

IN THE MATTER OF Order in Council 1662/2003, dated November 12, 2003;

AND IN THE MATTER OF a Commission of Inquiry pursuant to the *Public Inquiries Act*, R.S.O. 1990, c. P.41, as amended;

AND IN THE MATTER OF an Inquiry into the events surrounding the death of Dudley George and the development of recommendations directed to the avoidance of violence in similar circumstances

REPLY SUBMISSIONS

ON BEHALF OF THE ONTARIO PROVINCIAL POLICE

AND ITS SENIOR OFFICERS

PART I

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PART I

I. OVERVIEW

1. The OPP Reply is divided into Parts I and II. This is similar to the approach taken in our original submissions.
2. Since the OPP Reply is designed to respond, where necessary, to the submissions made by other parties, it has been organized into Sections, each of which addresses the submissions made by a particular party to the Inquiry. As a result, where another party has made both Part I and Part II submissions, their submissions may be addressed in two locations.

3. Often more than one party argued the same point in their Part I Submissions. The point is addressed in the OPP Part I Reply once, and not referred to again unless it is necessary to address some related or subsumed point. As is later explained, a different approach is taken in the OPP Part II Reply.

II. PRELIMINARY OBSERVATIONS

4. On June 1, 2005, Commissioner Linden conveyed the following about the Inquiry's non-adversarial quality:

...It's worthy of reminder that a public inquiry is not a civil or a criminal trial.

The Commissioner does not make findings of civil or criminal liability, nor does the Commissioner have the ability to impose any penalties.

An Inquiry is an inquisitorial, and not an adversarial proceeding. Notwithstanding the separate, and sometimes distinct interests of parties, withstanding [sic] I believe that this fact should continue to guide our behaviour during the course of this Inquiry.

In addition, on September 12, 2005, Commissioner Linden had the following to say about the Inquiry's role in contributing to healing:

And finally, I believe the inquiry process can be *instrumental in contributing to healing and to building and repairing institutional and individual bridges*. I hope all parties feel that we've begun to move in this direction and that this can be continued long after the hearing process has been complete. I reiterate my appreciation of Counsels' efforts to work constructively to meet our goals.
[emphasis added]

- Comments of Commissioner Linden, June 1, 2005, p. 78
- Comments of Commissioner Linden, September 12, 2005, p. 10

5. The OPP took these comments to heart. It has acknowledged mistakes made at Ipperwash, and drawn upon the perspectives and aspirations of First Nation peoples in its own evolution over the years, and in its recommendations to

this Inquiry. It came to the Inquiry prepared to contribute to the healing process, as did a number of First Nation parties to this Inquiry, even as we may not agree on all of the issues.

6. Unfortunately, it must also be said that the written submissions of some parties showed little or no real interest in contributing to the healing process. As reflected in the Prologue of our earlier Submissions, healing requires parties – *every party* – to listen and learn, not just be heard; to be introspective, not just adversarial; to be forward looking, not exclusively fixed on the past.

7. A few examples make the point. The submissions of Aazhoodena and George Family Group (“AGFG”) are often inflammatory and gratuitously adversarial. AGFG, which properly pleads for fairness in the Aboriginal claim process, has no room for fundamental fairness in its treatment of the OPP. It makes the point that the killing of Dudley George led to Deputy Carson’s promotion rather than his dismissal, and urges that his position within the OPP be reviewed. It makes the submission that Deputy Carson is “anti-Native”, which is breathtaking in its outrageousness. It would have been insightful to hear Commissioner Boniface, whose leadership and sensitivity on First Nations issues has been acknowledged by everyone including AGFG, asked to respond to these allegations about her Deputy Commissioner. The language that ties Deputy Carson’s promotion to the killing of Dudley George inflames, rather than heals.

8. Healing also requires true introspection. For example, AGFG claims that every single military report of misuse of firearms by the occupiers at the Army Camp is tainted and unreliable, an absurd proposition. The point here is not that these facts changed Deputy Carson's approach in September 1995. On the contrary, Deputy Carson was exceedingly fair in concluding that the occupiers were unlikely to use firearms against the OPP. The point is that responding to Aboriginal occupations and protests is a difficult, complex undertaking. Some of the difficulties arise from the possible intervention of undesirable elements, the refusal to communicate with police, and internal strife within the First Nations community. Finding solutions is not assisted by simply "heaping the blame" for everything – without nuance or understanding – upon the police. First Nations leadership, even while critical of the police, understands this. Too bad AGFG does not.

9. The submissions of the Estate of Dudley George and Members of Dudley George's Family ("EDG") were also disappointing. We must say at the outset that Sam George's foreword to those submissions was balanced and insightful. However, the EDG submissions are replete with characterizations that are baseless. An incorrect report of fires outside the Park becomes a "bogus" report. Mistakes become "fairy tales". Officers are described as "dangerous pit bulls". The submissions are so driven to make the case for political interference that they run roughshod over the evidence. We would prefer to focus upon the dignity that Sam George personally brought to this Inquiry, his sensitivity to OPP senior

officers when their testimony was completed, and upon Mr. Klippenstein's comments at the end of Deputy Carson's testimony:

Yes, Commissioner. I think I just – on behalf of myself personally, on behalf of – of my client who's sitting here, Sam George, and I think probably I speak for – for all counsel, I want to express appreciation to the witness, Deputy Commissioner Carson who has made himself available for a very long period for difficult and detailed questioning.

And it's been very important for the overall process of the Inquiry and we do appreciate the toll and strain it was on him and on some of the rest of us as well, but we do want to thank him.

- Comments of M. Klippenstein, June 30, 2005, pp. 146-47

III. THE ESTATE OF DUDLEY GEORGE AND MEMBERS OF DUDLEY GEORGE'S FAMILY ("EDG")

EDG's Proposed Finding 18: During the course of September 4 to 6, 1995, there were no circumstances on the ground at Ipperwash Park which warranted that the situation be dealt with on an urgent or emergency basis. (p. 128)

10. EDG submits that a number of Deputy Carson's key operational decisions were not informed by circumstance, but instead were the product of political pressure. EDG points to Deputy Carson's support of an *ex parte* injunction as an example:

Given the absence of anything on the ground that justified calling the situation an emergency, there is only one plausible explanation for why John Carson was willing to say on September 6, 1995 that there was urgency. He expressly wanted to support the government, and an urgent injunction is what the government wanted. Perhaps unwittingly, he had bought into Harris' emergency mindset...

Leaving aside that Deputy Carson's support for *any* type of injunction contradicts EDG's principal theory that he deployed the CMU to evict the occupiers in the absence of such an injunction, Deputy Carson's participation in the preparation for the *ex parte* application had, with respect, nothing to do with political pressure.

11. The uncontested evidence demonstrates that Deputy Carson wanted an injunction order *before* any political pressure is alleged to have been exerted. In addition, the minutes of September 1, 1995 indicate that the OPP understood, rightly or wrongly, that the MNR “is literally prepared to go into court at a minute’s notice”.

- Minutes of September 1, 1995 meeting, Ex. P-421, p. 5

12. Deputy Carson first learned of the possibility of an “emergent” injunction from Supt. Fox during their September 5, 1995 telephone call. At no time during this call does Supt. Fox suggest to Deputy Carson that Premier Harris is pushing for an injunction, let alone an emergent one. Instead, Supt. Fox relates how he persuaded the Interministerial Committee attendees that an injunction application was the appropriate route:

Fox: Um MNR by the way ah kind of were against getting an adjoining [sic] order.

Carson: Really.

Fox: Yeah yeah referring basically to pass it over and say well you know I mean there is criminal code offences of Mischief you know, Interfere Lawful Enjoyment or Use of Property and Trespass so I very carefully explained to them that you know under the Trespass to Property an officer could go serve process escort somebody to the gate and then they can come back in.

Carson: Right.

Fox: And we’ll go on for ever this way and I explained the same with the Criminal Code and the provisions of the Bail Reform Act and how release procedures work and I said quite clearly I mean this is a civil dispute

and it has to be adjudicated in a court of law and the police given sufficient authority to act.

Carson: Right.

Fox: So they finally agreed the consensus is they'll get an adjoining order and the MNR will provide the large part of the affidavit but they wondered who they might speak to if they needed some prospective [sic] from the police and I suggested yourself.

Carson: Um hum.

Fox: And I confirmed by when I say confirm I was talking to Coles just to let him know what went on here ah after I spoke to you earlier.

Carson: Right.

Fox: And he's quite content that you be the contact.

Carson: Okay yep that's no problem.

.....

Fox: Let me assure you that I I pushed them and they are going to apply for this enjoining order.

Carson: Okay.

Fox: And it sounds like they'll do the emergent form.

Carson: Good good okay...

Nothing in the Scribe Notes indicates that Deputy Carson connected Premier

Harris with an "emergent injunction". The entry referencing this call reads:

15:07 hours	Insp. Carson, advised Ron Fox is sitting on the "Blockade Committee." Sounds like they are going to get an emergency order.
-------------	---

- Transcript of Telephone Call between J. Carson and R. Fox, Ex. P-444A, Tab 16, pp. 117,126
- Scribe Notes (typed), Ex. P-426, p. 37

13. That conversation also reveals that C/Supt. Coles was not only aware of, but also endorsed the Incident Commander's role in providing an evidentiary foundation for the application. There is no evidence to suggest that C/Supt. Coles was subject to political pressure:

Q: Now, Chief, you're – you're aware that there have been many allegations with respect to political interference, at any point following the occupation of the Provincial Park, but prior to the death of Dudley George, did Premier Harris, any of his ministers or their staff attempt to direct you regarding the OPP's operations at Ipperwash?

A: No.

Q: And as far as you are aware, at any point following the occupation of the Provincial Park, but prior to the death of Dudley George, did Premier Harris or any of his ministers or their staff attempt to direct any OPP officers with respect to the operations at the Provincial Park?

A: Not to my knowledge, no.

- Evidence of C. Coles, August 16, 2005, p. 259

14. Deputy Carson learned further information about the emergent injunction during his telephone conversation with Supt. Fox on the afternoon of September 6, 1995:

Fox: ...What um what he's looking for is um of course they have the affiants all lined up from the MNR who are going to say it's their property and here's the deed and you know all the rest.

Carson: Sure.

Fox: But they need somebody from police perspective.

Carson: Okay.

Fox: And I said well you know I've talked to John about it I've talked to Chris Cole's [sic] and they agreed John's probably the guy to do that.

Carson: Uhum.

Fox: Because he has the knowledge of it. Now what the course the political people are really pushing and that's another story and I'll just fill you in so you know about that.

Carson: Okay.

Fox: But I mean they're pushing to get this done quick (sighs).

Carson: Yes yeah okay I hear yah.

Fox: There [sic] lining up a judge he is from Lambton County.

Carson: Okay.

Fox: A fellow by the name of Gardiner does that mean anything to you.

Carson: No he must be a different guy down here then [sic] when I

Fox: yeah

Carson: was posted here but anyway that doesn't

Fox: It didn't mean anything to me either.

Carson: All right.

Fox: And what they're thinking of is they'll either um do their ah their presentation to the judge tomorrow or tonight.

Carson: Okay.

Fox: And what they're thinking in lieu of having an affidavit from you.

Carson: Yes.

Fox: If you'd be willing to give the viva voce evidence.

Carson: Ah oh appear with them.

Fox: Yeah.

Carson: Oh yeah uhuh.

Fox: And I said well I said I you know I'm sure that's okay for John.

Carson: Yes.

Fox: But I said I've done it myself and I said personally I like to do it.

Carson: *Yes and I guess I don't have any problem as long as ah the Chief and the Commissioner don't have a problem with that.*

Fox: Yeah yeah while I think you know we'd want to check that out.

Carson: Yeah well the Chief's here.

.....

Fox: ...I guess the upshot is what Larry McKeird Tim McCabe is asking me he said is in your opinion can we say with certainty to a court that there is a need for an emergent order that makes it an ex parte order.

Carson: Well I think we can.

Fox: Yes.

Carson: I think we can.

Fox: Are you going to base that John on *the progression of event* [sic].

Carson: *That's right.*

Fox: Yeah.

Carson: And and you know I'm prepared too too [sic] appear and give that evidence *if ah you know if the Chief and the Commissioner feels that's the direction we should be going* and ah I don't see any reason why we can't ah support that.

Fox: No well I mean I've done it before with injunctions on strikes.

Carson: Right. [emphasis added]

- Transcript of Telephone Call between J. Carson and R. Fox, Ex. P-444A, Tab 37, pp. 260-62, 267-68

15. This passage demonstrates that Deputy Carson was not prepared to do anything to support an emergent injunction in the absence of approval by his superiors. This undermines EDG's contention that Deputy Carson was subservient to the Premier's views.

16. This passage also makes it clear that Deputy Carson's assessment that an emergent order was necessary arose from his concern about the progression of events. The timing of when this injunction could be brought was a critical issue for him. Indeed, the idea of having to wait two to four weeks for an injunction was

a serious concern for him. The 1:32 p.m. scribe entry for September 5, 1995 reveals this concern:

13:32 hours Ed Vervoort, MNR advise that Ron Baldwin was still on the telephone conference with the "Blockade Committee." He stated that there are two kinds of injunctions, a 24 hour emergency one or one that would take two to four weeks to get. Vervoort passed on the information from the briefing to Baldwin. *Insp. Carson questions if Ministry of Natural Resources is not prepared to get an injunction*, Ed Vervoort thinks they are prepared, doesn't know who isn't. *Insp. Carson states if it drags on have to discuss our media releases. John Carson advises that we have 60 people trying to secure the area.* Vervoort states he will inform Insp. Carson as soon as they know anything. [emphasis added]

Within approximately 20 minutes of this entry, Deputy Carson spoke to Deputy Chief Austin of the London Police Service about his desire for a timely injunction order:

Austin: I'm wondering I'm just wondering if we could develop something on an interim you know like these injunctions while as you're probably aware I don't do you think it's going to be a fairly immediate thing or?

Carson: Well see that's that's being debated hotly as we speak in ah the big smoke.

Austin: Cause hardly ever they are you know they.

Carson: Well there is the emergency type one they can get within a day.

Austin: Okay.

Carson: Um and if there [sic] not prepared to do that then I have to you know we have to really re look at our whole situation here.

Shortly after 4:00 p.m. that same day, the Incident Commander again expressed his concern about the timing of the injunction to C/Supt. Parkin:

Carson: ...have you [sic] talking to Ron Fox.

Parkin: Yeah I have been.

Carson: Yeah yeah that blockade committee ah sounds like there is some waffling going on there by some individuals.

Parkin: Yeah and apparently they want to go for the regular ah injunction.

Carson: W (u/i)

Parkin: So.

Carson: Are we prepared to live with that.

.....

Carson: But but if they're if they're prepared for that then let's just get the emergency injunction and get on with life.

Parkin: yep.

Carson: You know if if that's their feeling about it I mean let's have the appropriate support in law and deal with it.

Parkin: Yep okay.

- Evidence of J. Carson, June 29, 2005, pp. 271-74
- Transcript of Telephone Call between J. Carson and E. Austin, Ex. P-444A, Tab 14, pp. 101-02
- Transcript of Telephone Call between J. Carson and T. Parkin, Ex. P-444A, Tab 21, pp. 169-70
- Scribe Notes (typed), Ex. P-426, p. 35

17. When asked why the timing of the injunction was of such a concern, Deputy Carson offered the following explanation:

Well there was a – a number of issues, I would suggest all of the concerns that had arises to that point. We had the altercation on September the 4th, there had already been concerns in the community and the ability for us to maintain security was – was all going to be significant challenges and I felt it was important that some direction be sought through the Courts in regards to the ownership and direction relative to the ownership as soon as possible, before anything occurred that caused us other grief, so to speak.

Furthermore, Deputy Carson was prepared to promote an *ex parte* or urgent injunction at a point when the situation was relatively quiet because of that progression:

Q: See, the reason I ask you about this is because you've been through this territory and – and I understand that.

But what's being put to you in the context of *ex parte* versus the more long term injunction is, why are you promoting an *ex parte* or an urgent injunction when, as of the moment that you're speaking to Ron Fox, on the afternoon of September the 6th, the situation is relatively quiet at that point.

And that's what I want to ask you about, okay?

A: Yeah, it was at that point, but certainly no guarantees that that would be the order of the day as time went on.

We'd already had altercations and we'd had a situation where we didn't even have a dialogue happening and I was certainly concerned that, you know, without some stability, and without a Court injunction, it really put us in a – in a tough position trying to deal with all this.

Q: So looking at all these – all these things, when you're communicating that you'd support an urgent injunction based upon the progression of events, you weren't representing to

Ron Fox or anybody else that there were urgent events happening at two o'clock that afternoon?

A: Oh no.

Q: I mean I'll put it another way. The – the relative quiet at 2:00 p.m., did that represent how this occupation had progressed up into that point in time?

A: No.

.....

Q: The tensions that you've already described that were manifest between the Kettle and Stoney [sic] Point community and the occupiers, did you think they would be relieved or exacerbated through the passage of time?

A: Over time it would only get worse.

Q: You describe the difficulty establishing communications with them. Did you felt that a timely injunction would enhance or detract from reopening the dialogue with the occupiers?

A: I was it hoping it would stimulate it.

Q: You've described cruisers being damaged on two separate occasions, confrontations with the police resulting in charges.

A: Correct.

Q: You've described what you regarded, and there's different accounts of the event, as an ambush of the officers somewhat – on any account a somewhat violent confrontation between the occupiers, and the officers and so on, right?

A: Correct. Correct.

Q: Did that concern you?

A: Of course.

Q: Now, we've heard some evidence that MNR property, or property within the Park was being damaged. And – and of

course we tend now to – with – understandably to overlook that because we know in hindsight that Dudley George died, and it kind of pales in significance now, but was that a concern at the time?

A: Yes, there was some significant damage occurring.

Q: Now, the inability to control access into the Park by others than – than the Stoney Pointers who you knew, was that a concern?

A: To some degree.

Q: And would that have lessened or increased through the passage of time, in your view?

A: Well, it would have only increased.

Q: And what I'm going to suggest is that it was reasonable to promote a speedy injunction based on those events despite this window of relative quiet on the afternoon of September the 6th?

A: Correct.

- Evidence of J. Carson, June 29, 2005, pp. 275-80

18. There can be no question that there had been a progression of events between the evening of September 4 and the afternoon of September 6, 1995:

(1) on the evening of September 5, Roderick "Judas" George smashed out the back window of an OPP cruiser with a stick;

(2) that same evening, burning "strokes" were thrown at the police. EDG characterized the incident as follows:

Meanwhile, some of the kids occupying the Park started having a little too much fun with some firecrackers – little bottlecap-sized strobe firecrackers that spark and change colour and smoke a little bit. They threw some of them toward the area where the police were congregated. One of them unfortunately bounced off a police officer, but the little strobes were perfectly harmless and no damage was done. It was minor mischief by some kids, not an act of aggression.

With respect, Wesley George, who was a 15-year-old teenager when he threw six strobes that evening, testified at the Inquiry that he fully intended to throw them at the police. It did not amount to “careless lobbing of firecrackers” as EDG suggests:

Q: Okay. And what did you do with these strobe lights on Monday night?

A: I lit them and I *threw them towards the officers*.

Q: And why did you do that?

A: I don't know, *just felt the urge to*. [emphasis added]

David George and Kevin Simon confirmed that Wesley George threw the flares towards the police. Nicholas Cottrelle indicated that Mr. George “was just lighting them and throwing them into the circle of the police officers”;

(3) between 10:00 and 11:00 p.m. on September 5, 1995, following the removal of the picnic tables from the sandy parking lot, a number of occupiers threw rocks at police, damaging three police cars;

(4) close to midnight that same evening, 50 to 100 rounds of automatic gunfire were heard coming from “way back in the Army Base”. This was the information that Deputy Carson received on the morning of September 6, 1995. The relevant scribe note entries indicate:

06:34 hours Mark Wright and Stan Korosec and John Carson meeting with Insp. Linton briefing, 3 vehicles damaged and Army Camp Road bon fire. They backed off, 5 night glasses were distributed. Const. Parks of 50 – 100 rounds of auto fire. Backhoe and dump tracks [sic] running. Chris Martin activity all night. Males/females of children. Very little action at kiosk.

EDG discounts this report, claiming it was “a completely untenable, partisan position” and the product of “a heightened state of tension”. EDG argues that firecrackers produced the sound. There are three difficulties with this position:

(a) leaving aside the fact that it was never put to Sgt. Parks that his belief about automatic gunfire was a “partisan position” or the product of a “heightened state of tension”, his steady voice on the radio transmission belies any such notion;

(b) Sgt. Parks testified unequivocally that what he heard was not the sound of exploding firecrackers;

(c) it defies coincidence that two other officers who were not with Sgt. Parks at Checkpoint Charlie also heard what they believed was automatic gunfire that night. P/C Lorch heard automatic gunfire at Checkpoint Delta near the entrance to the Army Base.

