibility for the death of Dudley George, the beating of Cecil Bernard George, the mistreatment of Marcia Simon, Melva George, Pierre George and Carolyn George, and, generally, for the September 6, 1995 attack on the Stoney Point people. It would be expected that someone bearing such responsibility might be demoted or, at the very least, be denied promotion. The OPP treatment of John Carson was quite the opposite: he was promoted to the very high rank of Deputy Commissioner.

656. It is submitted that having John Carson as one of the five highest ranking individual members of the Ontario Provincial Police shows great disrespect to the First Nations residents of Ontario.

657. It is therefore submitted that it should be recommended that the Ontario Provincial Police review the suitability of Deputy Commissioner John Carson for his current high rank in light of the evidence at the Inquiry of his actions at Ipperwash in September 1995 and of his attitude towards First Nations people.

9. The reasons behind the OPP decision to march on the Stoney Point people

658. A fundamental question that must be answered is: why did the Ontario Provincial Police march down the road late on the evening of September 6, 1995 to confront the Stoney Point people?

659. The OPP has placed great reliance on the credibility and professionalism of now-Deputy Commissioner Carson in justifying OPP actions with respect to the Stoney Pointers' reclamation of Ipperwash Provincial Park. However, this Inquiry has demonstrated that such reliance is misplaced – John Carson was not a credible or reliable witness.

660. Incident commander John Carson maintained that he made the decision to send the officers down the road in order to prevent violence; he denied that any of the political pressure that he had been subjected to played any role in his decision. At the time that he testified at this Inquiry, ten years after the event, Carson may have genuinely believed that the political pressure did not influence him. However, it is submitted that, as detailed below, there is compelling evidence that Carson's account is not believable and that the only rational conclusion is that political pressure was a significant factor leading to the officers' confrontation with the Stoney Pointers.

661. There were several other factors in addition to political pressure that influenced the decision to send the CMU down the road on the fateful night. The role that the second-in-command, Mark Wright, played in pushing for aggressive action cannot be underestimated. Nor can the role that systemic and individual racism within the OPP

played be discounted, particularly given the evidence that racism is widespread within the organization.

662. It is very significant that the OPP does not have the tools required to resolve disputes such as the one they faced at Stoney Point. Aboriginal and treaty right claims are political issues – not criminal. Even if the OPP had truly desired to negotiate a peaceful resolution, it was not within their power to do so. As a result, they were left to use force.

A. What orders did Carson give to the CMU and TRU?

663. Carson had said in the press release he authored at the time that the central reason for the deployment of the CMU and TRU on the evening of September 6, 1995 was the (increasingly exaggerated) story of a "violent" interaction between First Nations persons and a local resident.

664. The false story that Inspector John Carson accepted was that five to eight First Nations people with baseball bats had attacked a female resident. In actuality, the incident was a minor one, involving Gerald George, a Kettle Point Band Councilor who had written a letter to the editor in which he had denounced the actions of the occupiers. After speaking with some of the occupiers, Gerald George drove away, and a rock was thrown at his vehicle. This incident was reported at a nearby OPP checkpoint.

665. John Carson, upon hearing the inflated version of the event did nothing to verify its accuracy. Instead, he decided to march CMU and TRU team members down the road at night, claiming he wanted to avoid the potential for violence.

666. Inspector Carson's explanation for his alleged decision did not stand up under cross-examination. Some of his evidence was the following:

> Q: As far as what the TRU reported back, as far as you understood, there was nothing else happening there except for people standing around, maybe some with bats or sticks, is that right?
>
> **A: Right.**

Q: So, sir, that's not having a campfire, but it's not doing anything either, is it, that requires officers to march on them, is it?

A: There's certainly the potential. We were concerned for a number of issues there.

Q: You state that one (1) of the concerns was about the nearby cottages, right?

A: Correct.

Q: And especially, there's one (1) cottage that's quite – relatively near to the Sandy parking lot, is that fair?

A: Yeah, it's adjacent to.

Q: But sir, I would put it to you that the TRU team could have kept on observing, and observing, and observing and see if any of what you consider to be potential danger was realized before you had officers march on those people; what do you say to that, sir?

A: Well, that was certainly an option, but the intention was to use a Crowd Management Unit to go down and move them back into the Park.

Q: I understand that, sir. That became the intention later on, but would you agree, sir, that what you are reported as saying, and what you acknowledge you did say: "if they're having a campfire, let's leave them. Why go in the dark?" would suggest that if that had been followed, you would have just left them all night unless the TRU observers saw something that really represented a danger, isn't that fair?

A: Fair enough.

Q; Why didn't you do that sir, just wait and let the TRU team keep observing rather than march those officers down that roadway?

A: **Because I was satisfied the activity in that area required the team to go down and move them back in to the Park.**

Q: Because of potential violence, is that what you're telling us, sir?

A: Right.

Q: And that potential was no different at the time they marched down from the time several hours earlier when Mark Wright said he observed persons in the parking lot in similar circumstances, isn't that fair?

A: Fair.

Q: And that potential had not been realized at all in that several hour period, isn't that right?

A: No one had stumbled into the area, I mean, that was one (1) of the issues. We didn't want someone else to come around that corner and

be confronted by the individuals there, and we didn't want anyone to – or the cottages to come into any harm up there.

Q: Yes. And as far as people coming down that road, were you afraid that some of the cottagers might march down the road in an attempt to displace the persons in the Park?

A: Well, that was certainly a potential, but we certainly felt, at that point in time, that Mark Wright's meeting with them earlier in the afternoon had dissuaded them, for the short-term anyway.

Q: I see. So, you say you were afraid that someone might go into that area and become a victim of violence, is that what your evidence is, sir?

A: Well, we didn't want that to happen, yes.

Q: Yes. But you had observation posts at various places approaching that area, did you not, sir?

A: Correct.

Q: And so, wouldn't the reasonable way dealing with that possible concern to have been to warn anyone who was marching down the road, driving down the road, or whatever, as they came to the observation post that it might be dangerous to proceed?

A: Correct. That's fair.

Q: And that would have been a safe way of dealing with that potential, would it not, sir?

A: That's one (1) option.

Q: Yes. And if you had chosen that option, Dudley George would not be dead, isn't that fair, sir?

(BRIEF PAUSE)

Q: Is that not fair, sir?

A: Well, it – it's very obvious what the alternative is.

Q: Is that not fair, sir?

A: That's a fact.

Q: That's a fact. So, this was a very serious error on your part, was it not sir, that resulted in the death of a human being, is that not fair, sir?

A: I don't believe there was an error on my part.

Q: I see. You agree that the same objective could have been attained by officers at the observation posts warning any persons that they should not go down that road, isn't that fair? You said that before.

A: Yes, I did.

Q: And so you don't agree that it was an error not to choose that way of handling it, as opposed to the way you did handle it, sir?

A: In hindsight that's easy to say.

Q: Yes. Well in hindsight, do you agree it was an error in hindsight, sir?

A: No. I – I wouldn't agree it's an error in hindsight.

Q: I see. It's easy to say in hindsight for other people, but for you, sir, is that correct; that's what you meant by it's easy to say in hindsight?

A: You don't have all the facts – we – we dealt with the situation as we had it at that time. And at that time it – we felt that was the best decision.

Q: I appreciate, sir, that's the decision you made. But would you not agree in hindsight, it was an error? Everybody makes errors and did you not make a grievous error that night, sir?

A: No, sir.

Testimony of John Carson, 20 June 2005, pp. 70–75.

667. Although Deputy Chief Carson refused to admit that he had made an error in ordering officers to march down the road that night, it is apparent from his testimony transcribed above that, even with the benefit of ten years' hindsight, he could not provide a rational explanation for having made such an order.

668. Moreover, Carson did not, in fact, even have concerns about the occupants of the cottage next to the sandy parking lot, because it was his understanding that there was no one home at that cottage. In the following passage, Carson acknowledged that fact, but then made a feeble attempt to justify the march down the road on the basis of protecting property:

Q: So I would put it to you that you were being informed by Officer Wright that nobody was home in that cottage, right?

A: Right.

Q: And you were glad about that, because that removed any possible danger to someone who might have been home, isn't that fair?

A: Correct.

Q: That's why you said "good".

A: Correct.

Q: But I would suggest to you it also lessened any conceivable need to march on the Sandy parking lot, wouldn't you agree, sir?

A: No, not at all.

Q: Well, sir, that's the only cottage that's right near the Sandy Parking Lot, isn't that so, sir?

A: Yeah, it's the first one, yes.

Q: Yes. And so, sir, if there was nobody at that cottage, wouldn't some simple observation of the people have been enough to protect anyone who conceivably could have been in danger at further away cottages?

A: Correct, but we didn't want damage to those cottages, either.

Q: I see. So you marched down the road to prevent damage to that cottage?

A: Well, I'm just telling you that is one of the issues, as well.

Q: But the – human beings are more important than cottages, aren't they, sir?

A: Absolutely.

Q: And the main concern was human life and human safety in this situation, isn't that right?

A: Of course.

Q: Yes. And that's why you were glad there was nobody in the cottage, right?

A: Absolutely.

Q: But also that should have made you more reluctant to use force against the First Nations people who were there.

A: No, the – the issue wasn't – the issue was that we want to make sure that no one was in the cottage that was going to come stumbling out into the situation that the police were involved in right outside their door. We wanted to make sure they were aware of what was going on so that they could either stay inside the house, or we could have somebody evacuate them.

Testimony of John Carson, 20 June 2005 at pp. 148-150.

669. In 1995, the OPP had a policy that, when dealing with occupations, physical force was only to be used in situations where death or serious injury was immediately probable if force was not used. Though Incident Commander Carson testified he was concerned

about the “potential” for violence, there was never a situation that evening in which Carson could honestly say that death or serious injury was immediately probable.

