IN THE MATTER OF THE IPPERWASH INQUIRY

Highlights of Submissions of

The Canadian Civil Liberties Association

PART II

To: The Honourable Mr. Justice Sidney B. Linden, Commissioner

August 3, 2006

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TO: Ipperwash Inquiry
FROM: Canadian Civil Liberties Association (CCLA)
RE: Highlights of Submissions

In a number of forums – including the 2004 conference convened by this Inquiry – the Canadian Civil Liberties Association (CCLA) has already criticized the existing relationship between the police and the government. This is one of the major issues that emerged in the wake of the Ipperwash confrontation and it is one that we plan to embellish at the hearing. In this regard, CCLA challenges the notion that the government may direct police policies but not police operations. Quite often, there is no clear distinction between these concepts and, even when there is, the distinction is often not very useful.

CCLA will propose a much larger role for the government in directing both police policies *and* operations.

Despite this proposal, however, we appreciate and support one of the key purposes of the existing arrangements: to avoid the politicization of the police. In order to ensure that the proposals we make do not unduly imperil this objective, we intend also to recommend the adoption of safeguards. To whatever extent the political authorities issue directives to the police, such directives should generally be in writing. Moreover, the police-government relationship – as well as police policies and practices generally — should be subject to self-generated audits by an independent agency that has ongoing access to police records, facilities, and personnel.

As for the handling of Aboriginal protests, the police should not have the primary role. There should be no question that the government is in charge of the police and that the police are subject to government direction. As far as possible, the

objectives should be to avoid the use of force as an instrument to end any contested occupations. And, to whatever extent there must be resort to force, the clear-cut policy should be to employ no more than is reasonably necessary in the circumstances. Apart from emergencies and front-line situations, the government, not police, should determine when and how far to use force.

In the event that private parties might seek an injunction to end an Aboriginal occupation of contested land, special measures should be considered. In the case of land in which the Aboriginal people have a "colour of right", the courts should be required to defer to existing negotiations or claims processes. Moreover, before any court orders are issued that could irrevocably alter the land in question, the provincial attorney general should be required to intervene to alert the court regarding the Aboriginal claims. While such an intervention could not – and should not – determine the outcome of the case, it is likely to ensure that the Aboriginal claims receive more weighty attention than might otherwise be forthcoming.

In a nutshell, the foregoing represent the areas that are likely to be covered in the CCLA's submissions.