Furthermore, D/C William Sword's interview statement reveals that, while patrolling the eastern boundary of the Army Base between the beach and Highway 21, he heard bursts of automatic gunfire at several points that evening and believed they originated from the Base's anti-tank range. He had a particular expertise in identifying such sounds:

Prior to joining the OPP, I was a member of Special Forces of the Canadian Army. I was a member of the "Recon." Unit for 1 RCR. I had received specialized training in automatic weapons and in fact became an instructor in automatic weapons with the rank of non-commissioned officer.

(5) shortly before 1:00 a.m. on September 6, 1995, an ERT officer reports that the occupiers are again throwing rocks at the police near the sandy parking lot. The relevant scribe note entry reads:

00:54 hours ERT member reports approximately 25 native males near parking lot, near fire, again threw rocks at cruiser.

(6) early on the morning of September 6, 1995, the Park occupiers had erected a second barrier of picnic tables in the sandy parking lot and had lit a camp fire there.

This was the information at Deputy Carson's disposal when he concluded that an *ex parte* or emergent injunction was, indeed, appropriate.

- Evidence of D. George, October 19, 2004, pp. 166-67
- Evidence of W. George, November 30, 2004, pp. 162, 190-91
- Evidence of K. Simon, December 1, 2004, p. 163
- Evidence of N. Cottrelle, January 18, 2005, p. 64
- Evidence of L. Parks, March 28, 2006, p. 329
- Interview of W. Sword, dated June 16, 1997, Doc. 2003904, pp. 2-3
- Transcript of Radio Transmissions, Ex. P-1226, P-1227
- Scribe Notes (typed), Ex. P-426, p. 47
- EDG Submissions, pp. 66, 78

19. Had Deputy Carson truly been motivated by political pressure to support an *ex parte* or emergent injunction, then surely he would have played up the report of automatic gunfire during his conversation with Tim McCabe on the afternoon of September 6, 1995 when they were discussing the evidentiary foundation for such a request. Instead, he placed it in context and was careful not to overstate its significance:

McCabe: But we'll be seeking this *ex parte* as I say which means without notice and in those circumstances ah it's it's important to be able to show some kind of urgency.

Carson: Yes.

McCabe: In order to demonstrate that if the order is not granted or if the if the time necessary to give the period of

notice ah that you know serious consequences could occur.

Carson: Right.

McCabe: Um ah we we there were I think the thing that has gotten people particularly concerned here is the reports of gunfire last night.

Carson: Yes.

McCabe: And and the fire

Carson: Yes.

McCabe: And the alcohol and those sorts of things. Um are I mean ah does that worry you?

Carson: Yes.

McCabe: Ah well.

Carson: There's ah there's ah.

McCabe: That's that's the answer to the question ah

Carson: yeah

McCabe: you know that's the point.

Carson: *Okay but ah I say that ah but I have to qualify that somewhat.*

McCabe: Yeah.

Cason: Ah the fire was set up as an ambush okay our guys got ambushed ah to down and deal with the fire on the roadway and got ah bombarded with rocks which caused damage to windshields the three vehicles and ah fortunately no no officers were hurt.

McCabe: Right.

Carson: *Ah the gunfire was back ah in the ah in the bush. I have I have to be frank with you we have not ah ah had a weapon pointed at us ah we haven't seen one*

fired in any direction and there is no reason to believe that the firing that we heard last night ah was anything more than [sic] audio for our benefit.

McCabe: I see.

Carson: Okay so so when when you hear that there's gunfire ah you can't really use that while you you I mean it it's a significant factor from from a safety point of view from my perspective in that I know that obviously there's weaponry in there.

McCabe: Okay.

Carson: *But but to say from a safety point of view that it's been ah that our officers have been threatened with weapons I can't say that.*

McCabe: Right.

Carson: Okay.

McCabe: Right but I I suppose from a public safety point of view if you take the view that the occupiers are themselves members of the public ah you know there's there there's this kind of stuff going on.

Carson: Well, there's no yeah absolutely like there is no doubt about it I mean it's you know it's ah certainly not something that's going to give you a fuzzy warm feeling.

McCabe: Yeah.

Carson: Yeah.

McCabe: Okay.

Carson: yeah I mean (u/i) the fact that there is gunfire going on is a is a concern and ah particularly when it takes and it happens in conjunction with other events I mean there is a subtle message there I guess as I was saying uh.

McCabe: Yep.

Carson: You know whether you see it or not but you know if if a judge asked me specifically did we see gunf err [sic] where did we see weapons or was any weapons pointed at us ah or were we ah ah ah felt our safety was in jeopardy because of those weapons we'd have to say we have not been ah directly threatened. I mean

McCabe: right

Carson: those are the subtleties that are used to you know ah ah as a tactical approach to us.

McCabe: Yeah.

Carson: Yeah.

McCabe: Right.

Carson: Yeah.

McCabe: Well um if he if the judge puts it to you that ah you as a professional police officer do you do you find do you think ah this injunction should be granted on this urgent basis ah ah you know what's your answer to that.

Carson: Yes absolutely.

McCabe: yeah all right.

Carson: *Okay (u/i) I mean they're just as long as it's understood in the big picture not in isolation okay cause I don't want people to think or or that your affidavit to suggest that that we have been fired upon or any of those kinds of things [emphasis added]*

- Transcript of Telephone Call between J. Carson and T. McCabe, Ex. P-444B, Tab 39, pp. 271-74

20. Deputy Carson unequivocally denied that he felt pressured to conform to the view of the political people that automatic gunfire justified the need for an *ex parte* or emergent order:

Q: ...Now, here you were being told by Tim McCabe, you know there's an application in the works for an emergency injunction, I'm speaking to you about it, and what's got the political people, you know, wound up, is the automatic gunfire.

Well, I mean, this is coming from the politicians. Did that move you to feel pressure, to kind of conform to their viewpoint?

A: No, not at all.

Q: Or to – or to emphasize the automatic fire in any way? In other words, to promote the view that – that they were promoting in favour of this ex-parte injunction?

A: No, I felt obliged to make sure that he understood the context as I – as I knew it.

Q: But what if – what if telling Tim McCabe that would have caused Tim McCabe to say, well, you know, on that basis, I don't think we can justify an ex-parte injunction.

A: Well, that's – that's – I had to live with that, and that's the facts of the matter, and I'm prepared to deal with whatever I had to as a result of it.

- Evidence of J. Carson, June 29, 2005, p. 283

EDG's Proposed Finding 32: The Premier's intentions and desires were communicated to the OPP on the ground at Ipperwash, including to John Carson, Mark Wright, and Stan Korosec. These officers and others were unequivocally aware of the political pressure emanating from Queen's Park. (p. 131)

EDG's Proposed Finding 33: In particular, the OPP were aware that:

- *The Premier was following the situation;*
- *The Premier wanted swift action to remove the occupiers from the Park;*
and
- *The Harris government's policy was to treat aboriginals and non-aboriginals the same, and that the Park occupiers should be treated like ordinary criminals or trespassers without treaty or aboriginal rights. (p. 131)*

21. There is no doubt that Deputy Carson and those under his command were aware of some political views being expressed, and would have been, even in the absence of anything communicated by Insp. Lacroix, Supt. Fox or Marcel Beaubien:

Q: ...You told Commissioner Linden that you advised those under your command of various matters including the political issues swirling around this occupation?

A: Correct.

Q: And let me ask you this, whether or not you told them about the political issues or controversy swirling around Ipperwash, did you believe that those under your command were unaware of those issues?

A: I believe they were well aware.

Q: All right. I mean was there any secret that there were strongly held views, both politically and in the community about what was going on at Ipperwash?

A: It was common knowledge, I would suggest.

- Evidence of J. Carson, June 29, 2005, p. 199

22. At no time did Deputy Carson deviate from the OPP policy regarding First Nation occupations as a result of any expressed political views:

(1) notwithstanding the views of MP Rosemary Ur, MPP Marcel Beaubien, Mayor Fred Thomas or Premier Harris, Deputy Carson left work for the day on September 6, 1995, heading off duty for the night and for dinner at a friend's house;

(2) he left having given directions to those under his command to maintain the *status quo*;

(3) at no time from the point he headed off to dinner to when the decision was made by him to send the CMU down the road did Deputy Carson speak with any of these politicians or Supt. Fox;

(4) furthermore, during this same timeframe, at no point did he seek instructions from Commissioner O'Grady, Deputy Boose, C/Supt. Coles or C/Supt. Parkin. Had the decision to deploy the CMU represented a deviation from the policy that he knew and respected, he would have sought such direction;

- Evidence of J. Carson, June 29, 2005, pp. 194-97

23. At no time did anyone under Deputy Carson's command ever urge him to deviate from the OPP policy as a result of political views expressed.

- Evidence of J. Carson, June 29, 2005, p. 195

24. Despite whatever could arguably be taken from those political comments, the OPP did not enter Ipperwash Provincial Park on the night of September 6, 1995. *This is a fact that no party to this Inquiry has challenged.* This is the most compelling proof that Deputy Carson's decision to deploy the CMU, and the actions of those under him who executed this direction, were not influenced by political views which allegedly promoted the occupiers' removal from the Park.

- Evidence of J. Carson, June 29, 2005, p. 193

25. EDG points to three of Deputy Carson's telephone conversations with Insp. Lacroix and Supt. Fox to demonstrate that Carson cared about Premier Harris' views and actively solicited them.

(i) Telephone Call with Insp. Lacroix on the morning of September 5, 1995

26. EDG contends:

At the OPP Command Post in Forest, the morning of September 5 began with the OPP Incident Commander, Inspector John Carson, hearing about the concerns of local MPP, Marcel Beaubien – a member of Mike Harris's government. Beaubien was irate, saying he wanted something done, and that he would be calling the Premier. It was only 8:20 the morning after the occupation, and already the police knew that the occupation was now a Provincial issue. *This mattered to John Carson, and he made a point of*

saying that he was interested in hearing Beaubien's feelings about the situation after he talked to Harris about it. [emphasis added]

At no time during Mr. Klippenstein's more than three-day cross-examination of Deputy Carson did he suggest to Carson that he was *actively soliciting* the views of Premier Harris through Insp. Lacroix and Marcel Beaubien. More important, EDG's factum fails to give context to the circumstances under which Deputy Carson sought input from the community.

- EDG Submissions, pp. 71-72

(1) in a telephone call just five minutes before the impugned exchange with Insp. Lacroix, Deputy Carson had sought the views of Chief Tom Bressette:

Carson: Right. Well I know they've they've a yeah well. Yeah but if ah you know *if there is anything ah that you have questions about, or counsel [sic] has concern, like like I'm gonna be here in Forest for the duration I guess, till we get this sorted out and ah ah we'd like to you know keep ah, you know the lines open I guess between counsel [sic] and ourselves to you know any concerns or whatever so they have an idea of what, you know, what were [sic] what's going on.*

Bressette: yeah, we'll I've never had any concerns. The only concerns I always had like I told you I don't know how come those people get away with ah running in somewhere and saying this is our land. The the land at Ipperwash even is held for the whole band, not for those few individuals down there.

.....

Carson: But anyway we're will try and deal with it the best we can and ah *like I say I'd like to keep the the communication open if there is anything we can do to*

answer any questions for you. Like don't be afraid to call and ah you know that type of thing and ah

Bressette: Yeah well I don't think you know we have any concerns we, I I don't know, as far as I'm concerned myself I think both people have to be dealt with somehow.

.....

Carson: Well and I appreciate that and ah like I say *if there is anything we can do ah, like just give us a call*. We want to work through this thing together the best we can. [emphasis added]

EDG has not suggested that there was anything improper in reaching out to Chief Bressette and the Kettle and Stony Point Band Council for their views about the occupation.

(2) just 30 minutes after his call with Insp. Lacroix, Deputy Carson met with Ken Williams of Bosanquet. The scribe notes capture Deputy Carson's solicitation of the administrator's concerns:

8:50 hours Ken Williams advised that he had been talking to the mayor about the situation. *Insp. Carson asked Ken Williams what we can do for them*. Insp. Carson advised him that the area is cordoned off, lots of officers available, public safety is important. [emphasis added]

- Transcript of Telephone Call between J. Carson and T. Bressette, Ex. P-444A, Tab 3, pp. 4, 6-7
- Scribe Notes (typed), p. 21

27. Deputy Carson identified the need to reach out to community leaders during the currency of the occupation. It had nothing to do with soliciting political views that would, in turn, govern his operational decisions. Instead, it had everything to do with identifying and allaying the concerns of the local community through its leadership:

Q: ...We know that – that you and under – those under your command were speaking with politicians. Chief Bressette for the First Nations, Thompson, Beaubien, Rosemary Ur, Ken Williams and the like; right?

A: Correct.

Q: And – and you understand that those contacts are – have been raised to fuel an argument that – that you were influenced by political pressures.

A: Right.

Q: You understand that?

A: Oh yes.

Q: But let's talk about where it's necessary or indispensable to speak to political figures, all right?

A: Correct.

Q: Let's talk about a few issues here.

First of all, if you want to reduce anxiety of constituents by persuading them that everything's being done by the police, you'd do that through a politician, I take it?

A: Correct. That's the elected leadership in the community.

Q: All right. If you want to reduce vigilantism or extremist rhetoric that makes the situation worse rather than better, who would you call?

- A: You'd go to your political officials, the leadership in the community again.
- Q: And we actually see this that – that when – when the Township issues press release called Reign of Terror, that didn't please you very much, did it?
- A: No, it did not.
- Q: Kind of ratcheted up the tensions?
- A: Yes, I was concerned about that.
- Q: And that was the subject of discussion with the political figures; wasn't it?
- A: Oh yes.
- A: If you want to acknowledge the concerns of constituents , in other words, you're being heard and your views and your views are being taken into account, how do you do that?
- A: Well, again, it's through the political leadership.

- Evidence of J. Carson, June 29, 2005, pp. 259-61

28. *Project Maple* contemplated this very type of contact:

Community Liaison

The communication exchange with the affected community is considered a vital component to the success of the operational plan.

Consultation with the area stakeholders will be maintained throughout the operation of the plan. Local municipal officials will be updated and consulted on issues of a community concern. The Chief of Kettle and Stony Point Band will be consulted regarding the impact and concerns of the First Nations Territory...

- *Project Maple*, Ex. P-424, p. 4

(ii) Telephone call with Supt. Fox on the afternoon of September 5, 1995

29. EDG argues that Deputy Carson called Supt. Fox on the afternoon of September 5 because Carson was wondering what the latest was from Queen's Park and, having spoken with Fox, Carson knew full well that the occupiers were to be treated no differently than anybody else:

September 5, 1995 2:47 p.m. All was quiet at the Park. Carson was still working hard on getting that LAV. He was also wondering what the latest was from Queen's Park, so he picked up the phone and called Ron Fox, who had just emerged from that Interministerial Committee meeting. Fox updated Carson:

Fox: First of all, the Premier's office had representation there in the form of one ah Deborah Hutton.

[...]

Fox: Very much empowered, and basically the Premier has made it clear to her his position is that there be no different treatment of the people in this situation, in other words, native as opposed to non-native.

Carson: Okay.

Fox: And the bottom line is wants them out [...]

The Premier's instructions – communicated loud and clear to the Incident Commander in the middle of a police operation. This was extraordinary! Never before or since had John Carson been involved in a police operation in which the instructions and views of the Premier were communicated to him. It was impossible to disregard those poisonous views. And Carson did not disregard them. Instead, he relayed them to his team. Apparently, this was information John Carson thought his command team needed to know.

Ten minutes after he ended his telephone call with Ron Fox, John Carson convened his command team – Wright, Korosec, and others. He proceeded to tell *them* the Premier's wishes: the First

Nations occupiers were to be treated no differently than non-natives. The poison spread. [emphasis in the original]

- EDG Submissions, pp. 74-75

30. When asked what Supt. Fox's role was in relation to the Ipperwash incident, Deputy Carson had the following to say:

Well he – he would – he was keeping me apprised of the status or the progress in relation to the application process for the injunction.

The telephone conversation between Deputy Carson and Supt. Fox on the afternoon of September 5 delved into the status of the injunction application following the meeting of the Interministerial Committee. (So did their telephone call of the following afternoon.) Deputy Carson's belief, rightly or wrongly, that the Interministerial Committee had convened to discuss the injunction application on the morning of September 5 was apparent in his telephone conversation with C/Supt. Parkin shortly after 11:30 a.m.:

Carson: ...and ah apparently there is suppose to an inner [sic] ministerial meeting at eleven hundred according to MNR to discuss their support of the injunction...

.....

Parkin: Is there a Ministry meeting?

Carson: Eleven o'clock.

Parkin: And it's ah re support for the ah.

Carson: Injunction.

and in the scribe note entries:

10:37 hours Mark Wright advised that the “Blockade Committee” is holding a meeting today at 11:00 hours to discuss their position on the injunction. Les Kobayashi discusses their position on the injunction.

13:32 hours Ed Vervoort, MNR advised that Ron Baldwin was still on the telephone conference with the “Blockade Committee”. He stated that there are two kinds of injunctions, a 24-hour emergency one or one that would take two to four weeks to get. Vervoort passed on the information from the briefing to Baldwin. Inspector Carson questions if Ministry of Natural resources is not prepared to get an injunction, Ed Vervoort thinks they are prepared, doesn’t know who isn’t. Inspector Carson states if it drags on have to discuss our media releases. John Carson advises that we have 60 people trying to secure the area. Vervoort states *he will inform Insp. Carson as soon as they know anything.* [emphasis added]

The reasonable inference is that Deputy Carson called Supt. Fox not because Carson was “wondering what the latest was from Queen’s Park”; he was wondering what the status of the injunction application was following the Interministerial Committee meeting. What is also evident is that Deputy Carson appeared to be *returning Supt. Fox’s call*. Deputy Carson received an unknown incoming call on his cell phone at 2:21 p.m. At the outset of his call with Supt. Fox, which commences at 2:47 p.m., Deputy Carson apologizes for taking a while to get back to Fox:

Fox: Ron Fox.

Carson: Hi Ronald John here.

Fox: How are ya.

Carson: Not bad.

Fox: I was just dealing your phone number.

Carson: (laughs) That's timing eh.

Fox: (coughs) Oh Jeez.

Carson: *Sorry I just inundated with calls and things.*

Fox: No I can well imagine. [emphasis added]

It follows that Deputy Carson was not even actively seeking political information as EDG contends.

- Evidence of J. Carson, May 17, 2005, p. 229
- Transcript of Telephone Call between J. Carson and T. Parkin, Ex. P-444A, Tab 11, p. 65
- Transcript of Telephone Call between J. Carson and R. Fox, Ex. P-444A, Tab 16, p. 1
- Cell Phone Records of J. Carson, Ex. P-492
- Scribe Notes (typed), Ex. P-426, p. 30

31. Deputy Carson did convey to the command team the Premier's view that the occupiers were to be treated no differently than non-natives. However, EDG omitted the complete scribe note entry on this point. When read in its entirety, it is evident that Deputy Carson was instructing his officers that *notwithstanding* this view, they were going to stay on course and await the injunction order:

15:07 J.C.: Ron Fox sitting on Committee. Sounds like they are going to get an emergency order.

Kob: Having someone search title.

J.C.: Premiers no different treatment from anybody else. We're ok on right track. Concern notice wasn't accept Ron Fox dealing with legal issues. Checking over Press Release. Don't have paperwork for injunction going. [emphasis added]

- Scribe Notes (handwritten), Ex. P-427, p. 72

32. EDG suggests that a passage from Deputy Carson's call with C/Supt. Parkin later in the afternoon of September 5 clears up any "ambiguity about what was meant by the instruction that natives not be treated differently than anyone else would be in this situation". With respect, EDG has "cherry picked" that portion of the call which conforms to its theory. In failing to reproduce the excerpt in its entirety, it has left a serious misimpression on this point:

Carson:	No I appreciate that cause ah ah you you have you talking to Ron Fox.
Parkin:	yeah I have been.
Carson:	Yeah yah that blockade committee ah sounds like there is some waffling going on there by some individuals.
Parkin:	Yeah and apparently they want to go for the regular ah injunction.
Carson:	W (u/i)
Parkin:	So.
Carson:	Are we prepared to live with that.
Parkin:	Depends who you listen to apparently the ah the the people from ah the government are saying ah eh you know why don't we treat them just like a bunch of bikers.
Carson:	Well well they've got a point.

Deputy Carson explained what he meant in this passage:

A: Well, if you – if you don't take all the factors into consideration, I guess that's one point of view you can take.

Q: If the people down – the people from the government were not taking all the factors into account?

A: Yes, the people at the committee meeting who were having this debate.

Q: But was it your view that they should take into account all of the factors?

A: Of course.

Q: Including the fact that the occupiers were members of a First Nation?

A: That certainly was a factor, yes.

Q: And that this land had at one time been part of the traditional territory of the occupiers?

A: Correct.

The excerpt from the telephone call goes on to demonstrate that despite the analogy to biker gangs, Deputy Carson wanted to proceed with an injunction order:

Parkin: Yeah.

Carson: *Ah but I guess for trespassing that's not very you know I mean.*

Parkin: Sounds good.

Carson: Yeah that's right that's right.

Parkin: But I (u/i)

Carson: *But but if they're prepared for that then lets just get the emergency injunction and get on with life.*

Parkin: Yep.