Exhibit P-472, Briefing Note for Interministerial Police Forum (Nov 26/91) (Inquiry Document 3000759)

670. As then-Inspector Carson’s superior officer, Chief Superintendent Coles acknowledged the decision to deploy the CMU violated the OPP policy restricting the use of force to situations in which death or serious injury was immediately probable. In so doing, the OPP themselves caused both a death and a serious injury.

Testimony of Chris Coles, 17 August 1005 at p. 86.

671. It is submitted that it is not believable that an intelligent man like Deputy Commissioner Carson would have marched officers down the road for the purpose of getting the Stoney Pointers back into the Park without finding a way to inform the Stoney Pointers of that purpose. Some of Carson’s evidence on this point is the following:

> Q: Now, I – I put to you the following, sir, that you should have known, and you must have known in the context when those people had been told they were trespassers by your officers, that a number of your officers marching on them in the circumstances that you ordered the march, would have led at least many of them to believe that the officers were coming to take them out of the Park, or to arrest them, or to do something to them other than allow them to stay in the Park.
>
> What's your response to that, sir?
>
> **A: Yes. It's a possibility.**
>
> Q: And you didn't realize at the time that it was a very realistic possibility, sir?
>
> **A: It's a possibility.**
>
> Q: But isn't it enough of a possibility that you had to, in any proper performance of your duties, if your goal was to keep them in the Park, inform them of that goal?
>
> **A: If we could have had a communication with them, I would have loved to have informed them exactly.**
>
> Q: And you couldn't have had a bullhorn, sir?
>
> **A: I didn't have a bullhorn.**
>
> Q: And you couldn't get a bullhorn?

A: I'm telling you, I didn't have one.

Q: No. You made extensive efforts to get armoured vehicles, right, sir; is that correct?

A: Yes.

Q: And you didn't have a bullhorn?

A: No, we didn't have one there.

Q: Did the thought occur to you that perhaps we should inform these people by bullhorn, if you stay in the Park, there's no problem here?

A: I never considered a bullhorn.

Q: And you didn't consider informing them, did you?

A: We certainly tried to communicate with them on a number of occasions.

Q: But as you marched down the road that night, and you say your intention was simply to keep them in the Park, you did not take any steps whatsoever to attempt to inform them of that intention, did you, sir?

A: Correct.

Q: Did it cross your mind that it might be appropriate to take such steps, sir?

A: I had no reason to believe there was anyway of getting the information to them. I had a number of people working, trying to develop communication, and it just simply did not happen.

Q: Would you agree, sir, that a reasonable way of getting that information would have been to have an officer in front of the group with a bullhorn, saying, if you simply stay behind the Park fence, there won't be any problem.

Do you agree that would be a reasonable way, sir?

A: That's – that's an option.

Q: That's an option, sir?

A: Yes, it is.

Q: And you could have obtained a bullhorn if you had thought of that option, could you sir?

A: Yes, I could have.

Q: And if you'd done that option, there's a good likelihood, would you agree, that Dudley George would not be dead, sir?

A: We don't know that.

Testimony of John Carson, 20 June 2005 at pp. 188-191.

672. Staff Sergeant Skinner testified that the TRU team would have had two bullhorns as part of its standard equipment; thus Inspector Carson could easily have obtained a bullhorn had he really wanted the Stoney Pointers to remain in the Park.

Testimony of Kent Skinner, 20 April 2006, pp. 230-231.

673. Skinner's evidence was completely different from Carson's. Skinner testified that the CMU officers were told to go about half way down East Parkway Drive towards Ipperwash Park and then await further instructions. Half way down East Parkway Drive would have left them about 400 metres from the sandy parking lot. If nothing dangerous was going on, then the Stoney Pointers were to be left alone. There was never any report to Carson or Skinner that there was anything dangerous going on, so there was never an order from the TOC to advance closer than 400 metres from the sandy parking lot.

Testimony of Kent Skinner, 20 April 2006, pp. 247-262.

674. Skinner's evidence on this point is summed up in the following excerpt from the transcript of his testimony:

> Q : So throughout this entire episode up to and including the punch-out and then including the shooting you were not aware of any information that would have justified the CMU making contact with the people in the Park, right? Or the sandy parking lot?
>
> **A: I didn't receive information at the TOC about that, sir. I –**
>
> Q: That would've – you didn't receive any information that would have suggested changing the order that we agreed was in place at some eight o'clock that evening or whenever about, Find out what's happening, if they're having a campfire, leave them alone, right?
>
> **A: That – that information – the information like that did not come back to the TOC. I don't know what Wade Lacroix saw on the ground that made him do that.**
>
> Q: You don't know why he did what he did –
>
> **A: That's correct.**
>
> Q: – but you didn't have any information that suggested changing that original order.
>
> **A: You're – you're right, sir.**

Q: And in parti – and then therefore, it's obvious but just to clarify, there was no order that emanated from you or Inspector Carson as far as you're ware, for them to do that advance –

A: Correct.

Q: – make contact with them, correct?

A: You're correct.

Testimony of Kent Skinner, 20 April 2006, pp. 263-264.

675. Staff Sergeant Skinner's evidence was confirmed by P.C. Zupancic, the only other officer who was close to Carson and Skinner during the relevant times. In fact, the passage from Skinner's testimony quoted above was read to Zupancic, and he stated that it was consistent with his memory of events.

Testimony of P.C. Zupancic, 24 April 2006, pp. 182-184.

676. It is submitted that Carson did not have a reasonable explanation for the lack of any notes, scribe or otherwise, that described when the decision was made to deploy the CMU, why they were deployed and what they were deployed to do. Some of his evidence on this point is the following:

Q: But, sir, would you agree that the most important decision to record was the decision to march on the Stoney Point people?

A: It is an important decision, and I'm telling you I made that decision.

Q: Yes. But was – was it not important, given the importance of police officers' notes generally, and the scribe notes in particular, to record the making of that decision and the reason or reasons for which it was made?

A: There would be no – the scribe notes would say what the decision was made – what the decision was. The scribe notes are not going to have a – a commentary about the discussion that leads to that decision, necessarily.

Q: I see. So the scribe notes report commentaries about conversations with the Premier and so on, but it's not – it wouldn't contain commentary about why a decision was made to march on the number of people.

A: I didn't say it wouldn't necessarily.

Q: I see. Well, in fact, shouldn't they necessarily contain that, sir, if they are to do the function that police officers' notes are supposed to do in general and scribe notes in particular?

A: It would be helpful if it was there, but clearly it's not.

Q: Yes. And there's nothing in your notes either, is that correct?

A: No, I didn't make any notes.

Q: Well, you made some handwritten notes that you just referred to, is that correct?

A: At two o'clock in the afternoon, I made notes.

Q: Yes –

A: But I did not make any notes around this particular decision that you're discussing right now.

Testimony of John Carson, 20 June 2005, pp. 50-53.

677. The leader of the CMU as it marched down East Parkway Drive on the evening of September 6, 1995 was Staff Sergeant Wade Lacroix. He testified that he was instructed to go to 300 meters out and then to check in. He then said that he needed "a soft permission" to proceed. He admitted that he had told Sergeant Richardson on September 7, 1995 that he sought and received permission to proceed further. He also acknowledged that he testified under oath at a criminal trial that he was briefed to stop about 200 yards out and seek permission to carry on from that time. However, a little later in his Inquiry testimony he claimed that he didn't require explicit permission and didn't receive it. His explanation for having informed Sergeant Richardson that he needed permission was "I used general language to an untrained person."

Testimony of Wade Lacroix, 10 May 2006, pp. 121- 131.

678. Staff Sergeant Lacroix then claimed that John Carson had told him earlier that he was to go down and clear the parking lot.

Testimony of Wade Lacroix, 10 May 2006, pp. 131-139.

679. But Lacroix also answered "Yes, I did" to the question of whether he'd gotten the understanding that he was not to interfere with the Stoney Pointers if they were "having a campfire" or otherwise behaving innocuously in the sandy parking lot.

Testimony of Wade Lacroix, 10 May 2006, p. 139

680. Any claim that the OPP confronted the Stoney Pointers on the evening of September 6, 1995 because of concern to protect the cottagers or the cottages or anything else is belied by the following fact: Shortly after killing Dudley George, the OPP officers went back down the road and left the Stoney Pointers alone. It is apparent that any possible aggression on the part of the Stoney Pointers would have been exacerbated by the attack by the OPP. It is submitted that no witness at the Inquiry gave any credible explanation, and no credible explanation could exist, for the OPP leaving the Stoney Pointers alone after the shooting if they had genuinely believed that the Stoney Pointers had posed a significant danger prior to the confrontation.

681. It is submitted that the totality of the evidence at the Inquiry leads to the inescapable conclusion that there was no legitimate, rational reason for the OPP officers to confront the Stoney Point people in the sandy parking lot on the evening of September 6, 1995. Claims that the CMU was responding to a serious threat in the sandy parking lot do not stand up to scrutiny. Thus, there must be some other explanation

682. It is submitted that the evidence, detailed below, of the "heat from the political side" suggests the following explanation: Officers Carson and Lacroix were concerned about the possibility that Premier Harris, MPP Beaubien and other politicians would further criticize them if they did not demonstrate that they were prepared to take strong action against the Stoney Pointers.

683. At one point during his testimony, Deputy Commissioner Carson stated "if those cottages had have been damaged or if anyone had stumbled into that area, I would have had a situation that would have been simply untenable for anyone to deal with." He was then asked "Yes, there would have been such incredible pressure from the Premier's office and from the MPPs that you would not, perhaps, have survived on the Force if something like that had happened; isn't that fair, sir?" Deputy Commissioner Carson responded "I don't believe that whatsoever."

Testimony of John Carson, June 20 205 at pp. 192-193.

684. However, it is submitted that all of the evidence suggests that he would have indeed believed that at the time. The above exchange took place ten years after Dudley George had been killed. It was clear that the killing of Dudley George did not create a situation that Carson found "untenable to deal with." In fact, the killing led to Carson's promotion rather than his dismissal.