Carson: *You know if if that's their feeling about it I mean lets have the appropriate support in law and and deal with it.*

Parkin: Yep okay. [emphasis added]

- Evidence of J. Carson, May 17, 2005, pp. 303-04
- Transcript of Telephone call between J. Carson and T. Parkin, Ex. P-444A, Tab 21, pp. 169-70

(iii) Telephone Call between Deputy Carson and Insp. Lacroix on the afternoon of September 5, 1995

33. EDG argues that Deputy Carson actively sought more information regarding the Premier's views when he called Insp. Lacroix at around 4:00 p.m. on September 5, 1995:

...But as soon as he was done with that call he picked up the phone again and called S/Sgt. Wade Lacroix, who had passed along the information from Marcel Beaubien to John Carson that morning. Carson wanted to know if Lacroix had heard anything about what was going on at Queen's Park through his contact, Marcel Beaubien.

It happens that Beaubien had just recently spoken with Bill King, one of Mike Harris's Executive Assistants. Bill King told him that Ipperwash was an MNR issue, not an Indian issue; that the Premier is following the situation closely; that the police are there to assist MNR; and that the law will be upheld no matter who is involved.

Beaubien passed all of that along to Lacroix who passed it on to Carson:

.....

Carson was not just accidentally receiving this information about eh Premier's views. *He was actively seeking more of it. It was clearly important to him*, and he clearly thought that the information was of sufficient importance to pass on to the rest of his command team.... [emphasis added]

- EDG Submissions, pp. 75-76

34. There are four difficulties with this argument:

(1) at no time did EDG suggest to Deputy Carson that this was the reason he was calling Insp. Lacroix;

(2) at no time during this telephone call does Deputy Carson ask about the Premier's views;

(3) as reflected in the earlier call with Insp. Lacroix, Deputy Carson was interested in Marcel Beaubien's feelings about the situation, not the views of the Premier; and

(4) as will be elaborated upon in our response to ALST's submissions, Deputy Carson's directions to his officers following this call indicate that despite the Premier's views, they were to stay the course and wait for an injunction. It does not make sense that Deputy Carson would actively seek

out the Premier's views and then simply disregard them if, as EDG contends, they were so important to him.

35. EDG points to Deputy Carson's efforts to secure an LAV as early as September 5, 1995 as an indication that he planned for the inevitable use of force against the occupiers as purportedly promoted by the Harris government and conveyed to the Incident Commander:

However, the message that this issue was now Provincial must have had some impact on Carson. It was not long after the election and everyone was well aware that with the new government, things would not be done the same as they had been in the past. It was clear that the Harris government was not sympathetic to native people, and Carson must have known even before hearing it that the Premier would want the occupation terminated swiftly. Carson was certainly not naïve, and he must have foreseen that there would be a real possibility that force would have to be used to end the occupation in short order. He busied himself for much of the day trying to acquire a Light Armoured Vehicle (LAV), should his conscious or subconscious expectation that force may soon be required to remove the occupiers come to pass.

Acquiring a LAV was not part of Project Maple. Nor was there any rush to do anything of this nature since no one in the community was in any danger in Carson's estimation. Perhaps Carson spent so much time that day on that task, and so little on trying to set up negotiations because he learned that the occupation was becoming political and that he and his men and women were being watched by the highest government official in the province. Perhaps not. In any event, Carson was not entirely averse to the pro-action non-negotiation stance which the Premier was advocating.

- EDG Submissions, pp. 72-73

36. At no time did Mr. Klippenstein suggest to Deputy Carson that:

(1) he must have known, even before hearing it, that the Premier would want the occupation terminated swiftly; and

(2) he must have foreseen that there would be a real possibility that force would have to be used to end the occupation in short order.

37. A detailed outline of the persistent and various attempts by Deputy Carson and his officers to open a dialogue with the occupiers is contained in Section IV of our Part I Submissions and will not be repeated here. Suffice it to say, the record at this Inquiry does not support the conclusion that Deputy Carson spent “so little time on trying to set up negotiations” as compared to the time dedicated to tracking down an LAV, and it is completely unfair to make that suggestion.

38. Deputy Carson testified at this Inquiry that he took steps to secure an LAV in the event it was needed to rescue an officer and not for offensive action.

- Evidence of J. Carson, May 17, 2005, pp. 185-86; June 2, 2005, pp. 159-60

39. Deputy Carson specifically raised the contingency of effecting a rescue from within the Park at the September 1, 1995 planning meeting. The minutes reflect this:

John – My main concern is the possibility of rescuing injured people out of this area.

- Minutes of September 1, 1995 meeting, Ex. P-421, p. 7

40. Telephone calls made on September 5, 1995 confirm the motivation underlying Deputy Carson's request for the LAV:

(1) shortly before 11:30 a.m. when, according to EDG's theory, Deputy Carson foresaw the use of an LAV to evict the occupiers, he told Cliff Logan of GMC Diesel:

Carson: ...I don't know if you have listened to the news this morning or not but we've had an issue at Ipperwash Provincial Park with a native group.

Logan: Yes yes.

Carson: *Okay we have no need at this point but I I would just to be prepared in the event that we do.*

Logan: Understood.

Carson: Ah there are some issues happening in BC apparently as we speak according to the news as well.

Logan: Yep.

Carson: That are similar in nature.

Logan: Yep.

Carson: *Um if ah we found that we had a need for the vehicle and if London Police was prepared to supply the driver ah I guess I would just like to to know you know in advance that ah you know that would be okay with you guys.*

.....

Carson: *um like I say we we don't have identified need right now but that potential exists.*

.....

Carson: Oh okay and ah I'm I'm just waiting for a call back from Deputy Chief Austin ah to discuss those other issues with him if they will supply ah their people to ah you know if I can get you know your approval to use vehicle *if it is required* so ah we can address that ah probably in an hour or so. [emphasis added]

(2) during the early afternoon, Deputy Carson expressly advised Deputy Chief Austin of the London City Police Service that the LAV was required only for a potential rescue:

Austin: Some potential for this err.

Carson: Well given what's going on in B.C. and some other issues that have raised their head here I'd I'd you know I'd I hope not but I guess I just want to be prepared for all eventualities.

Austin:
Okay and then secondly I would say (u/i) I'll I'll just let you know like what our protocol is on it is that we would get it ah for a rescue kind of a situation ah for protection in the event that you are under fire.

Carson: Yep.

Austin: And those kind of things.

Carson: Yep.

Austin: And I would say ah in an emergency if there was an emergency situation came up that that sort of thing ah was required then yeah we would ah provide ah ah driver along with it.

Carson: Right right.

Austin: um you know like certainly we we would certainly assist where we could.

Carson: Okay.

- Austin: Other than that um if it was for some other purpose we would probably have and this is only because you know just does London Police want to get involved in Ipperwash.
- Carson: Uh hum uh hum.
- Austin: Other other than sort of an emergency situation probably not.
- Carson: Um hum well ah I guess that puts us in a bit of a lurch I guess ah to be fairly blunt about it because like you know right now I don't know what all strategies I'll have to look at. Ah you know if the only alternative I I have is is that ah you know after we're under fire it puts me in a spot where you know that's really not not much help to me because by the time I could ah mobilize that piece of equipment after finding out we're in a jackpot it's too late even to ask for it.
- Austin: Yeah.
- Carson: So you know it doesn't really do much for a contingency point of view.
- Austin: Is there is there a potential for that to occur?
- Carson: Ah well firearms have been displayed and we've had flares thrown at our people already.
- Austin: How many of them are there?
- Carson: Ah well we figure in the neighbourhood of up up to possible 40 but were [sic] dealing with a half a dozen who are trouble.
- Austin: Jeez that much eh.
- Carson: Yeah yeah but like like you know quite frankly I don't you know *I have my doubts whether were [sic] going to need ah ah piece of equipment like that at all.* The only thing it's just like you know our Tactical Team you know you want available given worse case scenarios particularly after what's happened in B.C. *You know I don't want I don't want a see some young*

officer under fire and us not not be able to rescue him.
[emphasis added]

(3) later that same afternoon, Deputy Carson stated explicitly, this time to Tom Coffee of GM Diesel, that he needed an LAV in the event he had to effect a rescue:

Coffee: Okay and um what um what exactly is the the need for the vehicle ah like.

Carson: Okay at this point we got a ah ah a native ah take a bunch of natives have taken over ah Ipperwash Provincial Park

Coffee: Yes.

Carson: And ah there has been some ah reason to believe there is weapons involved.

Coffee: I see.

Carson: And at this point we don't have a need but but what we perceive is the potential for ah weapons to be involved and were [sic] just looking at options ah

Coffee: Okay.

Carson: *In the event of a need for a rescue.* [emphasis added]

(4) within the hour following Deputy Carson's telephone call with Supt. Fox on September 5, when, according to EDG, Carson is acutely aware that the Premier expects him to take aggressive action, he clearly states, this time to Cpt. Bachelor of DND, that he was looking for an LAV in case he was faced with a rescue mission:

- Carson: Ah but if if the risk you know if there were shots fired and ah you know a serious ah you know escalation then I think we'd have to look at having them say at ah you know within you know fifteen minute response in case somebody was down.
- Bachelor: Sure.
- Carson: An then there is some geography there are you familiar with the with the
- Bachelor: I
- Carson: base Ipperwash
- Bachelor: I haven't been down there myself no.
- Carson: Oh (u/i)
- Bachelor: I've seen it ah on from with photos and I've seen it on a map.
- Carson: Oh okay.
- Bachelor: (U/i) never been there myself.
- Carson: Well there is a ah ah a township road that is a perimeter to the Provincial Park and and adjacent to the Military Base and which is fenced on the on the park side and fenced on the Military side.
- Bachelor: The western boundary of the camp.
- Carson: That's right.
- Bachelor: Okay.
- Carson: So what happens there is is if we have people in there they are literally ah ah in a tunnel if you would and *if for some forsaken reason we had somebody injured in there we'd have a dell [sic] of a time trying to get somebody to extricate him.*
- Bachelor: Understood.

Carson: *So that that's really the kind of risk we want to be prepared for. [emphasis added]*

(5) shortly after 4:00 p.m. C/Supt. Parkin agreed with the Incident

Commander that the only reason the LAV would be needed was to effect a rescue:

Carson: *Ah the only thing they ask is that we would use em in ah a defensive mode only ah basically you know for a rescue.*

Parkin: *Yeah.*

Carson: *Which is exactly what we'd want anyway.*

Parson: *Yep.*

Carson: Ah so so I have no problem with that and the other thing is that they they'd want any markings relating to military covered up that says OPP on it.

Parkin: *Yep.*

Cason: *And and I'd want that anyway.*

Parkin: *Yep.*

Carson: So I think we're all okay with that.

Parkin; *Yep. [emphasis added]*

- Transcript of Telephone Call between J. Carson and C. Logan, Ex. P-444A, Tab 10, pp. 60-62
- Transcript of Telephone Call between J. Carson and E. Austin, Ex. P-444A, Tab 14, pp. 98-100
- Transcript of Telephone Call between J. Carson and T. Coffee, Ex. P-444A, Tab 15, pp. 104-05
- Transcript of Telephone Call between J. Carson and Bachelor, Ex. P-444A, Tab 19, pp. 141-42

- Transcript of Telephone Call between J. Carson and T. Parkin, Ex. P-444A, Tab 21, p. 160

41. The Solicitor General took steps to facilitate the possible loan of an LAV by DND to the OPP. Mr. Runciman also understood that it was being requested in the event a rescue was necessary and not for offensive action:

Q: ...Now again what appears to have happened is that you're providing an update that you no longer require the APC from the DND because it would appear the OPP had sourced it elsewhere, but that's not what I'm interested in and not what I'm focusing on.

I trust, sir, it was your understanding that the only need foreseen for such a vehicle by the OPP was for, in essence, a rescue mission, if I can put it that way, for the emergency evacuation of civilians or OPP personnel. That was your understanding?

A: That was.

Q: It was not, so to speak, for any type of an offensive maneuver?

A: That's correct.

- Evidence of R. Runciman, January 10, 2006, pp. 107-08

EDG's Proposed Finding 34: Mark Wright and Stan Korosec drew encouragement and inspiration from the Premier's views. They were emboldened by the political messages they were receiving and the law-and-order political mindset of the government. (p. 131)

EDG's Proposed Finding 35: Like Harris, Wright and Korosec wanted to teach the occupiers a lesson. When Wright and Korosec heard Harris's wishes, it was like taking the leash of a pair of dangerous pit bulls. (p. 132)

EDG's Proposed Finding 36: Mark Wright and Stan Korosec became aware on the afternoon of September 6 that the province was going to be seeking an emergency injunction the next day. However, they knew that there were not sufficient circumstances to call the situation an emergency. And so, having been unleashed by the political messages they were receiving, they set about to create a confrontation which could be labeled an emergency. (p. 132)

EDG's Proposed Finding 38: After meeting a number of angry local white cottagers who shared the same views as Mike Harris and wanted the occupation terminated immediately (views which Mark Wright was completely sympathetic to), Mark Wright drove to the Park looking for an excuse to send in the police to confront the occupiers that evening. He observed a small number of occupiers along the Park fence line, some of whom were holding sticks. This in itself was not enough to warrant any further action by the police. However, a few minutes later, Mark Wright learned that one of the occupiers had thrown a stone at a car, causing a minor dent. (p. 132)

EDG's Proposed Finding 40: *This incident was wildly distorted as it was communicated up the chain, so that the Incident Commander came to understand the incident to involve a group of natives beating on a white lady's car with bats and sticks as she was driving by the Park. (p. 132)*

EDG's Proposed Finding 41: *Wright exaggerated the nature of the stone-throwing incident and manipulated the information to achieve his desired objectives of manufacturing a confrontation with the occupiers, teaching them a lesson, and creating an emergency situation. The stone-throwing incident was merely the opportunity Wright and Korosec were hoping for in order to put their desires into action. (p. 133)*

42. According to EDG's theory, Insp. Wright (and Sgt. Korosec) are aggressive officers, insensitive to First Nation issues, who show no regard for the chain of command and are prepared to "manufacture" emergencies:

Wright was all revved up and eager to go and "get those fucking guys", *as he referred to the occupiers*. All he needed was permission, and an opportunity. The permission, he would soon get from the Premier. The opportunity would come in the form of a trivial altercation between two Band members the next day.

.....

It was no secret that Mark Wright was agitating for action. Mark Wright had spoken to Stan Korosec the night before about wanting to "amass a real fucking army to do these fuckers." That morning, *Wright had advocated going in and grabbing "those fucking kids" and arresting them for trespassing. The previous morning, Wright*

was telling Inspector Ed Robertson that their intention was to go and take back the Park.

.....

Wright's desire to take aggressive action against the occupiers had not waned over the course of the occupation so far. If anything, *he was emboldened by the political messages he was receiving*, and the meeting with angry residents firmed his resolve to do something, and to interpret events in a way that would justify his wishes. His opportunity to bring some kind of action about came shortly after leaving the MNR parking lot after the property owners' meeting.

.....

...Wright asked for an officer to take a statement from Gerald, adding, "you know what I'm after."

What Mark Wright was after was information that would justify some kind of aggressive action against the occupiers. He never quite got that kind of information so he proceeded to distort reality and interpret trivial facts on the ground in an unreasonable and prejudicial way until he had built up a version of facts (which did not resemble reality) that could justify amassing a fucking army to go to war against the Indians. Harris would have approved. Within the context of the political pressure infecting the police operation at Ipperwash, Wright was put in a position of consciously or subconsciously looking for facts which would support characterizing the occupation as an emergency. [emphasis added]

- EDG Submissions, pp. 74, 101-103

43. The following seven points refute EDG's argument:

(1) Insp. Wright properly conceded that he used inappropriate language at Ipperwash and he apologized for it. It is, however, a complete misinterpretation of the evidence for EDG to suggest that Insp. Wright used inappropriate language to refer to the Park occupiers as a *group* and

then rely on this to demonstrate his disdain for them and an apparent desire to have them evicted from the Park. Indeed, each time Insp Wright used the inappropriate language, it was to refer to individuals who had spilled out into the parking lot, and to their removal from that area so that containment of the Park occupation could be regained:

(a) his suggestion to “go and get those f-cking guys” arose during the now well-known telephone call between Insp. Wright and Deputy Carson at around 8:00 p.m. on September 6, 1995. It is apparent from Deputy Carson’s response that he knew Wright was referring to the specific occupiers, some of whom were armed with bats, who had spilled out into the sandy parking lot:

Wright: Don’t you say we go get those f-cking guys?

Carson: Well we got to deal with them we can’t let them out n that area with that stuff.

Furthermore, Deputy Carson testified that he did not take from Insp. Wright’s comment that he now wanted Carson to mobilize to go into the Park itself;

(b) his reference to “grabbing those f-cking kids” and arresting them for trespass arose during a conversation early in the morning of September 6, 1995. Deputy Carson and Insp. Wright were

discussing how to address the obstruction in the sandy parking lot.

The relevant scribe note entries read:

07:14 hours Mark Wright to John Carson explained map and picnic tables block the end of Army Camp Road. Mark Wright assigned to attend scene and video the scene and return. Keep 1 and 2 ERT on stand-by.

Les Kobayashi to arrange for a truck in case tables have to be removed as it is not Park land, it's road access.

07:50 hours Mark Wright returned drawing to scene 12 tables, 2 tents and 2 *children/teenagers*. John Carson get ERT x2 off duty go get it all and get it out. Make sure Const. Evans is there videoing everything, have the chopper up and view everything, have him stand off until we go in. [emphasis added]

Insp. Wright's comment is heard in the background of Insp.

Skinner's telephone call to the Transport Section at 7:49 a.m. The exchange is as follows:

2 minutes and 40 seconds into the call:

Wright: ...that little gate that's there, that's open. So what I would suggest you do, those f-cking kids are trespassing, we grab those f-cking kids

U/K: ...I/A...you're talking kids I mean

Wright: ...well teenagers. Arrest them, we'll bring them back here and give them a ticket under the Trespass to Property Act

Carson: *Trespass on town property?*

Wright: *Yeah,*

Carson: ...(I/A)...what...(I/A)...

Wright: they're parked there as well

U/K: (I/A)

3 minutes and 20 seconds into the call:

Wright: ...(I/A)...well we got them for mischief...(I/A)...

Carson: That's right

Wright: Okay. So do you...(I/A)...well it's wide open eh

Carson: Yeah I know but they were also...(I/A)

4 minutes and 20 seconds into call:

Carson: ...(I/A)...deploy them if we need them...(I/A)...Okay, do you like it?

Wright: Yep. Do you want to take some guys down to take those guys away for the arrest.

Carson: And the other thing is, make sure Evans is there with at least one video camera and video it cause if anyone starts moving towards us I want it on video and if any rocks are flying or anything, I want it on video...(I/A)...

The "kids" in question clearly refer to the handful of individuals in the sandy parking lot who later run into the Park as the ERT officers and MNR personnel approach to clear the picnic tables and the tent from the area.

It is noteworthy that Mr. Kippenstein did not cross-examine Insp. Wright on this conversation.

(2) while Insp. Wright did tell Insp. Robertson on the morning of September 5, 1995 that the OPP was going to take back the Park, this statement was not an indication that Wright “was agitating for action”. He explained to the Inquiry what he meant by this comment:

A: ...I’m giving him a briefing about what it is that has taken place, where we are and my understanding is, is that we’re waiting for an injunction that, in my mind, is imminent. And that when we get that injunction, we’re going to go back into the Park and we’re going to act on that injunction.

Q: And when you say you’re going to go back in the Park and act on the injunction, what did you just mean by that when you said that?

A: What did I – I – I think I say in here, if I can just have a moment, I think I say:

“Our intention is to go back in and take the Park.”

And prior to that, the sentence before that is, is I’m talking about we want an injunction, we want a piece – they’re going to get an injunction, we want a piece of paper.

Because if you look to the meeting that happened just prior to this telephone conversation which is at 9:25, I think is what it is, is that clearly that I’m of the understanding, in my mind, that A) we’re going to get the injunction, B) that the Province has title to that land.

And if we get the injunction that’s a court order and I anticipated that we were going to act on that court order. So ‘take the Park’ meant to, in my mind, go back into the Park and, acting on the injunction, remove the people that were there unlawfully.

Q: Assuming –

A: Assuming we got the injunction.

(3) if Insp. Wright had no regard for the occupiers' position, he would never have advised Bert Manning at noon on September 5, 1995 that the occupiers could make representations at the anticipated injunction application;

(4) not only was Insp. Wright not "emboldened" by the political messages he was receiving, but he also regarded the Premier's interest in the occupation as irrelevant to the execution of his duties and did not waver from this position during his testimony:

Q: You told Mr. Millar –

A: Okay.

Q: -- and the quote that I see in the transcript is:

"That the Premier's office was obviously aware of what was going on in this part of Ontario." –

A: Right.

Q: -- end of quote, okay. And at least by 9:25 on September 5th, you were aware of that fact?

A: Sure.

Q: And by the phrase, "what was going on in this part of Ontario," you were referring to the fact that a Provincial Park had been taken over and occupied by a group of First Nations persons without the consent of the MNR, right?

A: Sure, yes.

Q: And so it didn't come as any surprise to you that the Premier of Ontario would be aware of the hostile takeover of the Provincial Park, did it?

A: It didn't come as any surprise. I really didn't give a – I didn't even give it that much thought, to be quite frank with you.

Q: Okay But it –

A: John passed on the information and that was that.

Q: Well, I suggest to you – it would be surprising if the Premier of Ontario wasn't aware, monitoring or following the takeover of a Provincial Park in the province of which he's the Premier, right?

A: I – you know, I – I don't know. For me personally –

Q: Right.

A: It just – it was neither here nor there. So I don't know what would cause the Premier concern –

Q: Okay. Well, I mean, it didn't give you any concerns?

A: It didn't give me any concern. I didn't yeah, that's right. It didn't give me any concern.

.....

Q: ...So having that information that the Premier was aware, I just want you to confirm, you're aware that he's monitoring the situation, you're aware that the local MP [sic] has updated the Premier's office, can you confirm to me that since this didn't have any – you say it didn't have any affect [sic], I take it that you weren't intimidated by this knowledge.

A: No.

Q: Okay. And I take it also, to be very specific, that knowledge didn't influence your performance of your sworn duties –

A: no.

Q: -- on September 6th?

A: No.

(5) if Insp. Wright was as antagonistic and uncompromising towards the Stoney Point occupiers as EDG argues, he would never have recommended a non-aggressive approach to regaining containment of the Park occupation to Insp. Linton. Insp. Wright's recommendation is captured in the handwritten scribe notes. It speaks for itself and stood unchallenged at the Inquiry:

20:02 DL, MW, RG and SK. MW reports natives off Park area with baseball bats. P/C Zacher reports a personal vehicle being damaged.

DL: let's take over B – team with helmets and K9

MW: disagree – advise males to back off into parks [sic]

TR arrived in meeting. Reporting Brian Byatt reports lots of activity in kiosk area. They took the gas to fill the bus.

MW briefing Insp. Carson on telephone

(6) as Insp. Wright rounded the corner of East Parkway Drive and Army Camp Road on the evening of September 6, 1995, he did not have time to look “for facts which would support characterizing the occupation as an emergency”. The uncontested evidence revealed that he wanted to get off duty at the end of his shift so he could begin preparation for the following morning's injunction application:

Q: And what did you mean by, “MW disagree. Advised males to back off into Parks” or –

A: Park. I just – I just wanted him – I just wanted these individuals to be told, move back into the Park with what I thought would be a significant number of – of officers or the officers there.

My main concern at that time was I frankly didn’t want to have a whole lot to do with this, because I knew that the next morning I had to give evidence at the injunction.

And the last thing I wanted to be doing was having to deal with this. So I was really hoping we could deal with this immediately so I can move on the matter at hand.

.....

A: And as I gave in my evidence in-chief, my overriding concern at this particular moment, although it – it very quickly faded, was that I would like to be done with this problem because I needed to go spend some time preparing for the injunction.

And I felt that a very daunting task and I wanted to get to that.

(7) the Incident Commander indicated unequivocally at this Inquiry that he saw no indication that his 2 IC was motivated or influenced by political views:

Q: Now let me ask you this: Do you have any recollection whatsoever that Mark Wright actually spoke about these political pressures or views or appeared to care about those views or referred to those views in advising you or Linton?

A: I got no sense of that whatsoever.

Q: Have you seen to-date, at this Inquiry, any references in the scribe notes or telephone conversations to Mark Wright,

talking about the politics of the situation as influencing his advice?

A: No, sir.

- Evidence of J. Carson, June 29, 2005, p. 200; June 30, 2005, pp. 45-46
- Evidence of M. Wright, February 22, 2006, pp. 107-08; February 23, 2006, pp. 63-64; March 7, 2006, pp. 151-55; March 20, 2006, p. 173
- Transcript of Telephone Call between J. Carson and M. Wright, Ex. P-444B, Tab 48, p. 310
- Transcript of Telephone Call between K. Skinner and Transport Section, Ex. P-1365
- Scribe Notes (typed), Ex. P-426, p. 48
- Scribe Notes (handwritten), Ex. P-427, p. 111

EDG's Proposed Finding 42: Wright and Korosec mobilized CMU shortly after 8:00 p.m. without authorization from the Incident Commander. The Incident Commander's authorization only came after CMU was already mobilized. (p. 133)

44. EDG advances a variation on the theory of political pressure, namely that there was a juggernaut created by those under Deputy Carson's command to a point that he could not stop it:

John Carson arrived back on the scene after the train had already left the station (CMU having been suited up and initially deployed to the tactical operations centre near the Park), and was unwilling or unable to stop it. He too had heard the fairy tale version of the dented fender incident and knew the political realities of the situation. The runaway train was going to the destination the Premier wanted and he was not prepared to bring it to a stop.

45. This variation was, no doubt, compelled by the fact that it became clear at this Inquiry that Deputy Carson could not be motivated or influenced by political pressure.

46. Deputy Carson emphatically rejected such a theory and indicated that he is unaware of any documentary evidence that supports it. Deputy Carson did not feel the TRU team had to go in and effect arrests just because Insp. Linton had reached that conclusion before Carson returned to the Command Post. Applying the same reasoning, he did not feel that the CMU had to be deployed just because it had been assembled and was ready to respond, if and when needed.

- Evidence of J. Carson, June 29, 2005, p. 255
- EDG Submissions, p. 112

47. EDG has suggested that Insp. Wright (and Sgt. Korosec) acted improperly when they took steps to prepare for the possible deployment of the CMU. Indeed, EDG argues that these two officers actually deployed the CMU prior to Deputy Carson's return to the Command Post, thereby usurping his authority. With respect, the evidentiary record at this Inquiry demonstrates that they did not deploy the CMU and that the preparatory steps taken for the unit's possible deployment were entirely appropriate and what would be expected of them in the circumstances.

48. EDG's theory that the CMU had been deployed prior to Deputy Carson's return to the Command Post stands or falls on the interpretation of a single radio transmission which occurred at 8:19 pm:

Korosec to 3 and 6 District ERT that just left Forest. 10-19 to Forest
okay. 10-19 to Forest. 3 and 6 District Teams 10-19 to Forest.

The relationship of this transmission to EDG's theory is summarized in its factum as follows:

In this radio transmission, Korosec was recalling the ERT members that he and Wright had just deployed toward the Park, probably because they realized they did not yet have Dale Linton on side. Wright and Korosec had caused the CMU train to leave the station, deploying the CMU to the Park area, without any authority whatsoever.

There are five difficulties with this theory:

(1) the transmission does not refer to officers who have headed, or are heading, to the Park area;

(2) the transmission does not refer to the CMU;

(3) the transmission does not refer to any form of deployment;

(4) the transmission would have been made from within the Command Post in the presence of others, including Insp. Linton whose authority Insp. Wright and Sgt. Korosec were purportedly undermining. (Insp. Linton was not otherwise distracted on the telephone at this time). EDG's theory simply does not make sense; and

(5) according to Sgt. Korosec, the transmission was directed to the 3 and 6 District ERT officers who had just finished their day shift and, following their debriefing, were heading out to eat or back to their hotel to rest, unaware of the developments that had been reported by Insp. Wright at 7:54 p.m. At *no* time did counsel for EDG put it to Sgt. Korosec that this transmission represented a cryptic call back of a deployed CMU;

- Evidence of S. Korosec, April 18, 2006, p. 55
- Transcript of Radio Transmission, Ex. P-1321

49. While steps were being taken to prepare for the possible deployment of a CMU, there is no evidence that the CMU had been deployed prior to Deputy Carson's arrival at the Command Post:

(1) the CMU could not be deployed in the absence of its leader. Insp. Lacroix did not arrive at the Command Post until 9:10 p.m. and, indeed, was not even called out, according to the scribe notes, until 8:21 p.m., some two minutes after the deployed CMU was purportedly called back;

(2) the CMU could not be deployed in the absence of its second-in-command. Sgt. Hebblethwaite did not arrive at Forest Detachment with his hard tac gear, ready for possible deployment, until 8:40 p.m., more than 20 minutes after the deployed CMU was purportedly called back. Furthermore he told the Inquiry that he had been advised to prepare for a *possible* deployment prior to his departure to retrieve his equipment:

A: It was about this time just after these items were issued to us that we were informed that we needed to get ready to go into Crowd Management hard TAC.

Q: All right.

A: Myself and Officer Weverink drove back to the – our accommodations in Grand Bend.

Q: Hmm hmm.

A: And I – we retrieved our Crowd Management equipment at that point.

.....

Q: So then – I'm sorry. So then you were obviously apprised that this was going to be a certain type of mission, is that not fair?

A: *No we were asked to be prepared to deploy. It doesn't mean we're going to be deployed but we were asked to be prepared to go.*

And due to the circumstances of that day my equipment was in Grand Bend as opposed to in Forest as was Constable Weverink's. So we – we returned immediately, we retrieved our equipment bags, and came back to the Forest Detachment.

Q: All right. And according to your notes at page 33 you left the Forest Detachment – or you left the motel to return to the

Forest Detachment at about 20:27 and at 20:40 you arrived back at the Forest Detachment with your hard TAC gear?

A: Correct. [emphasis added]

(3) as reflected in Appendix “A” to EDG’s Submissions, the notebook entries and/or interviews of many of the CMU officers, including Officers Ariemma, Cloes, Cossitt, Gayos, Huntley, McGrath, Osborne, Rusk, Schwass, Sharp, Wilson, refer to being told at around 8:00 p.m. to prepare for a possible deployment or to remain on stand-by;

(4) of the 42 officers who formed the CMU, only one, P/C York, has recorded in his notes that the CMU was deployed to the TOC, called back and then re-deployed. He is simply mistaken. P/C York’s notes, which he used to refresh his memory at the Inquiry, do reflect another error: he recorded that between 7:40 and approximately 8:00 p.m., “individuals were arriving at the checkpoints with baseball bats and clubs and other weapons. Advised that some of the items had been seized and the occupants and vehicles were turned back”. In fact, the relevant radio transmission and scribe note entry confirm that this report came in at around 9:28 p.m.

- Evidence of G. Hebblethwaite, May 11, 2006, pp. 120-22
- Notebook entries of K. York, Ex. P-1540, p. 54
- Transcript of radio transmission, Ex. P-1126
- Scribe Notes (typed), Ex. P-426, pp. 74, 78
- EDG Submissions, Appendix A

50. It was entirely appropriate in the circumstances for Insp. Wright and Sgt. Korosec to take the steps they did to prepare for the possible deployment of the CMU:

(1) the role of a 2 IC is to offer the Incident Commander options. Insp.

Wright explained it well:

...as my position there, it's my job at an incident such – I'll talk about this incident. My job would be to tell the incident commander what I think is the appropriate action.

He or she would expect that from me, or I'm not much good to them. You know, a good incident commander does not want to hear their thoughts regurgitated back at them.

They want everybody's input so that they can make the best decision based on the situation that they find themselves in, because if that's not the case, then there's not much point for the rest of us to be there.

Having regard to the events that had unfolded in the preceding 30 to 45 minutes, it was entirely reasonable for Insp. Wright, who had experience as an ERT officer, to recognize that the Incident Commander might deploy a CMU to regain containment of the Park occupation. As the 2 IC, it was appropriate for him to prepare for that contingency by directing Sgt. Korosec to hold back the 3 and 6 District ERT teams;

(2) this was not the first time that a shift of ERT officers had been held back for a possible deployment. That very morning, the night shift was

held back for a possible deployment to remove the picnic tables from the sandy parking lot. This is reflected in the scribe notes:

07:14 hours Mark Wright to John Carson explained map and picnic tables block the end of Army Camp Road. Mark Wright assigned to attend scene and video the scene and return. *Keep 1 and 2 ERT on stand-by.* [emphasis added]

(3) during the telephone conversation between Insp. Wright and Deputy Carson, Wright specifically drew to the Incident Commander's attention that the day shift had been held back. Instead of questioning the appropriateness of this, Deputy Carson asked what Inspector Linton intended to do in response to the developments that Insp. Wright was describing.

- Evidence of M. Wright, March 20, 2006, p. 171
- Transcript of Telephone Call between J. Carson and M. Wright, Ex. P-444B, Tab 48, p. 309
- Scribe Notes (typed), Ex. P-426, p. 48

EDG's Proposed Finding 43: The car-denting incident (or at least the distorted version of that incident), and the fear that the incident might indicate that the occupiers intended to expand the occupation beyond the Park lands, was the sole reason why the Incident Commander ultimately authorized the deployment of the CMU and TRU on the evening of September 6, 1995. (p. 133)

EDG's Proposed Finding 44: *None of the other factors cited by John Carson for the mobilization of the troops justified that use of force that night. Those factors included: the bonfire in the Park; vehicle movement in the Park and Army Camp; women and kids leaving and saying something is about to happen; blinds being pulled down in the kiosk; people holding bats in the sandy parking lot; fears that the cottagers might attack the occupiers; or that the occupiers might expand the occupation to the neighbouring cottages. (p. 133)*

51. Section VI of our Part I Submissions sets out in considerable detail the factors that support Deputy Carson's reasonable and *bona fide* decision to deploy the CMU. They will not be repeated here. However, EDG's inaccurate characterization of certain events that transpired on the evening of September 6, 1995, will be addressed.

52. EDG seeks to undermine the credibility of Insp. Wright by suggesting that the OPP was unconcerned about the report of four males, some of whom were armed, standing outside the fence line, by P/C Spencer and P/C Weverink at 7:30 p.m.:

...As was the case the previous evening, Checkpoint Alpha, which the OPP had set up near the sandy parking lot during the day, was pulled back out of sight of the Park as part of the shift change around 7:37. After Checkpoint A was pulled back, a cruiser came up from the beach through the sandy parking lot at 7:39 without incident or being stopped, although it was noted that four males were outside of the Park fence, with some holding bats. *There is no indication that the OPP viewed this as a concern at this time as the*

OPP apparently did nothing to follow up on this report. Some of the occupiers had probably just wandered out since the checkpoint had just been pulled back.

- EDG Submissions, p. 100

53. EDG's depiction of this sequence of events is seriously flawed for three reasons:

(1) Checkpoint Alpha was not pulled back "as part of shift change". As Sgt. Huntley explained, it was pulled back "to protect the officers from objects being thrown back at them". He stated:

There was quite a bit of activity when we were leaving that night I recall one officer was somewhat concerned about all the activity. I can't tell you exactly what that activity was, but it was unusual.

We felt, or I felt that that Checkpoint was too close to the Park, considering the officers the night before were pelted with rocks.

I felt, for their safety, they should be moved from that location.

P/C Jamie Stirling, who was stationed at Checkpoint Alpha during the day, confirmed in his interview that the checkpoint was moved back from the intersection "out of concern for the nightshift's safety".

(2) The relocation of Checkpoint Alpha was a response to the sighting of the occupiers with baseball bats *before* Insp. Wright's contact with what appears to be a similar, larger group. Indeed, P/C William Sword, who was stationed at Checkpoint Alpha for the night shift, stated in his interview that the checkpoint was moved back at the same time as he observed

several natives walking on the roadway carrying baseball bats. The sequence of radio transmissions between Lima 2 and unit 2464 (P/C Spencer and P/C Weverink) also supports this conclusion. Lima 2 directs the unit to leave the area because of a gathering of occupiers in the beach area and because Checkpoint Alpha is no longer available to offer back up to those officers if necessary. Within two minutes of Checkpoint Alpha's departure at 7:37 p.m., P/C Spencer and P/C Weverink see armed occupiers at the checkpoint's former location:

19:37

Lima 2: Lima 2, 2464

2464: 2464 is go ahead

Lima 2: Are you aware we're still down at the beach are right adjacent to park there?

2464: Yeah, we've got a gathering of males down here now, we're a lone vehicle here. Alpha's moved back. Just to advise in case we need another vehicle down here.

Lima 2: Ten four. Your Lima Two advises you can leave. What kind of people are gathering there?

2464: We've got four males gathering right down in the beach area.

Lima 2: 10-4 you can leave.

19:39

2464: Lima 2, 2464

2464: Lima 2, 2464

Lima 2: 62 2464 go ahead

- 2464: just advise, leaving the beach ah, we came up to ah where alpha checkpoint was, there was four males outside on the Army Camp Road, a few ah with bats go ahead.
- Lima 2: Yeah, 2464 when you speak, speak up and speak into the mike and keep speaking up. I caught the first part then you drifted away.
- 2464: It's got to be the comms, when we came up past where checkpoint A was, there were four males on the Army Camp Road, ah, four natives outside the Provincial Park, go ahead.
- Lima 2: Yeah ten four.

(3) as noted above, sometime between 7:37 and 7:39 p.m., P/C Spencer and P/C Weverink observe four males, a few with bats, outside of the Park near the sandy parking lot. Unlike Insp. Wright, the officers did not engage the occupiers in conversation. Having regard to what the Inquiry now knows was said by the one occupier to Insp. Wright, it is not surprising that the occupiers allowed the officers to leave the area; they were concerned about people *entering* what the occupiers regarded as their territory. Having regard to the shift change and debriefings which were occurring right around this time frame, coupled with a request from Checkpoint Bravo at 7:47 p.m. to relocate by reason of increased traffic heading to the beach at their location, it is understandable that the OPP had not done anything in addition to moving Checkpoint Alpha back from the intersection. They had no opportunity to do anything more before Insp. Wright's transmission at 7:54 p.m. The absence of any additional

response does not imply a lack of concern about those individuals who had spilled into the parking lot, armed with bats.

- Evidence of R. Huntley, April 27, 2006, pp. 92-93
- Interview of J. Stirling, dated September 7, 1995, Doc. 2003899, p. 4
- Interview of W. Sword, dated June 16, 1997, p. 4
- Transcript of Radio Transmission, Ex. P-1110, P-1111
- Chatham Logger 0146, Track 12, 08:43 (elapsed time), 19:47 (actual time)

54. EDG misapprehends the relevance of the report of the bonfire by the sandy parking lot to Deputy Carson's decision to deploy the CMU. Its factum states:

In cross-examination at the Inquiry, John Carson explained the fundamental principle guiding his justification for deploying the troops. He stated that: "if the occupiers had stayed within the confines of the Provincial Park, there would have been no necessity to use a crown [sic] management team on September 6. This automatically excludes all of the attempted justifications for the deployment except for the bat-wielding car-trashing fairy tale, and the *bogus report of a fire outside the Park that occurred well after the deployment.*

.....

At 9:26 p.m., on September 6, 1995, the OPP received false intelligence that there was a bonfire outside the Park, which Mark Wright interpreted to mean that there was an escalation of movement within the Park to a position outside the Park. There was no bonfire outside the Park. In any event, this false information was received well after the OPP troops were already deployed (which occurred, at the latest, at 8:37 p.m.) and could not have been a factor in the decision to deploy CMU and TRU. [emphasis added]

- EDG Submissions, pp. 116, 118

55. As articulated in Section IV of our Part I Submissions, Deputy Carson's decision to deploy the CMU, accompanied by TRU, was conditional. Not long after his return to the Command Post (and likely close to the 8:37 p.m. time that EDG alleges), Deputy Carson did decide to deploy the CMU, but on the understanding that the unit would be stood down if the threat in the sandy parking lot subsided. It is correct to state that the report of the fire came in after the initial decision to deploy had been made; however it is incorrect to allege that it did not factor into the final decision to deploy the CMU. Deputy Carson regarded this report as an indication that the threat in the parking lot had, indeed, not subsided. It was appropriate for Deputy Carson to assume that the report that the fire was outside of the Park was reliable; the report came from an officer observing the fire first-hand. That the report turned out to be inaccurate has no bearing on the *reasonableness* of Deputy Carson's ultimate decision to send the CMU down the road from the TOC.

56. EDG mischaracterizes and downplays the scope of illegal and threatening activity that occurred in the sandy parking prior to the deployment of the CMU:

Carson conceded that as long as people were not doing anything illegal, they could go onto that sandy parking lot without being accosted by police. *There was no illegal activity going on in the parking lot when Mark Wright was present, and the only illegal activity that did occur in the parking lot that evening was Stewart George throwing a rock at Gerald George's car and causing a dent. However, arresting one person for throwing a rock is not generally what CMU is deployed for.* [emphasis added]

57. It is incorrect to allege that the occupiers were committing no illegal activity in Insp. Wright's presence. Those occupiers who were armed with bats were tapping them in the palms of their hands in a menacing fashion as Insp. Wright was told that he could not move past them down to the beach. That behaviour amounted in law to possession of a weapon dangerous to the public peace and interference with the lawful use and enjoyment of property (sections 88 and 430, respectively, of the *Criminal Code*). Regardless of what offences had been committed, this incident demonstrated to the police that the occupiers were prepared to act in a threatening fashion towards a *complete stranger*. Unlike the scenario with Gerald George that followed, there was no pre-existing animus that prompted this exchange. They did not know who Insp. Wright was when they spoke with him.

58. Insp. Wright's description of the encounter finds contemporaneous support in his radio transmissions that follow. (see OPP Part I Submissions, Section VI, page 126, paragraph 117). The notes of P/C Zacher, who was stationed at Checkpoint Charlie, also include:

ntfd. D/Sgt. Wright infor of numerous native persons on bch.
[beach] lot area of int. [intersection] of Acmp. Rd. & East Ippwsh.
Rd.