B. The role of political pressure in the decision to deploy the CMU

685. During his testimony at the Inquiry, Deputy Commissioner Carson maintained that the political pressure exerted by Premier Harris and Marcel Beaubien had no effect whatsoever on his actions with respect to the reclamation of Ipperwash Provincial Park.

686. The extent to which Carson consciously took the pressure into account may not be absolutely clear. It is conceivable that Carson did not have specific thoughts such as "I'd better exert some force or the Premier will be really upset."

687. Moreover, it is likely that, whatever the truth of the matter, by the time of the Inquiry Carson had re-formulated his memories so that he honestly believed that he had not succumbed to political pressure. On the other hand, it is submitted that the totality of the evidence at the Inquiry leads to the inescapable conclusion that the OPP's march against the Stoney Point people had to have been influenced by the political heat that Carson was feeling.

688. One strong indication that Carson was genuinely interested in knowing the politicians' views is contained in a transcript of a conversation between Carson and Staff Sergeant Wade Lacroix. In that conversation, Lacroix had informed Carson that Beaubien was going to call the Premier and say, "I want something done." Carson instructed Lacroix to call Beaubien back. He did not put any restrictions on what Lacroix should say to Beaubien. Carson indicated that he would also be glad to talk to Beaubien "if he wants information from me."

Exhibit P-444A, Transcript of Audio Logger, Volume 1, Tab 4, especially at page 13.

689. Most telling is Carson's statement to Lacroix at the end of the call: "I am interested in his feelings about this." That expression of interest cannot be explained as anything other than a genuine interest in Beaubien's feelings. It cannot be argued that Carson was merely being polite to Beaubien since Carson was not talking to Beaubien directly, and did not give any indication to Lacroix that he did not mean what he was saying.

Exhibit P-444A, Transcript of Audio Logger, Volume 1, Tab 4, especially at page 13.

690. Carson acknowledged that he got the understanding from Inspector Fox that the Premier's position was to not take into account any special rights or colour of right that First Nations people may have. He took from what Inspector Fox told him that the Premier wanted the people out of the Park "right now."

Testimony of John Carson, 9 June 2005at pp. 170-171.

691. Significantly, Carson replied to the question "It was the Premier talking through Deb Hutton and Ron Fox to you, right?" with the answer "Right."

Testimony of John Carson, 9 June 2005at p. 178.

692. Carson acknowledged interpreting Inspector Fox's message from the politicians as being "They just want us to kick ass," as he had said in the phone call with Inspector Fox. He then went on to explain that it was "all about aggression" and that "kicking ass" might be necessary "at some point." His testimony on these points included:

Q: And you say: "All right, they just want us to kick ass." Right?

A: Right.

Q: So you did take from what he was telling you, they want you to go in there and attack these people somehow, right?

A: It's all about aggression, yes.

Q: That's what you took from it?

A: Yeah.

Q: And Fox agrees that you're appropriately interpreting it, right?

A: Correct.

Q: And you say "yeah", and then you say: "We're not prepared to do that yet." Going to the next page, right?

A: Correct.

Q: So I take it that you meant at some point we may be prepared to be tough, but not at this point, right? Is that a fair reading of that?

A: At some point it may be necessary.

Testimony of John Carson, 9 June 2005at pp. 184-185.

693. Inspector Carson acknowledged that "you could draw the conclusion" that the Premier's view was that Inspector Carson, as Incident Commander, had made mistakes.

Testimony of John Carson, 9 June 2005 at p. 190.

694. It is interesting that Inspector Carson told Staff Sergeant Lacroix that his phone call was being recorded at the point when Lacroix started to tell him that Beaubien was "irate."

Testimony of John Carson, 9 June 2005 at p 11.

695. Inspector Carson suggested that the reason he informed a number of command officers to the effect that "the Premier is watching" was because he wanted them to understand that it was a serious event. It is submitted that that is a very unsatisfactory explanation, and that the only reasonable conclusion is that he wanted his officers to understand the pressure that he was under to be aggressive.

Testimony of John Carson, 9 June 2005 at p. 20.

696. One of the command officers who received information at a meeting from Inspector Carson testified that he got the understanding that the government was anxious that the OPP do whatever was necessary to prevent the Park from being taken over.

Testimony of Trevor Richardson, 8 June 2006 at p. 30.

697. Inspector Carson met with Beaubien on the evening of the killing of Dudley George, about two hours before he ordered the CMU to confront the Stoney Pointers. Carson understood that Beaubien wanted the Stoney Pointers out of the Park. He also understood that the government was considering calling in the military "if it wasn't appropriately handled by the police."

Testimony of John Carson, 9 June 2005 at pp. 30, 36.

698. Now-Deputy Commissioner Carson was asked “Here you're the Incident Commander, you're being told that politicians, who have presumably the authority to call out military forces, might do so if they feel that you're not handling the situation decisively enough. Wouldn’t that put a fair amount of pressure on you, sir?” He answered that it did not put pressure on him.

Testimony of John Carson, 9 June 2005 at p. 31.

699. Incident Commander Carson was obviously under extraordinary pressure to be aggressive towards the Stoney Pointers. One only has to imagine a cottager being assaulted or a cottage damaged on the evening of September 6, 1995. Could Carson (and the OPP generally) have withstood the consequent wrath of the government had something like that occurred?

700. John Carson is an intelligent man. He got the clear message that he had better value the cottagers and their property much more than he did the Stoney Pointers. Even though he knew that the chances of the Stoney Pointers threatening anyone during the period from 11 p.m. on September 6, 1995 to the next morning were very small, he simply could not take that chance because of the attitude of the Premier and of the local MPP. He had to be seen as “actioning.” The action he took, sending the CMU down East Parkway Drive, led to the killing of Dudley George.

701. It is inconceivable that this action was not influenced, at least subconsciously, by the political “heat” he’d been taking.

702. Although there was much police talk about alleged possibilities of aggression by the Stoney Pointers, the fact is that the Stoney Pointers simply defended themselves and their land with sticks and stones, and tried to stop the beating of Cecil Bernard George by driving vehicles at the officers. On the other hand, the OPP, under John Carson’s leadership, killed one Stoney Pointer, badly beat another, injured a young man by shards

of glass from their firing bullets at him, falsely arrested five people, and terrorized a group of people who were non-violently asserting title to land that had been promised to them in perpetuity by treaty.

F. The second-in-command: Mark Wright

703. In his testimony at this Inquiry, now-Inspector Mark Wright repeatedly asserted that he took his direction from Inspector Carson, and that he had no desire to move in quickly to evict the people in the park. The plan in the early days of the park reclamation, according to Mark Wright, was to "co-habitate" with the people in the park and wait to get an injunction. As the days passed, the plan to "co-habitate" was no longer feasible and the OPP was simply awaiting an injunction before taking any action.

Testimony of Mark Wright, 7 March 2006 at p. 234, 237-239, 254, 257, 306-308.

704. The contemporaneous telephone recordings and documents show a different side of Mark Wright: an extremely aggressive police officer with hostility towards the First Nations people in the park.

705. Right from the beginning, Mark Wright acted on the presumption that the people in the park had no claim to the park and that MNR was the rightful owner. He testified that there was absolutely no doubt in his mind that the Park belonged to the Province of Ontario. He was satisfied by his understanding that John Carson had caused research to be done that confirmed that title to the park belonged to the Province. Rather than maintaining a neutral position in a dispute involving Aboriginal and treaty rights, and allowing the courts to make a ruling on the issues, Mark Wright testified that "I'd taken a position, sure, yeah."

Testimony of Mark Wright, 21 February 2006 at p. 178.

Testimony of Mark Wright, 22 February 2006 at p. 84.

Testimony of Mark Wright, 21 March 2006 at p. 157.

706. In a telephone call with a superior officer on September 5, 1995, Mark Wright made no attempt to hide the fact that he had taken a position on the land dispute between the Stoney Point people and the provincial government. In his eyes, the provincial government was the clear owner. Rather than taking a neutral position, as befits the OPP, Wright felt that the OPP were acting *on behalf of* the MNR:

> *MW:* [*continues*]…MNR – of course we're acting on behalf of MNR. They're the landlords. We tried to serve them with notice last night that they were trespassing pursuant to the Trespass to Property Act. They refused Notice but as far as we're concerned they've been notified.
>
> *ER:* Is that the lease deal – the thing?
>
> *MW:* No, no no! This is the Provincial Park owned and there's no – there's no…
>
> *ER:* Its not like Serpent Mound?
>
> *MW:* No! No, no. There's no doubt that we've had this researched, that Park belongs to –ahh - the Province of Ontario.
>
> *ER:* Okay.
>
> *MW:* Okay. Absolutely no doubt whatsoever about that. So ah – at eleven o'clock this morning, the MNR, and all their ministry levels are meeting and they're going to go get us an injunction, 'cause that's what we want. We want a piece of paper…
>
> *ER:* Mmhmm.
>
> *MW:* …and *our intention is to go back in and take that Park.* [emphasis added]
>
> Exhibit P1098: Transcript of telephone call between Ed Robertson and Mark Wright, September 5, 1995 at 10:42.

707. Mark Wright explained what he meant by the above statements to Inspector Ed Robertson:

> We are not going to go in there, "in there," meaning the Park, without an injunction. And if we get that piece of paper and I certainly was of the understanding that we were going to get it, then our intention was to go back and take that Park, meaning that those people were in there unlawfully. We were going to return it to their lawful owners, i.e., the Province through the MNR.
>
> Testimony of Mark Wright, 7 March 2006 at p. 252.