- Notebook entries of M. Zacher, Ex. P-475, p. 12

59. Leaving aside the incident involving Insp. Wright, it is inaccurate to suggest that the only illegal activity that occurred in the parking lot was an act of

mischievous by Stewart George. With all of the emphasis that various parties have placed on what actually occurred that evening, as distinguished from what was believed at the time to have occurred, it is significant that Stewart George, on his own admission, struck Gerald George on the side of the head. Accordingly, an assault also occurred in the sandy parking lot that night, whether or not provoked.

EDG's Proposed Finding 48: The CMU would not have marched down the road toward the occupiers if the OPP reasonably believed that the occupiers were armed. (p. 134)

60. EDG contends:

As the CMU train continued its journey towards its fatal destination, it passed a key point that would have stopped the train in its tracks: neither Carson nor Korosec informed CMU leader Lacroix about the supposed intelligence regarding alleged weapons during their briefing of him. Lacroix clearly indicated that if he had been informed of this supposed intelligence, he would not have advanced from Forest as it would not have been a job for the CMU until the existence of automatic weapons was disproved. *The failure to provide this information to Lacroix was either intentional or grossly incompetent*, particularly given the obvious caution that Lacroix would exercise in order to protect his officers. Either of these possibilities is disturbing, especially since such information had been provided to the TRU team for their information. [emphasis added]

- EDG Submissions, p. 109

61. It was never suggested to Deputy Carson that he withheld operational information from Insp. Lacroix or that to do so was improper.

62. Deputy Carson consistently maintained at this Inquiry that he did not think that the occupiers would fire upon the CMU. Having said that, he was aware that the occupiers had access to firearms. He based this on information *apart* from what had been learned from Gerald George and communicated by D/C Dew to the Command Post on the night of September 6. Any access to firearms created a risk that the CMU could be fired upon and justified the involvement of TRU to provide cover for the CMU as it headed down East Parkway Drive. As Deputy Carson put it:

The use of TRU team as a cover team is used as a precaution because of the availability, or potential availability of weapons.

It's not because we felt that any individual was going to do something overt towards us.

Deputy Carson never overstated that risk. Insp. Skinner was at the Command Post when D/C Dew called Sgt. Graham with the details of Gerald George's admittedly unverified inventory weaponry and when Graham reported the information to the Command Team.

- Evidence of J. Carson, June 28, 2005, p. 58
- Scribe Notes (typed), Ex. P-426, pp. 75-77

63. While Insp. Lacroix may not have been apprised of the details of the Gerald George inventory, he was certainly alert to the possibility that the CMU could be fired upon before and during the deployment:

(1) the very fact that TRU was covering the CMU must have signaled to him that there was a risk of firearms in the hands of the occupiers;

(2) in preparing the CMU to deploy, he instructed his officers on what to do if fired upon. P/C Will Smith recorded the following in his notebook:

- S/Sgt. Lacroix advised TRU had two sniper positions set up and TRU would be following team as cover.

- if shots fired to go to ground and TRU would step forward

(3) as the CMU headed towards the Park, Insp. Lacroix expresses a need to remain alert to the presence of firearms over the radio:

Lacroix: okay ah (I/A)...good news they've got rocks and sticks piled up and we all know we can beat that (I/A)...rocks and sticks that's in our Bailiwick. *All we have to worry about is little brown stocks and black barrels...*[emphasis added]

- Transcript of March Down East Parkway Drive, Ex. P-438, p. 1
- Notebook of W. Smith, Doc. 2003882, p. 3

EDG's Proposed Finding: *The deployment of the CMU represented a drastic abandonment of the Project Maple objectives. (page 114)*

64. EDG argues:

...However, over the course of the next two days, Project Maple would crumble under the weight of political pressure from the Premier.

.....

The totality of the circumstances leads to no other conclusion for the drastic abandonment of the Project Maple objectives on September 6, 1995, just 48 hours after the occupation began. We know there was violence and death caused by the OPP. We know there was political pressure on the OPP. And we know that the OPP were influenced in some way by political pressure; otherwise the violence and death would never have occurred.

- EDG Submissions, pp. 67, 114-15

65. *Project Maple* was designed to promote the non-violent resolution of the Park occupation. The deployment of the CMU was consistent with *Project Maple's* stated objective. It was intended as a *show of force* which would, in effect, prevent violence. As reflected at page 151, paragraph 143 of our Part I Submissions, Deputy Carson genuinely and reasonably believed that a show of force packaged in the form of the CMU would prevent violence. He explained to the Commission how the deployment of the CMU was not inconsistent with the OPP's generally policy towards First Nation occupations and, by implication, with *Project Maple*:

Q: ...Now, Mr. Horton asked you some questions about the use of force policy in the OPP and – and he pointed up to you that the OPP police – and I won't take you back to it again – discourages the use of force subject to the death or serious bodily harm exception; and do you remember that cross-examination?

A: Yes.

Q: And in essence, what he was suggesting to you – and it was an excellent job of lawyering, if I may say so – that sending the CMU down the road is a use of force, and you agreed.

And – and then he's suggesting that it follows from that that because that's a use of force, that it violates OPP policy

unless there's immediate death or serious bodily harm that's likely to occur; you remember that?

A: Right.

Q: *Is there a distinction between the use of force and the show of force?*

A: Yes.

Q: What's the distinction?

A: *Well, use of force is the application of force, which I would suggest, is more than mere presence.*

Q: All right. So – so even if one could make the argument, and apparently you can because you agreed with it, that – that the show of force was a use of force, did you see the show of force in those circumstances as violating OPP policy?

A: No, sir, I didn't.

Q: *As you've articulated, the idea behind the exercise was that through the show of force and through intimidation, one would prevent the actual use of force?*

A: *Correct.* [emphasis added]

- Evidence of J. Carson, June 30, 2005, pp. 137-38

IV. AAZHOODENA AND GEORGE FAMILY GROUP (“AGFG”)

AGFG’s Proposed Finding: 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. (page 105, paragraph 367)

AGFG’s Proposed Finding: 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. (page 109, paragraph 380)

66. These submissions have largely been addressed in the OPP Part I Submissions in Section V at page 80, paragraph 64 and are further addressed below.

67. In its submissions, AGFG refers to the “consensus” reached by a number of OPP officers, including Deputy Carson, C/Supt. Parkin and Insp. Lacroix, and

Mr. Beaubien, during an August 11, 1995 meeting. While it appears that AGFG concedes that the officers did not reach a consensus with Mr. Beaubien that “Ministries involved have to give the OPP clear guidelines for law enforcement”, it does suggest that a consensus was reached regarding three remaining items, and that such a consensus on operational matters was improper.

- AGFG Submissions, p. 104

68. Mr. Beaubien’s August 14, 1995 letter to Attorney General Harnick articulates the three issues in question as follows:

(1) as the Ipperwash Campground is provincially owned, we should be in a position to legally uphold this property;

(2) enforcement is only a short term solution; and

(3) the long term solution is a negotiated settlement.

- Letter of M. Beaubien to C. Harnick, dated August 14, 1995, Ex. P-418

69. Leaving aside whether or not these three issues even “relate directly to OPP *operations*”, it was never put to Deputy Carson, C/Supt. Parkin or Insp. Lacroix that it was “unacceptable for the OPP to reach consensus with an MPP” on these issues. It is regrettable that AGFG’s view of “operations” is so rigid so as to even prevent any discussion that reinforces the value of negotiated

settlement, rather than enforcement, as a long term solution. We respectfully disagree.

AGFG's Proposed Finding: *The erection of the checkpoints at Ipperwash was not authorized by OPP policy or law. (p. 118)*

70. Mr. Rosenthal cross-examined Deputy Carson at length about the lawful authority for the establishment of the checkpoints. Deputy Carson discussed this very issue with C/Supt. Parkin in their 4:11 p.m. telephone call of September 5, 1995:

Parkin:	So we're controlling traffic to ensure the safety of the public given the fact we have ah an incident in where people have committed criminal acts are refusing to cooperate with the police.
Carson:	All right and if you see ah some of the driving and things which will be on the six o'clock news I'm sure in there I think I think it's only appropriate that we do that.
Parkin:	I guess we could say we're trying to direct the orderly movement of traffic.
Carson:	Yep and ensure the public safety.
Parkin:	And we can ask anybody for a drivers licence.
Carson:	That's right.
Parkin:	Um okay.
Carson:	But I know the crime guys have pursued the authorities in that and and seem to be pretty comfortable with that.

Parkin: Okay.

As an indication that the police were acting in good faith, Sgt. Richardson contacted a local Assistant Crown Attorney to verify the lawful authority for stopping the vehicles at the checkpoints on September 5, 1995. The advice received confirmed Deputy Carson's belief as to the legality of the checkpoints.

The relevant scribe note entry reads:

16:45 ...Insp. Carson inquired about vehicle checks. D/Sgt. Richardson states that he contacted Legal Branch and *H.T.A. covers checking vehicles...*[emphasis added]

Indeed, Deputy Carson offered the same explanation at the Inquiry:

Q: So, am I not correct, sir, that you, when you assigned the officers to man those checkpoints and ask for ID did you not know what legal basis, if any they may have had for asking for that ID?

A: Well, they, as well as myself, would all know that they have the authority to ask under the Highway Traffic Act for identification from a driver.

- Evidence of J. Carson, June 20, 2005, p. 206
- Evidence of T. Richardson, June 8, 2006, pp. 81-82
- Transcript of Telephone Call between J. Carson and T. Parkin, Ex. P-444A, Tab 21, pp. 162-63
- Scribe Notes (typed), Ex. P-426, p. 39

AGFG's Proposed Finding: *Mark Wright was insincere in his claim that he wanted to open up negotiations with the Stoney Point occupiers.*

71. It is incorrect and, indeed, unfair to suggest that Insp. Wright did not sincerely want to open a dialogue with the Stoney Point occupiers:

(1) Insp. Wright was one of the officers attempting to bridge the cultural gap between the OPP and the occupiers:

(a) he suggested that Sgt. Vince George accompany him to meet with the occupiers at noon on September 5, 1995. This is reflected in the scribe notes:

09:25 hours Mark Wright wants to have Vinnie George meet with the occupants at noon hour. John Carson instructed Brad Seltzer go with him. Mark Wright to check with Stan Korosec and have Vinnie attend here at 11:00 hours.

(b) he suggested that Sgt. Eve accompany him on the afternoon of September 6, 1995 to meet with the occupiers for the following reason:

Q: And why did you – why did Margaret Eve go down with you as the –

A: Well, because I – I wasn't – it was always – a couple of reasons really, is, one, she was a negotiator and I wasn't –

Q: Yes.

A: -- and two, her specifically because Marg was female and we felt that perhaps a female individual would meet with more success than a male individual.

I mean, we were basically trying – prepared to try anything and be somewhat innovative down there in order to make contact, because it was our – certainly my understanding and – and as well as Sergeant Seltzer's, that there was that tradition that the females in the First Nations culture were seen as people who may be representing their community, so we brought Marg down to accommodate that.

(2) AGFG has alleged that during their brief discussions of September 5, 1995, Insp. Wright told Bert Manning that “there would be no negotiations” and that “MNR was going to be applying for a Court injunction”. It has further alleged that following this meeting, Insp. Wright spoke with reporters, indicating that “the OPP were not prepared to negotiate anything”. With respect, this is an unfair characterization of what was said during Insp. Wright's encounter with Mr. Manning. At no time did Insp. Wright indicate that there would be no negotiations. Indeed, he testified that he told Mr. Manning “that we would like to open a dialogue and discuss the situation”. He was never challenged on this evidence. Furthermore, he was quoted in the September 6, 1995 *Sarnia Observer Article* as follows:

“He wanted the roadblocks down,” Acting Staff Sgt. Wright said after the conversation ended. “*We're not prepared to negotiate anything, just talk.*” [emphasis added]

It is evident that Insp. Wright was referring to an inability to negotiate anything about the land claim issue:

- Q: All right. There's no directive as to what's going to be discussed, how it's going to be discussed, in terms of negotiations.
- A: Right.
- Q: All right. You've been quoted in the press at the time as saying there weren't going to be any negotiations, we're simply looking to discuss anything with the people occupying the Park.
- A: Okay.
- Q: Is that accurate? You weren't looking to negotiate –
- A: I'm –
- Q: -- anything –
- A: I don't know I – if you say I said that, I said that; that's fine. I mean, I don't recall saying that.
- Q: *Well, you'd agree with me that you weren't in a position to negotiate anything with respect to the land claim?*
- A: *Agreed.*
- Q: *All right. The only thing you could negotiate would be people leaving the Park?*
- A: *Right.* [emphasis added];

(3) AGFG further alleges that although Insp. 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.” Sgt. Seltzer testified that on September 5, his role was to first learn the identity of the contact person. It quickly became clear from the exchange between Insp. Wright and Mr. Manning that no contact person had been identified:

A: Yes, I asked if they were organized and he said they were not organized and what I meant by that was, do you have a spokesperson. And –

Q: Did you tell him that?

A: Well, I – I know – I'm not sure. I – I don't recollect but I – I know that he understood because he said he wasn't comfortable doing that and they were going to – he's going to speak to the Elders before he could get back to me.

Accordingly, it was not time to introduce Sgt. Seltzer as the negotiator. Further, Sgt. Seltzer had to have known of Mr. Manning's offer to speak the following day – he was a party to the discussions on the morning of September 6 regarding Sgt. Eve's attendance to meet with the occupiers; The allegations made here by AGFG were never put to Sgt. Seltzer.

(4) finally, AGFG implies that the OPP's alleged tardiness in returning to speak to the occupiers is an indication that it was not serious about opening a dialogue with the occupiers:

Surprisingly, given that the OPP claim they greatly desired to speak to one of the occupiers, the OPP did not attend at this pre-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...

It is incorrect to suggest that the meeting was scheduled for 12:00 p.m.

Insp. Wright testified on this point and his evidence stood unchallenged:

“— he – eventually he told me that he’d talk to us, try again tomorrow I think at *three o’clock*.” [emphasis added]

- Evidence of M. Wright, February 22, 2006, pp. 151-152, 241; March 21, 2006, pp. 154-55
- Evidence of B. Seltzer, June 13, 2006, pp. 106, 116
- Scribe Notes (typed), Ex. P-426, pp. 28
- *Sarnia Observer* article, dated September 6, 1995, Ex. P-913
- AGFG Submissions, p. 123

AGFG’s Proposed Finding: *Mark Wright did not have reasonable and probable grounds to support the arrests of Pierre George, Carolyn George or J.T. Cousins.*

72. Our submissions generally on this issue appear in Section X of our Part I Submissions, at page 197 *ff*. AGFG raises two points which we will address here.

73. AGFG criticizes Insp. Wright for failing to inquire into the colour of the car involved in the altercation before the arrests. With respect, the officers were still involved in an ongoing emergency situation and it would have been inappropriate for Insp. Wright to call over the air, seeking information. Further, it is understandable, given the frenetic pace with which events unfolded in those few minutes and the various matters demanding Insp. Wright’s attention, that he had no opportunity to make such an inquiry:

(1) immediately after the confrontation is broadcasted across the radio, the call for an ambulance comes in with the attendant confusion as to where to send it;

(2) then Deputy Carson directs that additional officers be deployed to the operation at Ipperwash on an urgent basis;

(3) then the call about the Marcia Simon pursuit comes into the Command Post;

(4) then the request for medical assistance comes in from the main gate of the Army Base;

(5) then the calls come in regarding the shooting victim at Nauvoo Road;

(6) then a request comes in for extra security at the TOC;

(8) then Insp. Wright speaks with Chief Ovide Mercredi; and

(9) then the high risk takedown occurs outside of the detachment.

Realistically, the first opportunity that Insp. Wright had to probe this issue followed the return of Deputy Carson to the Command Post, the timing of which coincided with the arrests at the hospital.

74. AGFG points to an exchange between Insp. Wright and Supt. Parkin to support the inference that Insp. Wright was aware that the grounds for the arrest were shaky:

In a contemporaneous recording, Mark Wright implied that there were no grounds for the arrest when he told Superintendent Tony Park “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.

Insp. Wright explained the difference between the reasonable and probable grounds needed to effect an arrest and the standard of proof required to secure a conviction at trial:

Q: Did it not concern you that you had caused the brother and sister of a person who had been killed by police officers to be arrested on grounds that might not hold up at least?

A: No, sir, I mean –

Q: It didn’t concern you?

A: No.

Q: Thank you.

A: Well, that’s a very unfair question. You know, I mean, certainly it’s a very tragic set of circumstances that Mr. George’s brother and sister were arrested and put in a jail cell, yes, absolutely.

I mean, there can be no doubt that that's unfortunate. But at the time I had an honest belief that those people were – may have been involved in the attempted murder of police officers.

So I was, you know, that's unfortunate. But if I didn't feel that way, I certainly wouldn't have told the officers to arrest them. I mean, one goes hand in hand with the other. Either you – either you have a reasonable belief or you don't.

And – and you know, whether or not they're relatives or not, really can't come into play of your decision as to whether or not you're going to arrest them or not.

Q: You knew by four o'clock in the morning that the chances of the charges sticking against them were nil, didn't you?

A: I disagree.

Q: You disagree, I see.

A: And – and it's not – my job as a police officer is I'm required to have reasonable and probable grounds to make an arrest; I don't concern myself with convictions.

.....

Q: So you knew at the time there was very little chance that those charges would stick?

A: No, sir. The comment I'm making there is, again, like I said, is that it was a very dynamic situation, we had reasonable and probable grounds to make the arrest.

Whether or not there was proof beyond a reasonable doubt for them to be convicted was another thing. And on top of that my experience as a criminal investigator is that, you know, the charge of attempted murder is – is more difficult to deal with than the charge of murder.

C/Supt. Parkin testified that he did not take Insp. Wright's comment to suggest that Wright doubted the justifiability of the arrests: "I think the inference I took

from charges not ever sticking was more along the lines of sometimes charges are laid and changed.” As well, the offence of attempted murder (as opposed to lesser offences) requires proof beyond a reasonable doubt of an intention to kill.

- Evidence of T. Parkin, February 9, 2006, p. 234
- Evidence of M. Wright, March 21, 2006, pp. 54-57
- Transcript of Radio Transmissions, Ex. P-438
- Transcript of Telephone Call between R. Cousineau and Ambulance Services, Ex. P-347
- Scribe Notes (typed), Ex. P-426, pp. 80-81
- Transcript of radio transmission, Ex. P-1625
- AGFG Submissions, p. 159

AGFG's Proposed Finding: *The officers at Strathroy Hospital ought to have sought an explanation for the activities of Pierre George, Carolyn George or J.T. Cousins prior to their arrest and failed to do so.*

75. It is difficult to see how the police can be criticized for *not* questioning those arrested about their explanations. Had more extensive questioning taken place at the hospital, the police would have been criticized for doing so in the absence of counsel and at a traumatic time for the George family. None of the officers at the Strathroy Hospital who testified were challenged on why they did not seek explanations at the hospital. Insp. Bell did ask J.T. Cousins what had happened and the only information Cousins offered in reply was that “Dudley George was at the gun fight.” He volunteered nothing to signal his own lack of involvement in the altercation.

- Evidence of D. Bell, June 7, 2006, p. 130

AGFG's Proposed Finding: *The OPP ought to have disciplined Wade Lacroix and Brian Deevy in relation to their telephone conversation of September 7, 1995.*

76. The OPPA can address this issue on behalf of Wade Lacroix. AGFG's submission that the OPP ought to have disciplined Supt. Deevy is unfair. Supt. Deevy was not called as a witness at this Inquiry. Commissioner Boniface was never questioned as to whether she spoke to Supt. Deevy about this conversation and why discipline was not considered.

AGFG's Proposed Finding: *It was inappropriate for OPP officers to assist Kenneth Deane, as part of their paid, official duties, following his conviction.*

77. Pursuant to a direction from Commissioner O'Grady, C/Supt. Parkin conveyed to Sgt. Richardson on February 7, 1997 that he, along with D/C Dew, were longer to assist Mr. Deane's defence counsel.

- Evidence of T. Richardson, June 8, 2006, pp. 271-73

AGFG's Proposed Finding: *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. (page 173, paragraph 622)*

78. Nowhere in AGFG's Submissions does it challenge the credibility of Supt. Ron Fox. Indeed, it *relies* upon Supt. Fox's account of events which took place on September 5 and 6, 1995 to support its position before the Inquiry. Supt. Fox, whose credibility and reliability were unchallenged by AGFG, also addressed Deputy Carson's integrity, sensitivity and good judgement:

Q: ...Now another way to evaluate whether John Carson succumbed to the alleged pressure emanating politically, is to look at John Carson the man; and you knew him well?

A: I did.

Q: And you praised him, we've heard, to the Interministerial Committee as a skilled, competent officer?

A: Correct.

Q: And did that accurately reflect how you felt about him?

A: It did and does.

Q: Now, more to the point, you were described by some of your questioners, with – with complete justification I might suggest, as someone deeply sensitive to First Nations issues.