708. Mark Wright's intention to "go back in and take that Park" demonstrates an aggressive and confrontational attitude.

709. Mark Wright's easy acceptance of the view that ownership of the park lands was not in question shows very little understanding of the complexities of a First Nations claim to land. Registered title for land is not determinative of whether or not a First Nation has a valid claim to land. Mark Wright also failed – both in 1995 and now – to appreciate the obligation to protect burial grounds that motivated the Stoney Point people to reclaim the park lands, an obligation that carries the status of law in Anishaabeg culture.

W. Pue, "Trespass and Expressive Rights" (Part II Paper).

711. Insight into Mark Wright's aggression and anger towards the people in the park comes out most starkly in a telephone conversation between Sergeant Stan Korosec (the officer in charge of the ERT teams) and Staff Sergeant Wayde Jacklin. The conversation took place shortly after the "picnic table" incident. In the course of the conversation, Sergeant Korosec reported on an earlier discussion with Mark Wright:

> *WJ:* Yup. To – there's damage to windshields and they did a little damage to some of the hoods of the cars, too.
>
> *SK:* Little fuckers.
>
> …
>
> *SK:* Yeah. They were baited.
>
> *WJ:* Yup.
>
> *SK:* Well, live and learn, live and learn. This – their day will fucking come.
>
> *WJ:* Yeah.
>
> *SK:* I was talking to Mark Wright tonight.
>
> *WJ:* Hm-mmm.
>
> *SK:* We want to amass a fucking army.
>
> *WJ:* Hm-mmm.
>
> *SK:* A real fucking army and do this – do these fuckers big time. But I don't want to talk about it because I'll get all hyped up.

Exhibit P1154: Transcript of telephone call between Wayde Jacklin and Stan Korosec, September 5, 1995 at 23:32 hours.

712. Mark Wright stated that he did not recall having such a conversation with Stan Korosec. Stan Korosec states that he does not recall having such a conversation with Mark Wright. These denials are simply not credible, given the contemporaneous record. And as shall be seen below, the phrase "amass a fucking army" is eerily consistent with the war metaphors that Mark Wright used in a subsequent conversation mere hours before Dudley George was killed.

Testimony of Mark Wright, 21 March 2006 at p. 333-336.

713. Once the altercation with Gerald George occurred, Mark Wright saw an opportunity to take action.

714. Mark Wright played a key role in the amplification of the Gerald George incident from the fairly minor and personal dispute that it was to its depiction as a mass assault on a defenseless driver. The contemporaneous records show this amplification.

715. The first captured report from Mark Wright occurred very shortly after the event occurred. At approximately 19:54 hours on September 6, 1995, he called into the Command Post and made the following report:

> Yeah, we got about a – up to eight individuals at the picnic table area. I assume you know what that is. And they're just about on the edge of the road. They've got some bats and stuff in their hand and apparently they damaged some – an individual's vehicle. So we got some mischief right now. And willful damage. And I talked to them for a while. They weren't sure who I was and it appears to me – it appears to me that they're up to something. So can you talk to your ERT guy in there with the Inspector. I'm on my way back, I'll give you a full rep when I get back but I think we should be moving some people down that way. I think we should be moving some people down that way.

Exhibit P1115: Radio Transmission from Mark Wright to Command Post, September 6, 1995 at 19:54 hours.

716. Thus, his first report is inaccurate, in that he states that "up to eight" perpetrators caused damage to an individual's vehicle with baseball bats. Mark Wright is the undeniable source of this misinformation to the Command Post staff. He immediately recommended that "we should be moving some people down that way." Shortly afterwards, Wright personally made the decision to order the entire ERT day shift to remain on shift and not leave for the day, effectively doubling the number of OPP officers available. It is clear from the early moments after the "Gerald George incident" that Mark Wright felt that action should be taken immediately to quell the disturbance in the sandy parking lot.

Testimony of Mark Wright, 23 February 2006 at p. 58.

Testimony of Mark Wright, 21 March 2006 at pp. 377-379.

717. When Mark Wright spoke with Inspector Carson approximately five minutes later, he reported that "they got about eight of them there with baseball bats right on the road edge." At this Inquiry, Wright agreed that he was inaccurate in reporting that all the people in the parking lot were carrying bats and that his message to Inspector Carson made the situation sound more dangerous than it actually was.

Exhibit P444B, Tab 49: Transcript of telephone call between Mark Wright and John Carson, September 6, 1995 at 19:58:39 hours.

Testimony of Mark Wright, 7 March 2006 at pp. 288-289.

718. In his conversation with government lawyer Tim McCabe at approximately 8:19 p.m. that evening, Wright stated that there were "about eight guys down at the bottom end of the park…with bats in their hand", again amplifying the number of people that he alleges were carrying weapons. He told McCabe that these eight individuals had "trashed a car that went by".

Exhibit 464: Telephone conversation between Mark Wright and Tim McCabe, September 6, 1995 at 20:19 hours at p. 19 (Inquiry Document No. 2000604).

719. Upon his return to the Command Post, Mark Wright was extremely frustrated by on duty Incident Commander Inspector Linton's response to the incident. Inspector Linton expressed the opinion that if the people who threw rocks could be identified then the OPP could do something. Inspector Linton wanted to wait and see the statement from

the complainant before acting. The recording shows that Mark Wright was frustrated by Inspector Linton's "waffling" and lack of decisive action:

> Wright: And I got the whole day shift here with Canine.
>
> Carson: Okay so what's Dale want to do then?
>
> Wright: Of fuck I don't know, waffle. We'll be here 'til fucking daylight figuring it out, and daylight's a wasting.
>
> Carson: Okay well you let me know if you want me to come back.
>
> ….
>
> Wright: what if he [Linton] asks me what did you say what do you want me to tell him?
>
> Carson: Well it it's not my [inaudible].
>
> Wright: Don't you say we go get those fucking guys?
>
> Carson: Well, we gotta deal with them. We can't let them out in that area with that stuff.
>
> Exhibit P444B, Tab 49: Transcript of telephone call between Mark Wright and John Carson, September 6, 1995 at 19:58:39 hours.
>
> Testimony of Mark Wright, 7 March 2006 at pp. 290-297.

720. Inspector Carson and Acting Detective Staff Sergeant Mark Wright disagreed with Inspector Linton's "wait-and-see" approach. They shared the view that there was a criminal offence being committed by just standing in the parking lot with baseball bats. In their view, whether or not the person who threw the rock was identified, the OPP could still go down there and arrest the people in the parking lot for weapons offences and for mischief to property by preventing access to public property.

> Testimony of Mark Wright, 7 March 2006 at pp. 292-293.

721. Mark Wright has attempted to characterize his concerns with respect to Inspector Linton as being that Linton was waffling between taking overly aggressive action and no action at all. However, the above passage makes it clear that Mark Wright was the one who wanted to "go get those fucking guys." It is also clear that Inspector Carson agreed with that perspective.

722. Sergeant Graham was a witness to the dynamic that developed in the Command Post. He characterized Mark Wright as differing from Inspector Linton, in that "[Inspector Linton] was going to be longer than what Detective Sergeant Wright was looking for" and that "Detective Sergeant Wright was looking for some quicker, immediate decision or – or faster decisions."

Testimony of Robert Graham, 21 April 2006 at pp. 164-165.

723. That dynamic continued even after Inspector Carson returned to the Command Post: "Detective Sergeant Wright was…again looking for decisions to be made at a …faster rate than maybe Inspector Linton. Maybe even at that time Inspector Carson was."

Testimony of Robert Graham, 21 April 2006 at p. 167.

724. Mark Wright believed that the decision to send officers towards the sandy parking lot had been made by 8:46 p.m. that evening, within 45 minutes of the "Gerald George incident."

Testimony of Mark Wright, 7 March 2006 at pp. 343-344.

Exhibit P426: Typed Scribe notes for September 6, 1995 at p. 76

725. In a contemporaneous telephone call with government lawyer Tim McCabe, Mark Wright characterized the pending police operations in the following terms: "we're taking all the marines down now", "four ERT Teams and a TRU Team and two canine units going down there to do battle right now", "we're going to war now" and a "battle".

Exhibit 464: Telephone conversation between Mark Wright and Tim McCabe, September 6, 1995 at 20:19 hours at pp. 3, 20, 21, 22 (Inquiry Document No. 2000604).

726. Despite Mark Wright's attempts to portray himself as an even-handed, dispassionate and neutral professional, "Popcorn" Wright is challenged by the contemporaneous recordings of his own words. Wright was an aggressive officer who used all of his influence to pressure the Command staff to take aggressive action against the people in the park. He used the "Gerald George incident" as a convenient excuse. Incident Commander Carson was ultimately willing to accede to this pressure. Mark

Wright must accept responsibility for the role that he played in setting in motion the events that lead an OPP officer to shoot and kill Dudley George.

727. Mark Wright is now a Detective Inspector who manages major crime investigations. The promotion of this antagonistic officer sends the message that the OPP is not serious about changing its relationship with First Nations communities in Ontario. The promotion of an anti-First Nations officer to such a rank speaks volumes to the value that the OPP places on the lives of First Nations people.

Testimony of Mark Wright, 21 March 2006 at pp. 84-85.

728. The Aazhoodena and George Family Group recommends:

Recommendation No. 49

The Ontario Provincial Police should review the suitability of Deputy Commissioner John Carson and Inspector Mark Wright for their current high ranks in light of the evidence at the Inquiry of their actions at Ipperwash in September 1995 and of their attitudes towards First Nations people.

G. A culture of racism in the OPP

729. This Inquiry has permitted a startling insight into the culture of the OPP both in 1995 and today. The picture that has emerged is of a police force that is plagued with problems of racism – both individual and systemic.

i) The creation and distribution of racist souvenirs

730. Following the OPP operation in the Ipperwash area, several OPP officers were involved in creating and widely distributing racist paraphernalia. These souvenirs included at least two T-shirts and a mug.