Did you know, from dealing with John Carson over these issues, over the timeframe that you did, that he, too, was an officer deeply sensitive to First Nations issues?

A: I believe that he was and is.

Q: Any doubt about that in your mind then or now?

A: No.

Q: Now, jumping ahead, you continued to deal with John Carson after the Ipperwash incident, did you not?

A: I did.

Q You became a superintendent, am I right?

A: I did.

Q: Was he under your command?

A: He was.

Q: And, I take it, and I do not want to get into hearsay issues, so I simply want to put it to you this way, you did come to learn from his perspective what had motivated him to send the CMU down the road on September the 6th, did you not?

A: I did.

Q: And, did it change your opinion in any way as to his skill, his judgment, or his sensitivity to First Nations issues?

A: No, sir.

.....

Q: Did you believe in 1995 or do you believe now from everything that you've seen and heard that John Carson, the person you know, his history as an officer, how he responded when you communicated to him, was influenced in any way in the conduct of this incident by the Premier's views?

A: I don't believe so.

- AGFG Submissions, p. 92, para. 315, p. 97, para. 332
- Evidence of R. Fox, July 19, 2005, pp. 80-83

79. That favourable view of Deputy Carson was shared by C/Supt. Coles:

Q: And during that period before September of 1995, to your knowledge, your incident commander John Carson spoke with the various stakeholders, the Military, the occupiers, the

Kettle and Stony Point Band, non Native citizens and their representatives and so on; am I right?

A: That's correct.

Q: And were you confident of his ability to relate to those people?

A: Yes, I was.

Q: Now prior to September 4th of 1995 and let's confine ourselves right now to that period.

Did you ever have cause to regret the decision made to appoint him as incident commander?

A: No.

.....

Q: The third thing you'd be looking for, I'm going to suggest is an understanding of the concept which you've described as a peacekeeper's role of a police officer, in other words, an understanding that you're there as a peacekeeper in these situations; am I right?

A: Correct.

Q: And, part and parcel of that is an understanding of the importance of restraint in the use of force, isn't it?

A: Correct.

Q: I mean, if there's anything that's clear from your testimony I'm going to suggest to you, is that you understand and are sensitive to the use of restraint in dealing with these kinds of issues, right?

A: Hopefully, that's the case.

Q: What about John Carson?

A: I believe he has that, too.

Q: Any doubt about that?

A: No.

Q: Now, another thing that you might be looking for is an understanding of the approach to be taken to First Nations occupations generally, and I would call that as the, "injunction first approach" on the part of the OPP, right?

A: Right.

Q: Did he understand that?

A: Yes, he did.

Q: Any doubt about that?

A: No.

Q: You might also be looking for – I suggest you would be looking for a sensitivity to First Nations issues and respect for the First Nations community?

A: Definitely.

Q: Now, Commissioner Linden's been able to evaluate Deputy Commissioner Carson without your assistance, but I'll ask you this, what can you tell us about John Carson's respect for and sensitivity to the First Nations community?

A: It is very high.

.....

Q: Well, let me ask you something else. Even after the shooting took place, and again, at this Inquiry we're engaged in a very important function which is to evaluate how things might have been done differently, and – and John Carson participated in that very Inquiry here, but he was picked as the incident commander after the shooting in relation to the potential takeover of the Pinery, wasn't he?

A: Yes, he was.

Q: And did you participate in that decision?

A: I was involved in that decision.

Q: And did you have any difficulty with that?

A: No, I did not.

Q: And why did you pick him?

A: I picked him for two reasons, because *my review of the situation of the shooting led me to believe that he had conducted himself in – in an admirable way and – and did his very best.*

When the Pinery situation came up, I had a person that I believed needed the – the fact that I supported him, that I – and I did. I questioned myself if it was a good decision, because if things had gone operationally bad in – in the Pinery that I would have placed him in a position that could have hurt him more, given what had happened at the – at – at the Provincial Park.

But I had faith in the man that he was the man for the job and I thought it was good for the man, even though I might not – in my way, maybe it was not the best decision that I could have made in light of his future.

But, I supported it at that time and I think it goes to show my faith in John.

.....

Q: Okay. Now, the last quality that I'm going to put to you is perhaps the most important one that I want to talk about and that is that much has been said here about the pressures associated with incident command.

And we know the pressures are significant. You need an individual as incident commander who can handle pressure in an appropriate way, am I right?

A: Correct.

Q: So we can talk – we can talk at an academic level or an esoteric level about – about the optics of what the Premier has to say, or the optics of what Mr. Beaubien had to say and – and might have been communicated, but you need somebody in place who has the independence to be able to say, this is the course,

I stay the course, it's the right thing to do, I take my direction from Tony Parkin and Chief Coles. I don't take my direction from the Premier or anybody on the exterior – external, am I right?

A: I'd like the individual to have those qualities. I would also like him to have the qualities, if he thinks I'm wrong to tell me I'm wrong.

Q: Okay. Now, let's talk about John Carson in this connection. How does he measure up on that score?

A: High on both counts. He has told me I've been wrong on different occasions.

Q: I mean, did you ever get an inkling during the – your participation in the events concerning Ipperwash that – that John Carson was succumbing to external pressure in the decision making process –

A: No, sir.

Q: -- even an inkling of that?

A: No, sir.

Q: How about now? I mean, you've read all of the material, or much of the material, and certainly John Carson's evidence.

I mean, is that a concern for you now?

A: No, it's not a concern. [emphasis added]

- Evidence of C. Coles, August 18, 2005, pp. 134-38, 140-44

80. AGFG alleges that Deputy Carson played down the importance of the Gerald George incident at this Inquiry by casting it as one of a number of factors that informed his decision to deploy the CMU. This contrasts, AGFG argues, with his testimony at the trial of Warren George, and with the press release issued early on September 7, 1995 where the incident appeared to be central to the

decision. It attributes Deputy Carson's position at the Inquiry to the fact that he now recognizes how flawed that information was. With respect, Deputy Carson could not have been motivated to skew his testimony at Warren George's trial as AGFG suggests. It was already known by the time of Mr. George's 1997 trial that the information about the Gerald George incident was flawed. Indeed, Deputy Carson was cross-examined on that point at Mr. George's trial.

- Evidence of J. Carson, June 30, 2005, p. 80
- AGFG Submissions, p. 173, para. 623 to p. 174, para. 625

81. AGFG further alleges that Deputy Carson deliberately exaggerated his evidence at the Warren George trial regarding the possible danger presented by the Stoney Point occupiers armed with baseball bats in the sandy parking lot. Once again, Deputy Carson was not motivated to embellish his evidence on this issue – it was not particularly material to the Warren George prosecution and, indeed, the learned trial judge in that case made no use of this evidence in his Reasons for Judgment. In a 39-page judgment, the following represents the only reference to this point:

The occupiers soon decided to occupy public areas outside the confines of Ipperwash Park and this trial had been focused on one particular area, a sandy parking lot, proximate to privately owned cottages outside the park boundary, at the intersection of East Parkway Drive and Army Camp Road.

Deputy Carson very candidly acknowledged that he may have been mistaken at the time of Mr. George's trial as to, for example, the number of individuals armed

with bats in the parking lot, but was emphatic that he was not deliberately exaggerating his evidence.

- Evidence of J. Carson, June 9, 2005, pp. 67-69
- Judgment of Pockele J. in *R. v. Warren George*, Doc. 1004968, p. 8
- AGFG Submissions, p. 176, para. 626, p. 177, para. 627

82. AGFG claims that Deputy Carson had the September 7, 1995 press release issued, knowing that it left the false impression that “a totally innocent person” had been driving by when the car was damaged. It relies on an entry in Deputy Carson’s notepad to suggest that he knew that Gerald George, who had made provocative statements about the occupiers in the past, was the driver by the time the press release was issued. With respect, the name Gerald George scratched on the notepad had no connection with the timed entry on the same page:

Q: ...I just want to point out one thing, and ask you about it.

Gerald George is – is written in – and you said this is a scratchpad – at the top right corner of that page, am I right.

A: Correct.

Q: And what I’m interested in is immediately below Gerald George, there’s some information. Does that information have anything to do with the Gerald George incident?

A: No, not at all.

Q: And if you look at the previous page, does the previous page have any information on it that has anything to do with the Gerald George incident?

A: No.

- Evidence of J. Carson, June 30, 2005, pp. 88-89
- Notes of J. Carson, Ex. P-410, Tab 4, p. 3
- AGFG Submissions, p. 177, para.'s 628 - 631

83. AGFG claims that Deputy Carson misled the SIU as to the reason for the delay in returning its call. It suggests that he intentionally put off returning SIU's call in order to have a press release issued before SIU invoked its mandate. This evidence must be placed in context. As C/Supt. Parkin explained, the practice as to when a press release could no longer be released by a police service was much less clear than it is now:

A: ...So the discussion that I'm having with John and John is talking about a window of opportunity, that – that's his terminology, it wasn't uncommon back in those times that some police agencies, and this is not a criticism by my [sic] of any police agency, but some police agencies – and there was a – a general belief that that was an opportunity, there was an opportunity before the SIU invoked their mandate to make a press release...

.....

Q: Okay. Would you agree with me that when Carson tells you this [sic] a window of opportunity, in the previous conversations in the – in the literally the few hours that precede this conversation, when Carson says to you, This is a window of opportunity for us to put out our version of what happened before SIU puts the gloves on us, when he tells you that, the idea that Carson's conveying to you is we should put our version of events out there before we're not allowed to anymore, right?

A: Correct.

Q: And you knew and you – you reflected your knowledge that really that was dicey because once you knew that the

jurisdiction of SIU was invoked as it undoubtedly was here, once you knew that you really shouldn't be issuing press releases, right?

A: That was a debatable issue, sir.

Commissioner Boniface testified about current practices:

(1) OPP corporate/media relations staff are the only people who can issue a news release regarding a matter which involves SIU;

(2) the Director of SIU has determined that the OPP can prepare one generic news release that lays out the aspects of the incident; and,

(3) the news release is shared with SIU in advance of it going out.

- Evidence of T. Parkin, February 7, 2006, p. 177; February 9, 2006, p. 48
- Evidence of G. Boniface of June 14, 2006, pp. 96-97
- OPP Police Orders, Chapter 2, Law Enforcement, Ex. P-1720, pp. 12-14
- AGFG Submissions, p. 178, para. 632 to p. 179, para. 639

84. AGFG claims that Deputy Carson's description of TRU's role on the evening of September 6, 1995 shifted during his testimony. It contends that initially Deputy Carson testified that the Sierra team was called in to "observe" but not be "operational", but later indicated that "I expect them if someone comes into harms way, that they will carry out their duty which they're obliged to do...I never said that they could not carry out their sniper function". With respect, AGFG has misapprehended what Deputy Carson meant by "operational". The

evidence is clear that he did expect TRU to use lethal force, but only if necessary to protect the CMU. However, he wanted it understood that they were not to take aggressive action or a position of offence (e.g., make arrests).

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 – 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 – and effect the arrest.* [emphasis added]

- Evidence of J. Carson, June 20, 2005, p. 58
- AGFG Submissions, p. 179, para. 640

85. AGFG points to a memorandum entitled, "Procedures for dealing with First Nations People", dated August 28, 1995, as "strong evidence that Carson was influenced by an anti-First Nations bias". The MNR authored the document. It is unclear to what extent the OPP played a role in its development. Deputy Carson testified that he did not recall seeing it, but readily acknowledged that the officer

involved would have shared with him the fact that some protocols had been developed with the MNR. Deputy Carson placed the memorandum in context:

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 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 [sic] 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 co-operatively with the Ministry of Natural Resources, sir.

- Evidence of J. Carson, June 16, 2006, pp. 103, 107-09
- AGFG Submissions, p. 182, para. 645 to p. 185, para. 647

86. AGFG has suggested that Deputy Carson's "involvement with post-shooting souvenir t-shirts" is indicative of his anti-native perspective. In particular, it contends:

652. ...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.

This allegation is unfounded:

(1) Deputy Carson did not “really pay much attention to the T-shirt” when an officer first handed it to him. It was in that context that he initially “hadn’t really turned his mind” to its propriety. However, by the time Deputy Carson had a non-disciplinary discussion with Deputy Boose, he had formed a clear opinion as to its propriety:

Q: Now you had told the investigator earlier that you saw nothing wrong with the T-shirt that we just looked at a photograph of, right?

A: At – at the time I hadn’t really turned my mind to it, Quite frankly.

Q: Yes, in the course of your discussion with Deputy Commissioner Boose, was there a discussion as to whether there was something wrong with that T-shirt?

A: Well there’s – no doubt about it. By the – by the time that discussion had taken place, *I certainly understood where the sensitivities were and certainly changed my view on that.*

Q: I see. And you came to the view that there was something wrong with that T-shirt?

A: There’s – *there’s certainly no – no doubt about it that there is from the perspective that clearly it could be perceived in a negative fashion and be deemed insensitive by others,* despite, you know, the intent of the officers involved to not create that kind of an environment.

.....

Q: I see. But you recognize that it was very inappropriate and might be regarded as extremely offensive by First Nations people?

A: *I can appreciate that, yes.* [emphasis added]

(2) Deputy Carson's unchallenged response when he learned of the design on the mugs illustrates anything but a lack of sensitivity to First Nations people:

(a) Sgt. Adkin's interview summary captured Deputy Carson's strong reaction to the design on the mug:

"States that he heard of the mugs at Forest Detachment around the time the T-shirts were made. He was speaking with Staff Sergeant [name and location redacted] Detachment. When he heard about the arrow the commented, 'there better not be'. He understood the potential of what the arrow could cause..."

(b) Deputy Carson testified about this reaction:

Q: ...Now, that was the arrow with respect to what, with respect to a mug or a T-shirt?

A: That was specific to the mugs.

Q: The mug.

A: Yes, sir.

Q: So that was the design of the mug that included an OPP crest with an arrow through it –

A: That was –

Q: -- or behind it?

A: That was my understanding, yes. I – I didn't see a mug, I was being told about the mug –

Q: I see.

A: -- by -- by the Staff Sergeant.

Q: You were given a verbal description of it.

A: Correct.

Q: And when he mentioned the arrow you said –

A: well –

Q: -- That better not be?

A: Well, maybe I can myself very specifically clear on – on that –

Q: Yes.

A: -- particular issue. I was at the detachment at Forest.

Q: Right.

A: I – I attended for some other reason but I wasn't in command at the detachment.

Q: Okay.

A: As I was walking out of the detachment through the general office leading into the garage area, a Staff Sergeant from out of town informed me about the mug with the arrow through the shoulder flash, and I stopped in my tracks and – and I turned to him, and I was probably slightly more emphatic than the report suggests, that they better not be making those kinds of mugs.

Q: So more – almost in the direction of an order –

A: Well, I guess –

Q: -- I suggest to you?

A: -- in all honesty, probably in the -- probably with some expletive attached to it.

- Evidence of J. Carson, June 1, 2005, p. 25; June 16, 2006, pp. 111-112, 119-120
- Discipline Files – Volume I, Ex. P-1051, Tab 43
- AGFG Submissions, p. 185, para. 648 to p. 186, para. 651

AGFG's Proposed Finding: Deputy Carson's decision to deploy the CMU contradicted the OPP's policy regarding the use of force during the currency of an occupation.

87. We have addressed this issue above.

88. In connection with this issue, AGFG has excerpted a portion of Deputy Carson's cross-examination in which Mr. Rosenthal suggests that Deputy Carson had two alternatives to deploying the CMU:

(1) he could have done nothing except monitor the situation; or

(2) he could have set up roadblocks to prevent people from stumbling upon the armed occupiers.

AGFG claims that when confronted with these options, Deputy Carson's justification of the deployment did not withstand cross-examination. It is significant that Deputy Carson *did* consider other options at the time. With

respect, his explanation as to why these were not viable responses to the threat posed by the armed occupiers was reasonable. We have addressed this issue in Section VI of our Part I Submissions at page 151, paragraph 144 *ff*. In addition, the following exchange is instructive:

Q: But I want to ask you about the – the options that were presented to you in this somewhat complicated dynamic. One of the options that was suggested to you, and which there is obviously some discussion about within the scribe notes and as background to one of the taped conversations, is evacuating the cottages, ceding the parking lot, basically, and doing nothing about the activities within the parking lot.

Did you regard that at the time, and again, I don't want you to put on a – a retroscope and talk about what we know now, but based upon the information as – as you knew it back then, was that an option that made sense to you?

A: We talked about that option but it, in my view, wasn't a viable option.

Q: And why not?

A: Again, because of the proximity of the cottages there and the insinuations we had had previous about the cottages being next, that if we allowed that to happen, the cottages could be damaged or entered, et cetera, with no ability for the police to provide any protection whatsoever. And I felt we had an obligation to be able to do that or provide that.

Q: And – and you've already discussed the fact that what message that would send to a militant cottage community, which is the other consideration you had on the other side as well?

A: Well, I was – certainly was very aware of the community frustration and, quite frankly, in my view, the meeting that Mark Wright had with them – or with that group on the afternoon of the 6th certainly highlighted the level of frustration that it was getting to.

Q: Well, tell me this. Let's assume that you'd done that, you evacuate the cottages, the checkpoints are back some distance from the – from the corner; right?

A: Correct.

Q: Because we know that the checkpoint was moved back, because you couldn't have it right up in the face of this activity; right?

A: Right.

Q: So, let's say, the checkpoints are back, the cottages are evacuated and – and more and more occupiers pour into the parking lot, with more and more weapons and with vehicles, and bonfires are being set of picnic tables and son on.

So the numbers increase, the weapons increase, the fires grow; what do you do then?

A: The only option is to keep moving back, I mean you just – you have no ability to deal with it.

Q: What about the option that was proposed, namely that, why didn't you just send kind of a discreet arrest team down to arrest the people on the corner of – on the corner of the intersection?

A: Well –

Q: Was that a viable option?

A: Well, that option, I – I would suggest, we saw the results of that type of option on the evening of September 4th when the group came into the Park, that when there was as small group of officers they simply took advantage of that opportunity and resulted in violence and damage, and it was felt necessary to withdraw to avoid injury.

So I – I couldn't see any reason that I could expect the behaviour to be any different if I sent a small group in.

Q: Again, the idea of being an overwhelming number, supposedly, is – is going to intimidate and prevent that kind of –

A: Oh, very much.

Q: -- pitch battle?

A: That's -- that's a primary psychologically component of using a crowd-management team.

Q: Now what about another option. Mr. Rosenthal put to you, quite frankly, the -- the option that, you know, if the only concern -- and I'll ask you about that -- the only concern is a citizen kind of tripping over these people acting aggressively with baseball bats in the corner and so on, you could kind of impose a complete blockade on the area -- I don't think Mr. Rosenthal --

.....

Q: All right. So I want to ask you because -- because my interpretation of what you've said to Mr. Rosenthal is that you acknowledged to him that it was an option to address what he'd raised, but -- but you didn't accept, in hindsight, that it was an option that you ought to have adopted and the transcript will speak for itself and we'll deal with it later.

But let's talk about the option, let's get past all of that. Here's the option that's being presented to you.

Let's shut down the area, let's -- the checkpoints are at some distance back. We'll blockade the area, we'll -- we'll tell anybody coming up, either don't go there at your peril or we're going to tell them they can't come through, whether native or non-native, that's the option.

Was that a viable option?

A: Not in my view.

Q: Why not?

A: Well, quite frankly, I don't think the public were prepared to accept that and I -- and quite frankly I think the consequences of that would have been more difficult to deal with.

Q: And of course, we're saying all this without the benefit of what we – what we know later. Because if we'd known later what happened, every option looks better than the option that was pursued –

A: Sure.

Q: -- doesn't it?

A: Very much so.

Q: But what I want to ask you about in connection with the blockade, first of all, did you feel confident that you could control access to the area by those coming in, in support of the occupation?

A: No.

Indeed, Deputy Carson pointed out that the option of erecting roadblocks might have also had a provocative effect:

Q: And the second thing I want to ask you is this: that we actually heard from – from Glenn Bressette that one of the reasons they thought the police were going to do something that night was because you stopped letting traffic go though once it got dark, okay?

A: Okay.

Q: So, again, it's kind of an interesting part of the dynamic here that – that once you did restrict access to the area, closely to the time that the CMU went down the road, it was sending a message to at least that occupier that, ah, you're coming into the Park because you're isolating them; right?

A: Correct.

Q: And you see that it could send that message as well, if you created a blockade?

A: Yes.

- Evidence of J. Carson, June 30, 2005, pp. 108 – 14
- Transcript of telephone call between M. Wright and T. McCabe, Ex P-464
- Mobile Command Unit Logger Tape, Track 2 at 20:25 (corrected time)

AGFG's Proposed Finding: *The conflicting evidence of Deputy Carson and Inspector Skinner regarding the purpose of the deployment of the CMU supports the conclusion that there was no legitimate, rational reason for the OPP to confront the Stoney Point people in the sandy parking lot.*

89. AGFG points to purportedly conflicting evidence about the purpose of the deployment of the CMU to support its position that there was no basis to deploy it at all. In particular, it relies upon the testimony of Insp. Skinner and P/C Zupancic that it was deployed to facilitate the positioning of TRU's Sierra teams who had not been able to get in place and observe their assigned target areas. Without the benefit of the feedback from the Sierra teams, AGFG argues, Deputy Carson would have no basis to deploy the CMU.