731. Stan Cloud, a First Nations employee of the MNR at the Pinery Park, complained to the OPP about, among other problematic OPP behaviour, the existence of T-shirts and the mugs. The OPP assigned an investigator, Traffic Sergeant Adkin, to determine the

facts of the case and to recommend whether any discipline should be imposed. His investigation looked at the creation and distribution of the mugs and T-shirts.

732. The mug included a depiction of the OPP insignia with an arrow running through it and the words “Ipperwash 95”.

> Exhibit P458: CD ROM of OPP T-shirt with ERT, TRU, ’95 logo and coffee mug with “Team Ipperwash” logo.

733. The T-shirt had an OPP shoulder flash with ERT written on one side and TRU on the other. “Team Ipperwash” was written above the flash and below the flash was a white feather on its side. Stan Cloud and Sam George, among others, expressed dismay at this image. For some First Nations people, the feather on its side represents a fallen warrior. In the context of the shooting, the conclusion that the feather on its side represented the death of Dudley George was inescapable.

> Exhibit P1051: Discipline Records, Volume One, Tab 17, Report of Sergeant Adkin, at p. 15.
>
> Exhibit P458: CD ROM of OPP T-shirt with ERT, TRU, ’95 logo and coffee mug with “Team Ipperwash” logo.
>
> Exhibit P1001: Toronto Star, “OPP Apologize to Indians for Ipperwash “souvenirs”, December 26/96 (Inquiry Document No. 6000191).

734. OPP Commissioner Boniface recognized the offensive nature of the T-shirt, noting that the feather on its side “signaled to me – my normal way of seeing the feather would be standing upright, so it signaled to me the death….It signaled to me defeat or the death.”

> Testimony of Gwen Boniface, 14 June 2006 at p. 141.

735. The Incident Commander, John Carson, and his second-in-command, Acting Detective Staff Sergeant Mark Wright both possessed a souvenir. Wright testified that the inappropriateness of the design was not immediately apparent to him:

> A: I certainly purchased a mug with an arrow in it, that’s correct. And at some time after the fact I learned that the – the mugs with the arrows and everything else was inappropriate.
>
> Q : You learned after it was inappropriate.
>
> A: Right.

Q: You didn't learn that upon seeing it?

A: No, I – that was – no.

Testimony of Mark Wright, 7 March 2006 at p. 215-217.

736. Acting Detective Staff Sergeant Mark Wright was actually consulted in advance by the creator of the T-shirt and he did not raise any concerns about either the designs or the propriety of making the T-shirts at all in the circumstances. He deferred to the opinion of a First Nations officer who was also present with respect to the appropriateness of two different designs that were presented.

Testimony of Mark Wright, 7 March 2006 at pp. 221-223.

737. In an interview given to investigators, the designer of the T-shirt commented on the support he felt he received from the Command Staff, including Inspector Carson:

> While there I was approached by various people including John Carson. The reaction of Command staff was extremely positive. I can't quote [name redacted] but his comment was that the shirt was well received by all sides and the feather was a nice touch. And on more than one occasion he commended me for my efforts and that it was good for esprit-de-corps. These comments were later reconfirmed when I returned home to [redacted] and received a phone call from Inspector [name redacted].

Exhibit P1051: Discipline Files, Volume I, Tab 289, p. 2.

738. Sergeant Adkin's investigation appears to have been quite cursory in nature. Of the officers that were directly involved in the OPP operation on the evening of September 6, 1995, the investigator interviewed only Inspector Carson and Acting Detective Staff Sergeant Mark Wright. There was no general call out for OPP members involved in the creation of the T-shirts and mugs, or for those who simply had such items, to come forward and identify themselves.

Exhibit P1051: Discipline Records, Volume One.

Exhibit P1052: Discipline Records, Volume Two.

Testimony of Brad Seltzer, 13 June 2006 at pp. 254-259.

739. Asking the officers involved in the incident whether they had a mug or T-shirt should have been a standard and basic investigative step.

740. The following OPP officers, who were both involved in the events in the sandy parking lot and had either a mug or a T-shirt (or both), were not interviewed: Sergeant Stan Korosec, Sergeant Rob Graham, Constable Richard Zupancic, Staff Sergeant Wayde Jacklin, Sergeant Robert Huntley, Constable Sam Poole, Constable James Root, Constable Wilhelmus Bittner, Constable Kevin York, Constable Beauchesne, and Constable James Irvine.

Testimony of Wayde Jacklin, 25 April 2006 at pp. 317-218.
Testimony of Wayde Jacklin, 25 April 2006 at p. 232.
Testimony of Rob Huntley, 27 April 2006 at pp. 241-243.
Testimony of Sam Poole, 16 May 2006 at pp. 143-144, 164-166.
Testimony of James Root, 17 May 2006 at pp. 61-68, 107-113.
Testimony of Wilhelmus Bittner, 17 May 2006 at pp. 232-236.
Testimony of Kevin York, 18 May 2006 at pp. 106-110, 135-138.
Testimony of Mark Beauchesne, 25 May 2006 at pp. 111-121.
Testimony of James Irvine, 25 May 2006 at pp. 147-153.

741. Nor did any of these officers voluntarily come forward, though most of them were aware that an investigation was taking place with respect to the mug and T-shirt.

Testimony of Wayde Jacklin, 25 April 2006 at pp. 317-218.
Testimony of Wayde Jacklin, 25 April 2006 at p. 232.
Testimony of Rob Huntley, 27 April 2006 at pp. 241-243.
Testimony of Sam Poole, 16 May 2006 at pp. 143-144, 164-166.
Testimony of James Root, 17 May 2006 at pp. 61-68, 107-113.
Testimony of Wilhelmus Bittner, 17 May 2006 at pp. 232-236.
Testimony of Kevin York, 18 May 2006 at pp. 106-110, 135-138.
Testimony of Mark Beauchesne, 25 May 2006 at pp. 111-121.
Testimony of James Irvine, 25 May 2006 at pp. 147-153.

742. All of these officers claimed that they could not recall when or from whom they purchased their T-shirts.

743. In general, the creation of paraphernalia of this nature to commemorate an event in which an OPP officer killed a First Nations person is completely inappropriate and

offensive. Over and above this problem, the images that were created demonstrate a racist attitude towards First Nations people and, as the complainant Stan Cloud noted, a "cowboy and Indian mentality".

Exhibit P1051: Discipline Records, Volume One, Tab 17, Report of Sergeant Adkin, at p. 12.

744. It is truly extraordinary, given the nature of the complaints and the concern over racist souvenirs that these individuals, were not approached and asked whether they knew anything about the creation of the souvenirs or had the souvenirs in their possession. Sergeant Adkin's investigation hid more than it revealed.

745. Sergeant Adkin's shallow approach to the investigation was reflected in the investigation's subsequent findings.

746. Sergeant Adkin's investigation completely cleared those officers who produced the mugs and T-shirts as well as those that came into possession of a mug and/or T-shirt. In his findings with respect to the mugs, Sergeant Adkin noted that:

> It is necessary to look at intent. The two officers [names redacted] were professional in their actions in producing and distributing the coffee mugs. Historically, in the OPP as well as many other police services, it has been tradition to produce a memento of the event. Shirts, mugs, plaques and photographs are only a few of the forms of mementoes that have been distributed as a result of major events.
>
> …
>
> The officers were careful to be professional in dealing with the community while producing the mugs and took the in initiative to discuss the logo with a senior officer involved in Project Maple. On his suggestion they removed the arrow. The owner of [business name redacted] was also an acquaintance of Pam George, had lived and worked in the Forest community all her life and never saw the offensiveness in the mugs until pointed out to her.
>
> I find the officers acted properly in their actions.

Exhibit P1051: Discipline Records, Volume One, Tab 17, Report of Sergeant Adkin, at p. 14.

747. With respect to the T-shirts, Sergeant Adkin stated:

> The T-shirt, once again is an expected memento of policing involvement in major incidents. History of our police service as well as others has shown this type of article is the established norm and in the past has been an accepted practice. It falls into much the same category as the coffee mug.
>
> …
>
> I find that although there were people offended by the shirts, care and professionalism was used to attempt to ensure that people were not offended by the shirts and that the officer's sole purpose was to supply a memento. Unfortunately the sensitivity of the situation did not allow for this interpretation.
>
> Exhibit P1051: Discipline Records, Volume One, Tab 17, Report of Sergeant Adkin, at p. 14.

748. Ultimately, no discipline was imposed for the creation and distribution of the mugs and T-shirts. The makers of the T-shirts and mugs were subject to non-disciplinary discussions. Deputy Commissioner John Carson and several other superior officers who were present during the incident at Ipperwash, but who did nothing to stop the creation of the racist paraphernalia, were also the subject of "non-disciplinary discussions." The informal discussions were to ensure that these senior officers understood the "error of their judgment and to prevent any re-occurrence." Deputy Commissioner Carson was told in no uncertain terms that there was to be no "disciplinary" connotation to be taken from the fact that the discussion took place.

> Testimony of John Carson, 16 June 2006 at pp. 117-119.
>
> Exhibit P1052: Discipline Records, Volume 2, Tab 99.
>
> Testimony of Gwen Boniface, 15 June 2006 at p. 24.
>
> Testimony of Thomas O'Grady, 15 June 2006 at pp. 324-326.

749. Despite the absence of discipline for these highly offensive souvenirs, the OPP produced several Issue Notes to the MSGCS on the topic giving the erroneous impression that discipline was, in fact, imposed. Many of the counsel at the Inquiry laboured under this misimpression as a result of these Issue Notes, until copies of the Discipline files were finally distributed.

> Testimony of Gwen Boniface, 14 June 2006 at pp. 143-145.
>
> Testimony of Gwen Boniface, 15 June 2006 at pp. 24-25.
>
> Testimony of Thomas O'Grady, 15 June 2006 at pp. 332-334.

Exhibit P998: MSGCS issue note re: OPP crested items – Ipperwash, Apr 3/96 (Inquiry Document No. 2001000).

Exhibit P-999: OPP Crested items- Ipperwash, Apr 3/96 (Inquiry Document No. 1001259).

P-1000: MSGCS Issue note re: OPP Crested items- Ipperwash (2) December 18/96 (Inquiry Document No. 3001775).

Exhibit P1002: MSGCS issue note re: OPP crested items - Ipperwash January 8/97 (Inquiry Document No. 2000995).

Exhibit P1728: MSGCS Issue Note Re: OPP Crested Items – Ipperwash, Dec.18/96 (Inquiry Document No. 2000996).

750. In fact, the discipline cited in these Issue Notes was imposed with respect to several other racist and inappropriate actions by OPP officers following the death of Dudley George.

Exhibit P1051: Discipline Records, Volume One, Tab 17, Report of Sergeant Adkin, pp. 6-8, 10-12.

Testimony of Thomas O'Grady, 15 June 2006 at pp. 324-326.

751. Sergeant Adkin's investigation did not reveal the existence of a second, and even more offensive, T-shirt. This T-shirt was created by one of the TRU teams that was part of the OPP operation on the evening of September 6, 1995, William Klym. The T-shirt depicts the TRU symbol with its pointed edge slamming down onto an anvil. The anvil has the word "ERT" superimposed over it. The ERT and TRU symbols are in the process of crushing an arrow between them.

Exhibit P1494: Photograph of T-shirt with broken arrow.

752. Twenty to thirty officers received the "broken arrow" shirt. The following OPP witnesses at the Inquiry testified that they had possessed this T-shirt: Sergeant George Hebblethwaite, Constable Dougan, Constable Root (who had both T-shirts), Constable Leblanc, Constable Mark Beauchesne, Constable James Irvine and Constable William Klym. Again, none of these officers were interviewed as part of the disciplinary investigation, nor did these officers voluntarily come forward to identify themselves to Sergeant Adkin when they learned that there was investigation being conducted into the creation of Ipperwash souvenirs. The creator of the image, Constable Klym, came forward only after the Globe and Mail ran a photograph of the T-shirt on its front page in the days after its existence was revealed at this Inquiry.

Testimony of George Hebblethwaite, 11 May 2006 at pp. 279-288.
Testimony of George Hebblethwaite, 15 May 2006 at pp. 156-165
Testimony of Mike Dougan, 3 April 2006 at p. 154.
Testimony of James Root, 17 May 2006 at pp. 61-68, 107-113.
Testimony of Dennis Leblanc, 23 May 2006 at pp. 150-153.
Testimony of Mark Beauchesne, 25 May 2006 at pp. 111-121.
Testimony of James Irvine, 25 May 2006 at pp. 147-153, 336-343.
Testimony of William Klym, 6 June 2006 at pp. 122-209.

753. Constable Klym claimed that the symbol was intended to show the "cooperative efforts" of ERT and TRU, as September 6, 1995 was the first time the two programs had operated in a crowd management function together. It is difficult to understand how an image of an arrow being crushed between two hard surfaces could be intended to show "cooperation" in anything other than crushing the First Nations people who were in the parking lot that evening. Thus Constable Klym's attempt to portray the image in a positive light does not stand up to scrutiny.

Testimony of William Klym, 6 June 2006 at pp. 198-201.

754. Although several other "creative" suggestions were given by OPP witnesses about the meaning to be taken from this image (for example that a broken arrow could mean "peace", that the arrow was a depiction of a weapon of violence being broken), Sergeant George Hebblethwaite agreed that the most obvious interpretation is that, between TRU and ERT, they broke the First Nations people.

Testimony of William Klym, 6 June 2006 at pp. 130-131.
Testimony of George Hebblethwaite, 11 May 2006 at pp. 179-180.
Testimony of Dennis Leblanc, 23 May 2006 at pp. 150-153, 214-222.
Testimony of Mark Beauchesne, 25 May 2006 at p. 116.

755. It is submitted that, at its most sinister, the image represents the killing of Dudley George.

756. Yet, some officers, such as Constable Dennis Leblanc, still do not see anything wrong with the image on this T-shirt:

Q: And you didn't see anything inappropriate with the design at the time?

A: I saw it, I didn't think there was anything wrong with it, no.

Q: What about today, when you see the logo? Do you think there's anything inappropriate about it when you reflect on it and look at that design today?

A: Last week or the week before when I initially was told that there was another T-shirt which had surfaced, and I learned that it was actually a T-shirt I had purchased, I was curious as to what it was.

The only thing I could figure was it was the sign of the broken arrow on there. The anvil and the ERT was just that, it was an anvil and ERT. The TRU symbol has been a TRU symbol for a long time.

I didn't know what the significance of a broken arrow was. I did a Google search on it, trying to figure out what's offensive, what does it mean to the Native culture.

The only thing I found is it was a sign of peace. That's the only thing I could tell you. I don't know what it meant.

…

So am I offended by it in looking at it? I still don't know what it means … No, I'm not offended by it.

…

Q: And would you agree with me that the most obvious interpretation of this logo is that ERT and TRU together broke the First Nations people?

A: I guess you could interpret it that way if that's what you wanted. You could also say that ERT and TRU and the sign of peace in the center, if that's what a broken arrow actually means.

Testimony of Dennis Leblanc, 23 May 2006 at pp. 214-217.

757. It is extremely troubling that so many of the officers that were involved in the OPP operation at Ipperwash had these souvenirs in their possession. Like Constable Leblanc, many of these officers maintain that there was nothing wrong with the design, though some do now acknowledge the problem.

758. Most troubling was the fact that the Incident Commander and his second in command failed to intervene to prevent the distribution of these hateful items. The lack of

sensitivity (to put it mildly) to First Nations peoples must inevitably taint the OPP actions on the evening of September 6, 1995.

ii) James Dyke and Darryl Whitehead

759. Viciously racist remarks by two OPP officers posing as media people at Ipperwash Park in September 1995 were recorded on videotape.

> Exhibit P452: Vide Recording of comments by Detective Sergeant Darryl Whitehead and Provincial Constable James Dyke, September 6, 1996.

760. This information was only made public in 2003, when it was revealed as a consequence of a freedom of information request. Gwen Boniface commenced a complaint to the Professional Standards Branch.

761. Darryl Whitehead acknowledged that he made the following comments on the recording: "Just a great big fat fucking Indian." He identified James Dyke as the speaker who said: "We had this plan. If we got five or six cases of Labatt's 50 we could bait them. Then we could get this big net in a pit, creative thinking, works in the south with watermelons."

> Exhibit 1051: Discipline Files, Volume I.

762. Darryl Whitehead accepted the recommendation of the Professional Standards Branch that informal discipline should be imposed. As a result, he was the subject of informal discipline consisting of the deduction of 24 hours from his accumulated credits and attendance at a four day First Nations awareness program with his attendance being deducted from his accumulated credits.

> Exhibit P452: Vide Recording of comments by Detective Sergeant Darryl Whitehead and Provincial Constable James Dyke, September 6, 1996.
>
> Testimony of Gwen Boniface, 14 June 2006 at pp. 165-173.
>
> Exhibit 1051: Discipline Files, Volume I.

763. Jim Dyke was no longer a police officer with the OPP, but was working for the OPP on contract. Dyke denied that he made any of the comments on the tape, and claimed that he could not even distinguish his own voice due to hearing loss. According

to OPP Commissioner Boniface, Jim Dyke has not worked for the OPP since the conclusion of the Professional Standards Branch investigation.

Exhibit 1051: Discipline Files, Volume I.

764. Both of these officers were responsible for carrying out "intelligence" functions during the Ipperwash operation. It is extremely disturbing that two of the officers responsible for gathering and assessing information that could be used in OPP tactical and other decision making were so clearly racist.

Testimony of Don Bell, 7 June 2006 at pp. 328-239.

765. Although all officers must operate free of racism, it is particularly important for those involved in performing an intelligence function to approach their job without bias. One of the most serious forms of bias is racism. The fact that two (of four officers assigned to "intelligence" at Ipperwash) were caught in the act of expressing such hostility to First Nations people undermines the credibility of the intelligence operations in the OPP both at Ipperwash and more generally.

iii) Racist statements captured on telephone and radio recordings

766. It is purely by chance that this Inquiry has had access to recordings of many of the telephone conversations the took place on the Command Post telephones. It was not intended that they all be recorded. It is because of this unintended record that we gain a further troubling insight into a culture of racism within the OPP.

767. Exhibit 1727 to these proceedings is a chart reflecting several telephone calls that the OPP identified for disciplinary review as well as the discipline, if any, that was ultimately carried out. The chart is reproduced in its entirety below:

Date/Time	Parties	Impugned Remark	Disciplinary Response
September 5, 1995 at 03:22	Sergeant Bob Cousineau	Wells states, "any shooting?" Cousineau replies, "not yet". Wells states, "any killing" and	Cousineau was a sergeant in the Chatham Communications Centre, but

	Sergeant Wells	Cousineau replies, "not yet". Wells states that he would like to come to Ipperwash and bring his gun. He would have the Park back in 15 minutes	was brought into Ipperwash to work as the communications sergeant in the command post during the material time. He was the subject of non-disciplinary discussion (date u/k). Wells was a communications sergeant in London. He never worked at Ipperwash. Wells had retired from the OPP.
September 5, 1995 at 09:33	Ray Al (civilian member)	[Name redacted] calls [name redacted] to log on. They are talking about search done and press release. [Name redacted] talks of Ipperwash situation – more important to the press than his search. "Ipperwash is a little more important because the Indians are taking over the world and we are letting them have it. Whenever I need something, I'll hire an Indian. They'll get it for me." [Name redacted] replies, "If you're looking to buy a house, don't buy it. Just have an Indian take it over for you. That house over there is real nice…just take it over for me, will you?...I'm glad I don't live in a disputed area…real estate value drops drastically when the Indians come in."	"Ray" was the subject of non-disciplinary discussion on November 8, 2004. Ray was a police officer at the material time, but he was not involved in the Ipperwash events. "Al", a civilian member, received a letter of reprimand. "Al" was a civilian radio operator working at the material time out of the London Communications Centre. He did not work as a civilian radio operator out of the command trailer in Forest on September 5, 6, or 7, 1995.
September 5, 1995 at 11:00	Insp. Jim Gordon Sergeant Rob Huntley	Gordon refers to the First Nations protestors in park as a "bunch of aresholes…yup, actually that is a very nice way to describe them…being generous, eh?...too generous."	Insp. Gordon had retired from the OPP. Sergeant Huntley was the subject of non-disciplinary discussion on November 8, 2004.
September 5, 1995 at 11:06	Sergeant Rob Huntley Sergeant	They are talking about overtime: "what are you going to do with all your money?" "Give it to the government so that they can give the Indians	Huntley was the subject of a non-disciplinary discussion on November 8, 2004. Brigger had retired from the OPP.