90. At no time did anyone suggest to Deputy Carson that he deployed the CMU as a diversion (despite the availability of Insp. Skinner's notebook entries and interview). Nor did his testimony support that inference. The commander of the CMU and his second-in-command were crystal clear that their unit was deployed for the purpose articulated by Deputy Carson:

(1) Insp. Lacroix testified that immediately upon his arrival at the Command Post, Deputy Carson instructed him that the CMU was to move the occupiers back into the Park and arrest those who resist:

A: ...So as soon as I walked in the trailer I realized that John was back and basically John was in charge and I received my briefing from John which follows on here about:

"I was advised that a civilian motorist had had his car pelted with stones and hit by baseball bats as it attempted to pass and had lodged a complaint. I was advised that I was to command a CMU to move the demonstrators back into the Provincial Park property...Advised to arrest any demonstrators that would not leave for unlawful assembly and mischief"

Actually, I'll stop for a second. We're having this briefing, a very specific mission-oriented briefing. Actually I believe Mark Wright was in attendance, but Mark Wright, I believe, was on the phone a lot of the time.

There was a little break at this time because I questioned about unlawful assembly, mischief. And, you know, I remember Mark came into the discussion about – at about that time, caused disturbance, unlawful assembly, mischief. What mischief are we talking about? Mischief for, you know, not property but for lawful use – obstruction of lawful use –

Q: You mean in the parking lot?

A: The parking lot. Mark – I said, Okay, what charges are we using? He's the Detective Crime Sergeant. I said, you know, I – I talked to him, are we going to go to court with this? He said, You know, really what we're interested in is – you know because of course cause disturbance isn't even an offense; unlawful assembly, summary.

It was – what we want is to remove people. If they refuse we want to arrest them, to bring them to Forest to get them away from the area and then we'll release them on – charge with a condition not to go back.

So there was that discussion and that's when Mark was off the phone and he partook this part. There was quite a little discussion around what we were you arresting for and, you know, what was the intent of the arrest. Were you really going – you know going to go through a whole, you know – was this all about going to court or was this actually to – to break up the disturbance, you know, to send people home? And it was more the latter.

So then it ends and John gives me a glerk [sic] as – as we're supposed to in any of these kind of situations. Both TRU Team and Crowd Management are what you call miss – mission driven or mission oriented. They're mission specific so he gives me a clear-cut mission.

He's supposed to give me situation, background knowledge. He's supposed to give me a mission and he's supposed to talk about some of the execution. Administration he leaves up to me and we then talk about the command and control, the Comms, what channels and any intelligence.

So I'll come back to the last part. *Here he gives me; our mission was to move the demonstrators back onto the Park property and ensure the safety of local residents and motorists using Army Camp Road.*

So right here we have the – the discussion. I always call in the four "P's". You have to protect the public, you know, protect property, protect the peace, you know, and even protect the accused but protect; you know, the protection of the – of the public order.

So we had that discussion that that's your mission. *Move them back in the Park.*

There was a follow-up discussion that the – I do remember him telling me, he said under no circumstances go into the Park. [emphasis added]

(2) Sgt. Hebblethwaite testified as follows regarding his understanding of the purpose of the CMU's deployment:

Q: ...So standing back a bit, it appears that what Mr. Lacroix is saying is that he understood that his primary purpose was to go down and move the people back from the sandy parking lot. But if as a secondary benefit of doing that, the movement would serve to facilitate the positioning of the Sierra teams, well that's fine and that would make good tactical sense. Do you agree with that?

A: I would agree with that. That was much of my sentiment on Thursday when I had a question put to me that was similar.

- Evidence of W. Lacroix, May 8, 2006, pp. 191-93
- Evidence of G. Hebblethwaite, May 15, 2006, p. 38

91. There is nothing on the radio transmissions that supports an inference that CMU had been deployed for any purpose other than that articulated by Deputy Carson, or that the purpose somehow changed once the CMU was underway.

- Transcript of Radio Transmission, Ex. P-438

92. With respect, it is absurd to suggest that a CMU operates to support TRU; indeed, the exact opposite is the case. Both Insp. Skinner and Insp. Lacroix acknowledged as much.

- Evidence of K. Skinner, April 19, 2006, p. 289
- Evidence of W. Lacroix, May 9, 2006, pp. 305-06

93. Insp. Skinner's recollection at the time of the events in question, as reflected in his notebook, is entirely compatible with the position taken by Deputy Carson, Insp. Lacroix and Sgt. Hebblethwaite:

- plan for C.M.U. to move in to move occupiers back onto Park property
- plan for ALPHA to move with C.M.U. in case they meet armed resistance
- Sierras report still difficult to advance
- determine to move CMU into position onto roadway about 400 m from scene supported by ALPHA
- *perhaps CMU's presence will distract natives from Sierra enabling them to move in to position for eye*
- CMU/ALPHA move forward [emphasis added]

Insp. Skinner agreed at the Inquiry that from the moment that he arrived at the Command Post, he understood that the CMU was to move down the roadway in order to push the occupiers back into the Park, if that was required. He further agreed that one benefit of sending the CMU down the road was that it would act as a distraction which would, in turn, assist the Sierra Teams in positioning themselves. As noted above, Insp. Lacroix and Sgt. Hebblethwaite shared a similar view about the ancillary benefit of deploying the CMU in these circumstances.

- Evidence of K. Skinner, April 19, 2006, pp. 290-91, 294
- Notebook entries of K. Skinner, Ex. P-1341, p. 32

94. It is also noteworthy that the recollections of P/C Klym and P/C Beauchesne, as recorded shortly after the events, are also consistent with the testimony of Deputy Carson, Insp. Lacroix and Sgt. Hebblethwaite. These two officers were, of course, members of the Alpha or IAP cover teams:

(1) P/C Klym's relevant notebook entry states:

Briefing at T.O.C. by Skinner. S1 and S2 to be deployed as advanced eye on the roadblock. Crowd Management Unit (C.M.U.) to be deployed. TRU mission to act as cover for C.M.U.

(2) P/C Beauchesne said the following in his interview with Det. Parent:

...I was briefed that I would be part of an alpha unit with designation myself, Cst. Dean, Cst. Halleran, and Cst. Klin. There was also going to be two sierra teams consisting of Cst. McCormack and Cst. Camerman and Cst. Irving and Cst. Strickler. The sierra teams would be sent out prior to us to hopefully get an eye on the park and the roadway intersection, this was done. As an alpha team were advised that we were going to be moving up in advance of the crowd management unit and just to be security for them in the event that firearms were encountered.¹

There is no indication in either document that the decision to deploy the CMU was somehow dependent upon feedback from the Sierra teams, or that the purpose of deploying the CMU was to facilitate the positioning of the Sierra teams. P/C Beauchesne also advised the Inquiry that no one told him that the CMU was being deployed as a diversion to permit the Sierra teams to get into place.

- Evidence of M. Beauchesne, May 25, 2006, p. 29
- Notebook entries of B. Klym, Doc. 2003648, p. 3
- Interview of M. Beauchesne, dated September 8, 1995, Ex. P-1594, p. 115

¹ A number of the names here are misspelled.

95. AGFG's position might be more credible if Deputy Carson was dependent upon the Sierra team as his sole source of information as to what was transpiring in the area of the sandy parking lot. This was not the case. He was receiving information transmitted by ERT's Oscar team which was positioned close to the sandy parking lot shortly before Deputy Carson released the CMU. He relied upon it and other sources to make his decision to release the CMU. The information that came over the radio following his departure from the Command Post and before his release of the CMU is summarized in Section VI of our Part I Submissions at page 138, paragraph 131 *ff.* Insp. Skinner had considerably less access to the information that Deputy Carson was receiving over the ERT channel. Insp. Skinner agreed in cross-examination that he did not mean to give the impression that Deputy Carson was dependent upon hearing back from the Sierra teams before he could make a final decision about the deployment of the CMU:

Q: Okay. And I gather that you don't want to leave us with the impression that the key to making the decision about whether or not to send down the Crowd Management Unit depended upon what the Sierra team reported back?

They weren't the exclusive source of information as to what was going on down at the sandy parking lot?

A: There could have been more sources of information that I'm not aware of.

Q: All right. All right. So you weren't aware of the other sources that were coming in, in other words?

A: I was not.

.....

Q: Right, okay. So what I gather then that you're saying to us is that you, because of various duties you had, you would not necessarily be privy to the same information that Inspector Carson would have had an opportunity to hear to the extent that he – he was in a position to hear it obviously.

But you had other – other things to do at the TOC.

A: I had other things to do upon arrival at TOC than listen to the radio, yes ma'am.

96. AGFG's position might be more credible if the only role of the Sierra teams was to scout out possible threats before a decision to deploy the CMU was made. As reflected in Sgt. Irvine's testimony, this was not the case. In addition, no one suggested to Sgt. Irvine that he knew that the CMU would not deploy down the road until the Sierra teams had reported their observations.

- Evidence of K. Skinner, April 19, 2006, pp. 294-96, 299
- Evidence of J. Irvine; May 25, 2006, pp. 275, 317-18

97. Finally, it must be borne in mind that the very reason that the Sierra teams found it difficult to get into position to observe the sandy parking lot was, in and of itself, a factor relevant to the deployment of the CMU. This is most evident in the notebook entry of P/C McCormack, another member of the Sierra teams:

While deploying from veh. were spotted by a member of occupiers. The male native started running toward us, banging two baseball bats together and yelling "let's go".

- Notebook entries of M. McCormack, Doc. 2003752, p. 9

AGFG's Proposed Finding: *Any claim that the OPP confronted the Stoney Pointers on the evening of September 6, 1995 because of a concern to protect the cottagers or the cottages or anything else is belied by the officers' retreat following the gunfire. (page. 198, paragraph 680)*

98. It is unreasonable to expect that an Incident Commander who honestly believed that his officers had just been fired upon and targeted by vehicles would do anything but direct them to retreat away from the source of that threat. Following the confrontation, it appeared that the police were more at risk of immediate harm than the cottagers. Indeed, Deputy Carson took steps to secure the TOC area:

Q: Then what did you do next?

A: I got in my car and I headed back to the – well, I – I gave Skinner some direction about putting personnel into the bush area around the TOC site and assisting with the observations for the evening while I went back to Forest to look after further resources for the coming day.

Q: And when you say that you put the – wanted the TRU to go into the bush around the TOC site, why was that, sir?

A: We wanted to make sure, if anyone approached

For the same reason, the checkpoints were moved back from the area of the Park and Army Base. Having said that, it is incorrect to suggest that the police had no concerns about the cottagers following the shooting. Indeed, the police

were in telephone contact with them immediately following the incident and arrangements were made for their evacuation:

Q: Okay. And then there's – the note at --- the scribe notes at 00:02 hours refers to the – can you tell us what that note's about?

A: When I arrived back?

Q: Yes.

A: Well, he indicates – well, there was a discussion here:

“Dale Linton agreed we are not – we are to back off to the outer perimeter to ensure we're not sitting ducks inside. We'll control the area for the night and evacuate people.”

.....

Furthermore, TRU and ERT officers had the sandy parking lot under observation:

Q: And at this point in time what steps, if any, had taken place to secure the crime scene, and that's the sandy parking lot?

A: Right. Quite frankly, all that had been done was the – the TRU team and ERT personnel down at the TOC site had been tasked to keep observation on the area, basically.

Certainly it was not secured in the fashion that we would normally conduct a secure scene.

Q: And – and so it was simply the TRU team was deployed to simply observe?

A: Correct.

- Evidence of J. Carson, May 30, 2005, pp. 157, 180; May 31, 2005, p. 77
- Transcript of Telephone call between Chatham Communication Centre and I. Jago, Ex. P-1784

AGFG's Proposed Finding: *Dennis Adkin's investigation into the memorabilia complaint was cursory and shallow in its approach, as illustrated by its failure to uncover the second t-shirt.*

AGFG's Proposed Finding: *The OPP's disciplinary response to the creation of memorabilia was inadequate.*

AGFG's Proposed Finding: *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". (page 135, para. 492)*

99. Commissioner Linden's *Ruling* of June 5, 2006 held that the adequacy of the investigation into the creation of the memorabilia, bull's-eye and beer can, in addition to the allegation of perjury by P/C Cossitt, fell beyond the Inquiry's mandate:

15. I've said on other occasions, this is not an inquiry into systemic racism in the OPP nor the justice system. As well, this is not an inquiry into the adequacy of the OPP complaint and discipline processes *nor the investigation carried out by the OPP as outlined in Exhibits P-1051, P-1052, and 1053....[emphasis added]*

In any event, it would be entirely unfair to the investigators involved to address this issue without the benefit of their testimony.

- *Ruling of Commissioner S. Linden*, dated June 5, 2006, p. 8

100. As reflected in the passage of Commissioner Linden's Ruling excerpted above, the OPP's discipline process also falls outside the Inquiry's mandate. That having been said, Section XI of the OPP Part I Submissions at page 208, paragraph 210 to page 220, paragraph 219; page 223, paragraph 222 to page 228, paragraph 231 does include an outline of the various responses to alleged and proven misconduct. Of greater relevance to the issues that do fall within the Inquiry's mandate, the Section also outlines the OPP's institutional responses to the conduct in question. Issues surrounding the OPP disciplinary response are further addressed in the OPP Part II Reply.

AGFG's Proposed Finding: The OPP was remarkably unprepared to take up the task of containing and negotiating a peaceful resolution of the Park occupation.

101. AGFG contends that "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" and that the OPP was "remarkably unprepared" to take up the task of containing and negotiating a peaceful resolution. In particular, AGFG criticizes the appropriateness of selecting Insp. Wright to reach out to the occupiers. It claims that "he was a singularly improper choice for this role."

- AGFG Submissions, p. 227, para's. 782-783, 786

102. With respect, Deputy Carson's choice to involve Insp. Wright in opening a dialogue with the occupiers was a reasonable one:

(1) Insp. Wright had considerable experience serving the First Nation community. That experience is summarized in our Part I Submissions at page 19, paragraph 8 *ff*;

(2) as reflected above, Insp. Wright was sensitive to the cultural differences between the Stoney Point people and the OPP, and presented ideas to bridge that cultural gap; and

(3) while he had no formal training as a negotiator, Insp. Wright had something equally valuable: a prior relationship with the Stoney Point people. As summarized in Section IV at page 43, paragraph 32 *ff* of our Part I Submissions, they were open to speaking with him in the weeks leading up to the Park occupation.

V. RESIDENTS OF AAZHOODENA (ARMY CAMP) “RAAC”

RAAC’s Proposed Finding: *Project Maple amounted to an “in your face” or confrontational approach to the Park occupation.*

103. RAAC claims that the OPP should be criticized for a confrontational plan, manifested by *Project Maple*. Others claim that the OPP should be criticized for failing to respect *Project Maple*, which they maintain was an appropriate plan for addressing the possible occupation of the Park. Parties are, of course, entitled to take inconsistent positions. But in fairness, what those inconsistent positions show is the difficulties and complexities associated with responding to Aboriginal occupations generally, and this occupation in particular.

104. Neither criticism is valid. The OPP now has a more sophisticated and nuanced approach to Aboriginal occupations, represented by the Framework and the planning that flows from the Framework. It has specialty units to address some of the difficulties that manifested themselves at Ipperwash. But that being said, the objective of *Project Maple* – and its basic approach – were sound. From the outset, *Project Maple*’s objective was to “contain and negotiate a peaceful solution.” The objective was of sufficient significance that it was posted for all officers to see. The objective was complemented by the OPP policy that occupiers would not be removed without court process. That policy was respected throughout the Ipperwash encounter – indeed to the present date.

105. Containment has to form a component of any police response to an Aboriginal occupation. The logical extension of RAAC's submissions is that because the police are to be neutral and not prejudge land claims, they cannot take effective steps to contain an occupation, and they cannot take steps to avoid the escalation of violence. Of course, RAAC's submissions do not say that (nor could they), but that is the implication of their position. A strategy designed to keep the police as close as possible to the occupation, and provide the best opportunity for the police to talk, monitor, and discourage violence is a reasonable one. That was contemplated by the strategy employed. However, what is also clear is that when co-habitation would increase, rather than reduce, the likelihood of violence, it was abandoned. Similarly, a strategy designed to confine the occupation to the Park, rather than allow it to incrementally expand to nearby properties was also a reasonable one.

106. RAAC notes the discussion surrounding "keeping them out of the Park" as a strategy incompatible with police neutrality. Again, the logical implication of RAAC's submission is that police can never employ a strategy to prevent an occupation – of anything, at anytime. Surely, the more nuanced approach is to weigh all relevant considerations, including the Aboriginal context of an occupation, in evaluating what should be done. Of course, public safety figures most prominently in that assessment. With respect, that is precisely what the OPP did at Ipperwash. Despite some violence employed when the Park was

taken over, the OPP withdrew. The OPP did not ultimately co-habit within the Park. The OPP did not enter the Park when it removed obstructions from the sandy parking lot. These were measured responses, consistent with *Project Maple's* objectives.

RAAC's Proposed Finding: *The OPP had no operational plan in the event that it lost control of the Park.*

107. This submission has been addressed elsewhere. But it should be added that an operational plan articulates the basic approach, and ensures the availability of resources to address an incident. The operational plan does not substitute for operational decision-making and discretion on the part of the Incident Commander, nor should it.

RAAC's Proposed Finding: *The information about weaponry conveyed by Gerald George was relied upon by Deputy Carson in his operational decisions. This contradicted his position that he would not allow intelligence to affect operational decisions. (page 84, paragraph 165)*

108. This is not accurate. Deputy Carson described why intelligence did not lead the OPP's response to this incident. That point has been fully developed elsewhere. But Deputy Carson also made it clear that he was not relying upon the information about weaponry in any improper way. Concerns about weapons

caused him to employ the TRU team as cover only, not to go “operational.” This distinction is critical. Even unsubstantiated information about weapons justifies this use of the TRU team. Had Deputy Carson directed TRU to storm the kiosk, for example, based upon unsubstantiated information about weapons there, he could rightly be criticized for relying upon it.

RAAC’s Proposed Finding: The police neglected fundamental lessons learned from the Daryl George incident of February 1995, namely the need for Native officer involvement, and basic First Nations awareness, the benefits to negotiation and a wait and see approach to a volatile situation, the merits to the use of a bullhorn or other broadcast system, the risks that are inherent in any operation when the “target” may “react” to actions by the police. (page 86, paragraph 173)

109. The Daryl George incident was materially different than Ipperwash. The dynamics there permitted involvement of the First Nation police service, unlike Ipperwash. The incident occurred on First Nation territory and the Kettle and Stony Point Police were both able and willing to become engaged in the successful resolution of the matter. Deputy Carson acknowledged that a bullhorn might have been used in hindsight. As for RAAC’s submission concerning a “target’s” reaction to the police, instruction for ERT (POU) members and POU Commanders on the special considerations and unique responses involving an

Aboriginal blockade, occupation or land dispute is now being incorporated into their training.

RAAC's Proposed Finding: The operational decisions on the night of September 6, 1995 were motivated by the portrayal of same by the media. (page 87, paragraph 177)

110. This submission tells against RAAC's own position. Deputy Carson and Supt. Fox explicitly spoke about how a more aggressive approach would not look very good in the media. It is unreasonable to infer that concerns about media portrayal would motivate a more aggressive approach to the occupation.

VI. CHIPPEWAS OF KETTLE AND STONY POINT “CKSP”

CKSP’s Proposed Finding: *OPP officials, in particular John Carson and Dale Linton, would routinely communicate with Chief Tom Bressette with the sole purpose of eliciting comments as to his disapproval of the occupation of the Camp, and ultimately of the Park, with a view to regurgitating it to others to justify their own positions and statements. (page 31)*

111. It is entirely unfair to suggest that Deputy Carson or Insp. Linton spoke with Chief Bressette for the sole purpose of soliciting comments upon which the OPP would later rely to justify its positions. This suggestion was never put to Deputy Carson in cross-examination. As well:

(1) many parties to this Inquiry have repeatedly stressed the importance of consultation with First Nation leadership on policing issues. The OPP supports and, indeed, promotes a consultative approach to policing. Deputy Carson regarded Chief Bressette, and other members of his community, including Robert “Nobby” George, as valuable resources. It is inappropriate to impute a malevolent intent to gaining Chief Bressette’s perspective on, for example, the existence of a burial ground in Ipperwash Provincial Park. Such information was not used to *justify* the police positions; it was utilized to *inform* them;

(2) further, Deputy Carson communicated with Chief Bressette prior to, during and following the Park occupation for reasons other than seeking information:

(a) he spoke with Chief Bressette to encourage him to express any concerns that he or the Band Council might have about a police operation, including *Project Maple*. This was evident in their telephone call of September 5, 1995 the relevant excerpts of which are reproduced above.

(b) following the shooting, Deputy Carson advised Bressette that the police did not intend to take aggressive action:

Bressette: Well, that's why my concern is – I mean this nighttime stuff – there's kids around down there. And I know I – It's something that I don't support this kinda thing what they are doing down there.