	Brigger	more stuff…like you know all this stuff we keep giving them doesn't come cheap."	
September 5, 1995 at 13:25	Ray Al (civilian member)	[Name redacted] calls the comm. Centre and speaks of incidents and occurrences. Talk turns to weekend's events. [Name redacted]: "All you have to do is find a Provincial Park and occupy it and it's yours…I'm looking for some real estate myself…I'm going to contact the Ipperwash Indian Band to pick it up for me so I don't have to pay for it…"	"Ray" was the subject of a non-disciplinary discussion on November 8, 2004. Ray was a police officer at the material time, but he was not involved in the Ipperwash events. "Al", a civilian member, received a letter of reprimand. "Al" was a civilian radio operator working at the material time out of the London Communications Centre. He did not work as a civilian radio operator out of the command trailer in Forest on September 5, 6, or 7, 1995.
September 5, 1995 at 16:23	Sergeant Stan Korosec Cst. Randy Burch	Korosec states, "they're native, they've all got long guns…AK 47's…not confirmed…never been confronted with a native with a long gun or they would probably be a dead native by now."	Sergeant Korosec had retired from the OPP. No action was taken against Cst. Burch.
September 5, 1995 at 23:32 hours.	Sergeant Stan Korosec Cst. Wayde Jacklin	Korosec refers to an earlier conversation he had with Mark Wright and states, "we need to amass a fucking army. Do these fuckers up right."	Sergeant Korosec had retired from the OPP. No action was taken against Cst. Jacklin (unsubstantiated)
September 6, 1995 at 07:34 hrs.	Sergeant Kent Skinner A/Sergeant Ken Deane	Automatic gunfire overnight changes things. Skinner: Some people around here want to do things. Deane: Wright? Skinner: That would be one of them.	This communication was not identified for disciplinary purposes.
September 6, 1995 at 16:48	Sergeant Stan Korosec	Korosec is speaking to a tow truck driver and tells him not to worry about causing damage to OPP WHO car if he has to	This communication was not identified for disciplinary purposes.

		tow it.	
September 6, 1995 at 17:44 hrs	[Name redacted] Chuck (civilian member)	Chuck states, "what's wrong with hating Indians" and then refers to being on a taped line.	Both "Chuck" (civilian member) and the constable involved had retired from the OPP. "Chuck" was a civilian radio operator working at the material time out of the Chatham Communications Centre. He did not work as a civilian radio operator out of the command trailer in Forest on September 5, 6 or 7, 1995. The constable was not involved in the Ipperwash events.
September 6, 1995 at 20:25	Sergeant Stan Korosec	While Korosec is on hold, he is overheard to say, "Lacroix is on his way in to do these guys."	This communication was not identified for disciplinary purposes.
September 6, 1995 at 23:25	C.R.O. Norm u/k male (partner of Tracy Crane)	u/k male: who was shot? Norm replies, "one of the bad people."	This is a conversation between an officer (who is identified as a partner of Tracy Crane) and "Norm", a civilian radio operator working out of the Chatham Communications Centre. It would appear from the contents of the communication that the officer was uninvolved in Ipperwash but was inquiring as to what was happening there. Norm was not one of the civilian radio operators working out of the command trailer in Forest on September 5, 6 or 7, 1995
September 7, 1995 at 01:13	Dispatcher D/Sergeant Terry McIntosh	During conversation about shooting, he refers to "stupid fucking Indians."	D/Sergeant McIntosh was informally disciplined. D/Sergeant McIntosh was not involved in the Ipperwash events. He was speaking to a civilian radio operator (unidentified)

			working at the material time out of the Chatham Communications Centre.
September 7, 1995 at 18:43 hrs.	Sergeant Brian Deevey S/Sergeant Wade Lacroix	Lacroix states he's there with Tex and the boys. They want to know what autopsy revealed re injuries to deceased. Dudley only had 2 holes?...We took out Dudley George.	No action was taken (unsubstantiated)

Exhibit P1727: chart of racist remarks captured on OPP recordings and disciplinary response.

768. Although some of the participants in the above noted discussions were not directly involved in the OPP operations at Ipperwash, some of them played key roles. Inspector Gordon was one of the Incident Commanders at Ipperwash after the shooting. Sergeant Huntley, who participated in two of the above listed telephone calls as well as at least one other similar conversation that was not listed in the chart, was a member of the Crowd Management Unit that marched on the park. Sergeant Brian Deevey was the leader of the Barrie TRU team that came to the area after the shooting. Staff Sergeant Wade Lacroix led the CMU in its march to the park.

Exhibit P-1157: Transcript of Rob Huntley, Sept 05/95, 13:38 hrs.

769. Many of the discussions took place with one of the speakers being present in the OPP Command Post in Forest.

770. The comments range from slurs about "Indians" getting handouts and claiming property to which they are not entitled to express desires to use violence against the people in the park. The comments reflect an absence of understanding of the historical wrongs done to First Nations people and a consistent current of racist hatred.

771. All of the above statements were referred to the Professional Standards Branch for investigation. No formal discipline flowed from the subsequent investigation. Where informal discipline was imposed it was limited to either "admonishment" or "discussion."

Testimony of Gwen Boniface, 14 June 2006 at pp. 172-174.

772. Significantly, none of the transcripts involving Mark Wright's inappropriate comments were sent to the Professional Standards Branch for investigation specific to Mark Wright. The conversation in which Sergeant Korosec reflected on a conversation with Mark Wright about "amassing a fucking army" was sent to the Professional Standards Branch but Mark Wright was not a subject of the investigation. The chart reflects that no action was taken against Sergeant Korosec as he had retired, and the complaint was "not substantiated" against Wayde Jacklin.

> Exhibit P1154: Transcript of telephone call between Wayde Jacklin and Stan Korosec, September 5, 1995 at 23:32 hours.

773. Given the widespread racism in the OPP that is reflected in these recordings, it is not surprising that, following the death of Dudley George, many OPP officers involved in the operation either distributed or received racist paraphernalia to commemorate the event.

iv) Racial profiling of First Nations people in provincial parks

774. In the summer of 1995, the OPP collaborated with Ministry of Natural Resources personnel to enact a policy that MNR employees who saw First Nations people committing criminal or provincial offences should report that to the OPP; there was no such reporting policy with respect to people who were not First Nations.

775. As discussed in greater detail above, Incident Commander Carson testified that he would have reviewed these protocols with the OPP officer who negotiated them with MNR employees, and that "we would have asked for their cooperation."

776. Although the present OPP Commissioner testified that it was "very disturbing" that there had such a policy as recently as 1995 providing for special policing of First Nations people, Incident Commander Carson stated that he didn't see a problem with the policy, even in retrospect.

v) Systemic racism in the OPP remains a problem

777. Although the OPP purportedly investigated the above-mentioned racist actions by their officers, no OPP officer received any significant discipline for any of those actions. In particular, Incident Commander Carson received no discipline whatsoever for his acquiescence to the distribution of racist "memorabilia" or to the special policing of First Nations people, or with respect to any aspect of his actions concerning Ipperwash.

778. On the contrary, Inspector Carson was subsequently promoted to the rank of Deputy Commissioner. There are only four Deputy Commissioners of the OPP, and the only higher-ranking officer is the Commissioner herself. At present, Carson continues to hold the rank of Deputy Commissioner. Mark Wright, the then-Sergeant that advised Carson on the evening of September 6, 1995 "Let's just go get those fucking guys," was subsequently promoted to Inspector, a very high rank within the OPP.

779. Lack of discipline, even for incidents that were identified in 2003, 2004, 2005 and 2006, shows that the OPP is not serious about addressing a problem of widespread and systemic hatred of First Nations people amongst its members.

780. The Aazhoodena and George Family Group recommends:

Recommendation No. 44
The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that Ontario police forces must each adopt a policy of "zero-tolerance" towards racism by police officers.

Recommendation No. 41
The Province of Ontario should enact a regulation pursuant to the Police Services Act requiring that all telephone calls and radio transmissions made by police officers in the course of performing their duties be recorded in all cases in which it is practical to do so.

Recommendation No. 56
In recognition of the fact that the failure to include appropriate education concerning First Nations' issues and First Nations' history in the Ontario educational system does a disservice to all residents of Ontario, the

Government of Ontario should revise the educational curriculum in Ontario so that it includes substantial information concerning First Nations' issues and history. Instruction concerning this portion of the curriculum should begin at an early age and should continue throughout both elementary and secondary education.

Recommendation No. 57
The Government of Ontario should ensure that the First Nations' portion of the curriculum in Ontario public schools should be written, and periodically updated thereafter, with the input and partnership of First Nations.

Recommendation No. 58
The Governments of Canada and Ontario should ensure that there is adequate funding and resources for the teaching of First Nations languages.

Recommendation No. 59
The Government of Canada should make Aboriginal Solidarity Day a statutory national holiday.

H. Police do not have ability to negotiate resolutions to disputes with First Nations

781. Clearly, negotiation is the only way to resolve disputes such as those that arose at Stoney Point. Removal of First Nations people from territory that they assert belongs to them, or that has sacred characteristics, can only be a short-term solution and is certain to lead to violence. If violence is to be avoided in the future, it is essential to understand why the OPP was utterly unable to enter into constructive negotiations with the Stoney Point people, and thereby avert Dudley George's death.

782. The central problem facing the OPP was that it did not have either the will or the power to bring the conflict over the provincial park to a peaceful conclusion.

783. The primary mission of Project Maple was supposed to "contain and negotiate a peaceful resolution" of the occupation of the park. If that was the goal, the OPP were remarkably unprepared to take up that task.

Exhibit P424: Project Maple.

784. Brad Seltzer was identified in Project Maple as the leader of the negotiating team. However, Mr. Seltzer was quite clear in his testimony that the "negotiating team" was never called upon. The negotiating team was only to be called upon if there was a traditional hostage-taking or barricaded person type of situation. The negotiators did not have training to negotiate in a protest-style occupation such as faced the OPP at Ipperwash Provincial Park. Rather, Seltzer saw his role throughout September 4-6, 1995 as assisting in opening a dialogue with the people in the park. Prior to September 4, 1995, the OPP had not identified any person who would play this "opening dialogue" role.

Exhibit P424: Project Maple.

Testimony of Brad Seltzer, 13 June 2006 at pp. 219-223.

785. If the goal was to "open dialogue" with the people in the park, Brad Seltzer testified that an appropriate person would have the following qualities: it should be the same person throughout, someone trusted by both sides, knowledgeable about First Nations, have experience and training as a communicator, and have respect for the First Nations people in the park. This facilitator would have to be someone who believed that the situation should be de-escalated.

Testimony of Brad Seltzer, 13 June 2006 at pp. 227-229.

786. Yet, the primary OPP communications contact with the people in the park was Acting Detective Staff Sergeant Mark Wright. Clearly Mark Wright did not possess any of the above qualities and, as the discussion above should make clear, he was a singularly improper choice for this role. In addition to the fact that he was one of the most vocal proponents of aggressive action against the people in the park and had no particular knowledge about First Nations' issues, Mark Wright had no experience or training as a negotiator.

Testimony of Mark Wright, 21 February 2006 at p. 177.

Testimony of Mark Wright, 21 March 2006 at p. 248.

787. The message that Mark Wright conveyed to the people in the park through his "negotiations" was that the OPP would not negotiate, and the OPP considered the people

in the park to be trespassers. It is thus not surprising that Mark Wright was not able to open up a dialogue with the people he spoke with.

788. Of course, it is highly questionable whether any OPP officer would have been appropriate in the circumstances. Given the level of trust between the parties that is required to open up a dialogue, the fact that the OPP had already had several unpleasant interchanges with the people in the park would make it very difficult for the OPP to play such a facilitative role.

Testimony of Julie Jai, 14 September 2005 at pp. 31-33.

789. Not surprisingly, many of the Stoney Point people expressed a concern about acting as a spokesperson and dialoguing with the OPP. For example, Kevin Simon testified that the Stoney Pointers made a point of not taking on a spokesperson role because they did not want to be seen as an OPP target.

Testimony of Kevin Simon, 2 December 2004 at pp. 174-175.

Testimony of Marlin Simon, 30 September 2004 at pp. 64-65.

790. This barrier to opening up a dialogue with the people in the park was brought to the attention of the OPP. Two elders at the Kettle Point reserve told OPP "negotiator" Brad Seltzer that two leaders of the Stoney Point community, Glenn George and Roderick George, may be willing to meet with police but that they would not do so unless they were assured they would not be arrested as a result of stepping forward. Brad Seltzer passed this information on to Inspector Carson, but unfortunately this message came too late to prevent the tragic CMU operation.

Testimony of Brad Selzter, 13 June 2006 at 246-251.

Exhibit P1704: Handwritten notebook entries of S/Sergeant Brad Seltzer, September 6, 1995 at pp. 88-96 (Inquiry Document No. 2003866).

791. Brad Seltzer was also specifically told that the people in the park would want to talk with somebody who had the authority and power to deal with their claim to the land. That would clearly not be the OPP nor did Les Kobayashi, the representative of the MNR who attended at the park to serve the notice of trespass

Testimony of Brad Selzter, 13 June 2006 at 223-225..

792. The Canadian Association of Chiefs of Police has passed a resolution calling on governments to work in conjunction with First Nations to resolve grievances. Former OPP Commissioner Thomas O'Grady described the analysis that lead the Association to pass such a resolution:

> We were very much of the view that while the First Nations and the police very often came in contact over these things [i.e. land claims], and very often in very contentious nature, that certainly, the police could not resolve it, and that if it was to be resolved, it would need to be done by Provincial and especially Federal Governments working in conjunction with – with First Nations leadership to resolve these issues.

Testimony of Thomas O'Grady, 15 June 2006 at pp. 322-323.

Exhibit P622: Canadian Association of Chiefs of Police resolution re: First Nations land claims, 1996.

793. Protests by First Nations peoples that are claiming Aboriginal and/or treaty rights will almost always require intervention by either the Federal or Provincial government. Police services do not have the capacity to address the complex historical and legal issues that are posed by these demonstrations. Respect for the rights and nationhood of First Nations peoples requires governments to respond to these disputes as political disputes, not to leave them in the hands of the police.

794. However, rather than turning to the government to demand that they resolve a complex problem involving sacred sites and entitlement to the lands in the provincial park, the OPP placed their reliance on the courts to conclusively resolve the problem by way of an injunction.

795. Although the OPP may be of the view that the courts are beneficial, in that they give the appearance of allowing the OPP to neutrally enforce a judicial finding regarding ownership, the reality is much more complex. As Part One of this submission reflects, the courts have rarely risen to the challenge posed by First Nations' rights claims. These problems are only exacerbated by a rush to court to obtain an injunction. No court can

fully assess a historical claim to land on an injunction motion prepared in a matter of hours – particularly when the motion is brought on an ex parte basis.

796. The way to resolve First Nations claims to land and to other unique rights without violence is respectful negotiation between equal partners. Only governments can participate in such negotiations. The police must be taken out of this equation if violence is to be avoided in the future.

Part Five: Conclusion

797. The causes of the Sept 4, 1995 occupation of Ipperwash Provincial Park were the Federal and Provincial governments' numerous failures to observe their obligations to the Stoney Point people: allowing the unconscionable 1928 surrender of a part of Stoney Point reserve that included what became Ipperwash Provincial Park, the seizure of the rest of Stoney Point by the Federal government pursuant to the *War Measures Act* in 1942, the continued refusal to return the land to the Stoney Point people and the lack of concern of both governments for the prevention of the desecration of burial sites.

798. There was no rational, legitimate purpose served by the OPP attack on the evening of September 6, 1995.Thus, the inescapable conclusion is that the immediate cause of the attack was political pressure from the Harris government combined with the aggressively racist attitudes of some OPP officers. Dudley George and a number of others were the tragic victims of this attack.

799. Mike Harris and his Conservative government prevented any negotiation or cooperation with the Stoney Point people that could have led to the peaceful resolution of the Ipperwash situation. Pressure by Harris' assistant Deb Hutton created a crisis out of what otherwise would have been a peaceful occupation that did not interfere with the rights of anyone. The Harris government's attitude was summarized succinctly by Premier Harris himself when he proclaimed "I want the fucking Indians out of the Park." Incident Commander John Carson and leader of the Crowd Management Unit Wade Lacroix got the Harris government's instruction to be aggressive from Inspector Ron Fox's messages and from the direct pressure exerted by local MPP Marcel Beaubien.

800. The OPP viciously maligned the victims of their attack, in formal press releases and in numerous statements by individual officers that were reported in the media. From the totality of the evidence tendered at the Inquiry, we can be virtually certain of the following facts:

- Deputy Commissioner John Carson's claim in the initial press release that "a private citizens vehicle was damaged by a number of First Nations people armed with baseball bats" was completely false.
- Another of Deputy Commissioner Carson's claims in the press release, that "occupants of those two vehicles fired upon police officers and subsequently police officers returned fire" was also completely false. None of the Stoney Pointers fired any shots whatsoever; in fact, no Stoney Pointer even had a firearm at the scene of the confrontation.
- Commissioner O'Grady's press release the next day was entitled "clarification of events." Nonetheless, it was also completely false. This press release claimed that "the OPP were there to address a disturbance involving First Nations persons causing damage to private property in the area." There was no disturbance involving First Nations persons, and the only damage to private property was the denting of Gerald George's car by a rock thrown by Stewart George, which occurred hours before the OPP attack. Commissioner O'Grady's press release repeated the defamatory statement of Carson's "that OPP personnel were fired upon from the vehicles."

801. The Report by the Commissioner of this Inquiry will be the permanent historical record of what happened at Ipperwash Provincial Park on September 6, 1995 and of the surrounding circumstances. It is imperative that the Report detail both the facts as to what did occur and the facts of the defamation of the Stoney Point people by the OPP and by politicians. This Commission must confirm in no uncertain terms that the Stoney Point people did not fire at the OPP; rather, an OPP killed an unarmed Dudley George and lied about it.

802. The evidence given at Part I of the Inquiry and the research studies submitted to Part II have provided extremely broad and valuable information concerning the causes of occupations such as that of Ipperwash Park, as well as the policing of public order situations in general and First Nations occupations in particular.

803. It is submitted that all of the recommendations that we have proposed in this submission are reasonable, practical, arise from Part I and/or Part II of the Inquiry and would, in a general sense, help to prevent violence in similar circumstances in the future. It is respectfully submitted that the Commissioner should propose these or equivalent recommendations to the appropriate bodies.

ALL OF WHICH IS REPECTFULLY SUBMITTED at Toronto, Ontario, this 28th day of July, 2006.

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