Carson: Tom, my concern is for the community as a whole and there's nothing that's gonna get started unless somebody else starts it. I can assure you that, okay.

Bressette: Alright.

Carson: Thank you.

- Transcript of Telephone Call between J. Carson and T. Bressette, Ex. P-249, p. 9
- Transcript of Telephone Call between J. Carson and T. Bressette, Ex. P-444A, Tab 3, pp. 4-6

CKSP's Proposed Finding: *Insp. Wright directed P/C Poole to take a statement from Gerald George about the information he had over and above his complaint. In addition, he directed intelligence officer, Mark Dew, to speak with Mr. George about the same information. (page 34)*

112. CKSP contends:

Constable Poole notifies Acting Sergeant Mark Wright that he has an individual with *information and a complaint*. Sergeant Wright sends an intelligence officer, Mark Dew, to speak with Gerald respecting *the information* he has. Mark Wright tells Constable Poole: “*You know what I’m after.*”

- CKSP Submissions. p. 34

113. CKSP argues that Insp. Wright directed both D/C Poole and D/C Dew to take a statement from Gerald George regarding what George knew about the presence of firearms at the Army Base/Park area. With respect, CKSP has misapprehended the evidence which bears upon what Insp. Wright directed each of these officers to do.

114. At no time did Insp. Wright direct D/C Poole to take a statement from Gerald George regarding any information beyond his complaint about Stewart George:

(1) D/C Poole did not tell Insp. Wright “that he has an individual with *information and a complaint*”. He could not have done so. D/C Poole testified that Mr. George did not mention anything about firearms until they

were partway through his statement. Even on Gerald George's own evidence, a discussion about firearms did not occur until his interview with D/C Poole was complete and he was speaking with D/C Dew. Hence, nothing D/C Poole said to Insp. Wright would have caused Wright to direct Poole to take a statement about firearms;

(2) nothing in the radio transmissions supports the inference that Insp. Wright was aware that Mr. George had information about firearms; and

(3) further, it was never suggested to Insp. Wright that he would have somehow known that Mr. George had information of this nature to offer or that his comment to D/C Poole, "you know what I'm after", referred to something beyond the mischief complaint.

- Evidence of G. George, January 13, 2005, pp. 100-04
- Evidence of S. Poole, May 16, 2006, pp. 72-73

115. At no time did Insp. Wright send D/C Dew to speak with Mr. George about this additional information. The testimony of both Insp. Wright and D/C Dew was that Dew was dispatched to collect a statement that D/C Poole had already taken, and to bring it back to the Command Post. D/C Dew had no advance warning that he would be speaking with Mr. George about firearms. It should also be noted that D/C Dew was not an "intelligence officer" as CKSP has contended and, accordingly, had no special expertise to delve into this type of information as CKSP implies.

- Evidence of M. Wright, March 21, 2006, pp. 32-33
- Evidence of M. Dew, April 4, 2006, pp. 75, 77, 87, 316

116. D/C Dew's 8:41 p.m. telephone call to Sgt. Graham represents the first communication to the Command Post of the information about firearms that Gerald George provided. That call is captured in the scribe notes as follows:

20:43 hours Rob Graham reports from Mark Dew that they are evacuating women and children. Preparing all night for Kettle and Stony Point. If they have any problems with Kettle Point Counsellors [sic] they will set building on fire.

Reports of numerous guns, 4 S.F.F.'s, 30 detach. clips, 10 fixed rd. clip, 2 ruger 14's, 3 ord. clips, hunting rifles, gas bombs.

Insp. Wright testified that this was the first that he learned about the report of firearms. That testimony stands unchallenged.

- Evidence of M. Wright, February 23, 2006, pp. 195-96
- Transcript of Telephone Call between M. Dew and R. Graham, Ex. P-1137, pp. 2-4
- Scribe Notes (typed), Ex. P-426, pp. 75-76

CKSP's Proposed Finding: *The OPP abandoned its general policy towards First Nation occupations and Project Maple by reason of frustration felt by the officers, pressure exerted by the Premier of Ontario and the catalytic actions of Mark Wright.*

117. For the reasons already articulated, the deployment of the CMU did not represent an abandonment of the OPP policy regarding the use of force.

118. CKSP argues that frustration felt by officers was a contributing factor to the abandonment of *Project Maple*:

Frustration: The OPP had suffered two reverses: the first when they were themselves evicted from the park; the second when they sustained vehicle damage the night of September 5 while trying to move picnic tables. The decisive show of force the next morning to remove the tables was unsatisfying as only two individuals were present at that time and they quickly withdrew.

Negotiation: This, in fact, was another source of frustration. The OPP had adopted a “take me to your leader” approach to negotiations and this had taken them nowhere. While greater resourcefulness, reappraisal and patience were called for, the actual decision seems to have been that 40 hours was long enough and the linchpin of the OPP strategy was taken out of play

- CKSP Submissions, pp. 50-51

119. It does not assist the Inquiry in the fulfillment of its mandate for CKSP to argue that Deputy Carson deployed the CMU because a decisive show of force earlier that day was “unsatisfying as only two individuals were present at that time and they quickly withdrew”. There was no evidence tendered at this Inquiry to support such an outrageous suggestion.

120. As CKSP has stated in its factum: “responsibility for the decision to send the CMU and TRU down the road that night rests with John Carson, the incident commander”. However, at no time was it ever suggested to Deputy Carson that *his* decision to deploy the CMU accompanied by TRU was motivated by his frustration over the events of September 4 or 5, 1995. Furthermore, no scribe note entry, no telephone call and no radio transmission supports such an inference. Indeed, CKSP has cited none in support of its argument. In addition, no one suggested to either the commander of the TRU team or the CMU that their decisions that evening were borne of frustration over the confrontations from the previous two days.

- Evidence of M. Wright, February 22, 2006, p. 249
- CKSP Submissions, p. 51

121. It is also incorrect to allege that Deputy Carson’s deployment of the CMU was motivated by frustration over failed attempts at negotiation and a “time’s up” mentality. The deployment of the CMU and the resumption of attempts at negotiation were not mutually exclusive. Indeed, the Incident Commander reasonably expected that attempts at negotiation would resume the following morning. Deputy Carson elaborated on this:

Q: And, in fact, your objective was out the window once you – you marched down that road, wasn’t it?

A: No, I wouldn’t say that. We – we were going for an injunction the next morning. We were optimistic that the injunction may provide us some assistance into next steps. And we had worked in the community with a couple of officers trying to

establish some communication networks and, quite frankly, well, it still had the potential to stay on track.

Q: You keep saying you were going for an injunction. That not correct, is it? I mean, the OPP was never going for an injunction –

A: Well, that's maybe the wrong terminology, but I'm sure you understand. The Ministry of Natural Resources was going to make an application and there would be a hearing the next morning.

Q: Right. It was not within your control whether the Ministry of Natural Resources went for an injunction, didn't go for an injunction?

A: Not at all.

Q: Not within your control whether they went the following morning or a week later?

A: Correct.

Q: Okay. In terms of what you could control, you weren't expecting to go back to having a peaceful negotiation with these occupiers once you sent forces like that [sic] the road in the middle of the night and pushed them back into the Park, were you?

A: Absolutely.

- Evidence of J. Carson, June 27, 2005, pp. 174-75

122. CKSP argues that as a result of political pressure, Deputy Carson deviated from *Project Maple* and deployed the CMU to forcefully evict the occupiers from the Park. With respect, this argument is irreconcilable with the following statements contained elsewhere in its factum:

- (1) ...*The OPP say they never intended to cross the fence line into the park, which seems credible*, but the occupiers did not know that. They assumed the show of force was intended to drive them out of

the park and appeared to become more confident when the assault stalled at the first barrier...[emphasis added]

- (2) ...Then they advanced on the fence line; a futile gesture *since they intended to go no further*. But again, the First Nations boys and men did not know that. They were heartened when, from their perspective, the attack failed. [emphasis added]

Section V of our Part I Submissions addresses the absence of political interference in operational decisions. We have developed aspects of that argument elsewhere in this factum and will not repeat those submissions here.

- CKSP Submissions, pp. 30, 51, 52

123. CKSP contends that Insp. Wright was a factor in the abandonment of *Project Maple*. It argues:

Catalyst: The catalyst was Mark Wright. On his own initiative, he had held back the ERT teams going off duty that evening. He communicated to John Carson that Dale Linton was dithering. He gave direction to the officers taking the incident statement from Gerald George: "...and you know what I'm after..." . He wanted a show of force: "Don't you say we go get those fucking guys?" And he was happy to get one: "we're going to war now".

It is Wright who tells Tim McCabe:

Well they're moving ah they're coming out for a fight down to the road so were taken all the marines down now.

There is, of course, no evidence that anybody was coming out for a fight. But Wright did get his wish and somebody else paid for it: Dudley George notably, but many, many others as well.

The unsupportable portrayal of Insp. Wright as an aggressive officer, looking for a fight, prepared to manufacture an emergency and usurp the authority of his superiors has been addressed above. It is, with respect, a misstatement of the record before this Inquiry to suggest that there was “no evidence that anybody was coming out for a fight”. It is clear that Stewart George came out for a fight on the evening of September 6, 1995 and that those occupiers armed with bats in the parking lot were certainly prepared for one. Clayton George’s testimony is apposite on this point:

Q: Yes. So I mean one of the things that – that you were doing and being out on the road, is you were kind of asserting your ownership interest in this area.

This is our land, we’ll go here if we want, we’ll be armed with these items that we want because we’re entitled to, right?

A: Hmm hmm.

This was also evident when the occupier standing in the sandy parking lot told Insp. Wright to leave, conveying, “it wasn’t my problem and I would best get out of there”. No one suggested to Insp. Wright that he fabricated this comment.

- Evidence of C. George, November 8, 2004, p. 93
- Evidence of M. Wright, February 23, 2006, p. 23
- CKSP Submissions, p. 51

124. Deputy Carson clearly recognized that some of the occupiers were engaged in criminal conduct in the sandy parking lot and could not be left there:

Q: Could you reasonably regard these individuals, based upon the information communicated by Mark Wright, to be analogous to people having a picnic in the parking lot?

A: Not at all.

Q: I mean, based upon that information as communicated by Mark Wright, would you regard the objects in the hands of those individuals as being weapons, regardless of whether or not they were used to damage a vehicle?

A: Very much so.

Q: Possession of a weapon for a dangerous purpose, does it require proof, as you understand it, that the weapon has already been used?

A: No.

- Evidence of J. Carson, June 30, 2005, pp. 29-30

125. With respect, a generalized claim in the nature of, “it was an irrational act in aid of a trivial objective”, does not assist in the resolution of the very complicated issues which the Inquiry must address.

- CKSP Submissions, p. 51

VII. CHIEFS OF ONTARIO “COO”

COO’s Proposed Finding: None of the risks identified by John Carson justified the dangerous use of force. (page 47)

126. A detailed overview of the factors that informed Deputy Carson’s decision to deploy the CMU and ultimately release it to head down East Parkway Drive appears in Section VI of our Part I Submissions at page 118, paragraph 108 *ff.* For ease of reference, we have set out below in table form COO’s position on the justifiability of each factor, coupled with our response.

Factor	COO’s Position	Response
Possible invasion of cottages	There had been little indication aside from a few stray comments that there was a risk of occupiers attacking nearby cottages. (p. 48)	While nobody said that the Park occupiers were going to move on the cottages that particular night, he could not simply ignore that factor; he had to be mindful of it. (June 30, 2005, p. 52) As reflected in the 8:05 p.m. telephone call between Carson and Wright, Wright expressed a concern that the occupiers were taking a position for the <i>third</i> time in that parking lot. In Carson’s mind this was simply a progression of events and he felt an obligation to be mindful of that as well. (June 30, 2005, pp. 52-53) Clayton George’s testimony about the desire to push on to claim the cottage properties makes this very point. (June 30, 2006, pp. 53-57) Carson was also mindful of information from Chief Bressette that there were rumours that cottages at the east end of the Park would be taken. (June 30,

Factor	COO's Position	Response
		2006, p. 57; Scribe Notes (typed), Ex. P-426, p. 41)
	None of the actions taken by the OPP in the lead up to the CMU and TRU deployment were consistent with a belief that the occupiers would invade nearby cottages. No efforts were made to evacuate the cottages and, in fact, a group of irate cottages were told to return to their cottages only hours before the CMU and TRU move on the Park. (p. 48)	Before the CMU was released to head down East Parkway Drive, Carson did call Linton to confirm whether someone was in the cottage closest to the intersection. (Ex. P-444B, Tab 54, pp. 344-45). The scribe notes confirm that calls in this regard are made both before and after actual deployment. (Ex. P-426, p. 79) Cottagers were encouraged to return to their properties <i>before</i> the police became aware of any threat in the sandy parking lot. (June 30, 2005, p. 61) Whether the cottager was home or not did not remove this concern as a factor. Carson believed that the OPP had an obligation to the property owners to protect public and private property. (June 30, 2005, p. 58)
Guns in the park	John Carson indicated that he did not believe that the officers would be fired upon. "Guns in the park" was not his reason for deploying the CMU and TRU. (p. 51)	The issue of firearms was a factor informing Carson's decision to have TRU accompany the CMU; it did <i>not</i> inform his decision to employ the CMU. Further, Carson did not deploy TRU because of a concern that his officers would be fired upon; he deployed TRU because the occupiers had access to firearms. He could not simply ignore the report of automatic gunfire from the night before (Section VI of our Part I Submissions, page 154, paragraph 147 ff, June 30, 2005, pp. 117-18)
Fires in the parking lot	No fire was actually burning in the parking lot. (p. 52)	At the time, Carson believed, on an entirely reasonable basis, that a fire was burning outside of the park in the sandy parking lot: that was the information reported to him at the time. He regarded a fire as a potential risk to the adjacent properties. Indeed,

Factor	COO's Position	Response
		Carson expressed the same concern before the escalation in his telephone call with Parkin on the morning of September 6. Carson's desire to have the picnic tables removed on the morning of September 6 was borne of a concern about how fire might spread to the nearby cottage properties. (June 30, 2005, pp. 70-75; Ex. P-1058, p. 2
Closing the kiosk blinds	The TRU sniper units that had been deployed to observe the situation had, prior to the deployment of the CMU established that there was no risk to the cottages from the kiosk. The kiosk did not pose a risk to any operations in the sandy parking lot. (p. 52)	The activity in the kiosk did not feature in Carson's consideration of whether the situation in the parking lot merited the CMU's deployment. Activity in the kiosk posed a potential risk to the CMU and Carson wanted that risk evaluated: Q: All right. And I just – I just want to be clear that actually, by the time your officers were walking down the road, you had dismissed the kiosk as a risk to any operations in the Sandy Parking Lot? A: Correct. My concern was the line of sight from the kiosk – Q: Yeah. A: -- to the Sandy Parking lot. Q: So, before the decision was actually implemented, you had satisfied yourself on that? A: Right. Q: And again, the kiosk was only an issue if you did send your officers down the road to confront the occupiers in the Sandy Parking Lot, correct? A: Right. Q: You – you weren't expecting someone sitting in the kiosk to shoot at the cottages?

Factor	COO's Position	Response
		A: No. (June 27, 2005, p. 141)
Vehicle movement in the park	There were no reports of such vehicles causing harm. Further, Carson did not make any efforts, prior to deploying the CMU, to determine why there was vehicle movement in the park and whether it was cause for concern (p. 53)	Leaving aside that it is entirely clear on the evidence that none of the occupiers would have responded to an inquiry by the OPP as to why there was increased vehicular traffic, no inquiries would have uncovered an innocent intent on the part of the occupiers. The bus was moving. The uncontested evidence demonstrated that the bus had been used as a weapon to facilitate the incremental increase in land claimed by the Stoney Point people as recently as July 29, 1995: "Well, I had every reason to believe that. I mean, the – the bus was brought down, and in – in every case in the past the bus always figured into some of the tactics that were used by them." (June 30, 2005, p. 49) Indeed, Marlin Simon testified that he brought the bus up to the Park that evening because it had proven useful in the past. (September 29, 2004, p. 93) In addition, Elwood George testified that the occupiers did increase the amount of traffic flow in order to mislead the police into thinking that there were more of them that night. (November 3, 2004, pp. 86-87)
Cottagers might attack occupiers	Carson's information at the time of deployment was that Mark Wright had defused the situation with the local cottagers and that they were sent back to their homes, a decision that would not have been made if the OPP really considered an attack by the cottagers on the occupiers to be at risk. (p. 55)	At the time Wright spoke with the cottagers, the situation in the sandy parking lot had not yet escalated so it could not have factored into the advice that Wright imparted to the cottagers. Carson was concerned about what might happen when the cottagers did learn of the new situation. He was very much alive to the issue of how far the police could withdraw before they might be faced with a fight between the non-native and the native communities. (June 30, 2005, p. 61)
Baseball bats in the sandy	Carson was unable to identify the nature of the concern regarding	The issue was not the vulnerability of the checkpoints or the TOC. The point

Factor	COO's Position	Response
parking lot	the baseball bats that would have led him to deploy the CMU and TRU. He did not, for example, believe that the occupiers with baseball bats would attack an OPP checkpoint or the TOC centre. (p. 56)	was that Carson could not exclude the possibility that the occupiers were going to act aggressively in that area. Carson felt it was a real possibility: "Oh, I felt it was a real possibility. I mean, we – we had seen aggressive behaviour. The night that we went into the Park we had seen aggressive behaviour when the officers responded to the bonfire on the roadway the night before. They certainly had already done significant damage to police property with no hesitation at all." (June 30, 2005, pp. 47-48) Further, based on the information that was available at the time, there was a reasonable prospect that other weapons (rocks, firebrands, and the like) would be accumulated and used from the parking lot. (June 30, 2005, p. 50)
	Carson indicated that he might have been concerned that the baseball bats would be used against the cottages. However, this possibility had clearly been discounted when the decision was made to send the cottagers back to the cottages, and not to evacuate the cottages. Carson could not point to any contemporaneous document that indicated that the occupiers would attack the local cottages with baseball bats. (p. 57)	As noted above, at the time Wright sent the cottagers back to their homes, the occupiers had not emerged from the Park, armed with bats and clubs. Experienced officers (Oscar teams) felt vulnerable when in proximity to the activities of the occupiers. As one officer put it, it was getting "henky". (Ex. P-1129).
	The contemporaneous evidence suggests that the OPP's belief at the time was that the occupiers were carrying baseball bats defensively, waiting for the OPP to attack them. (p. 57)	When Carson received the information about baseball bats, there had been no movement by the police towards the Park. It made no sense to him that they would be carrying weapons for a defensive purpose. (June 30, 2005, pp. 30-31, 50-52)
Gerald George incident	Carson conceded that he made no effort during a period of some	Even if Carson had made inquiries and had become aware of an accurate

Factor	COO's Position	Response
	two or three hours between receiving the report and ordering the CMU to begin marching down the road, to confirm erroneous reports of the woman's car being attacked with baseball bats prior to making the high-risk decision to deploy the CMU and TRU. (p. 60)	summary of what befell Gerald George, the incident would still have remained a factor in deciding whether or not the CMU should be sent down the road: "Well, whether the fact the [sic] Gerald George was someone who was at odds in his opinions, the fact of the matter, we have to be mindful that we can't permit that kind of behaviour regardless of who the victim happens to be. It just – you're still dealing with the fact that there has been an altercation; the "who" part of it is really – I mean it's a factor, but at the same time, it doesn't matter that he's – that – that he is an individual they know or an individual that has a differing opinion. It's still – you still can't allow it to happen and – and that's basically one of the pieces that brought some -- not necessarily attention, but awareness to the activities that were going on in the area that lead to the monitoring of – of what was happening in that particular area at that time." (June 30, 2005, pp. 75-78)

VIII. ABORIGINAL LEGAL SERVICES OF TORONTO (“ALST”)

ALST’s Proposed Finding 9: The incident commander at Ipperwash Provincial Park inappropriately included, as part of his briefings of his command team, the political views of high ranking officials within the Conservative government. (p. 146)

127. Deputy Carson did communicate information about politicians to his command staff. Section V, page 103, paragraph 88 of the OPP Part I Submissions sets out why Deputy Carson felt no hesitation in doing so. It is noteworthy that any communication of information about politicians or their views was often combined with language of restraint.

- Evidence of J. Carson, June 29, 2005, p. 205

128. At page 27, paragraph 55 of its factum, ALST has summarized instances of alleged “political pressure directed at the OPP through the period September 4 through September 6, 1995”. For the sake of convenience, we have reproduced that table below and added:

(1) rows to reflect other examples of alleged political pressure cited in other parties’ facta, and additional, relevant communications the OPP relies upon; and

(2) a third column that demonstrates that the alleged pressure had *no* impact on operations:

Anything added to the ALST chart has been italicized.

Source	Comment Conveyed	Response
September 5, 1995		
Marcel Beaubien to Wade Lacroix to John Carson Telephone Call b/w W. Lacroix & J. Carson on Sept. 5 at 8:27 a.m. P-444A, Tab 4	"MPP quite irate not at us" (Sept. 5, p. 8) "He wants me to brief him he's going to call the Premier and say this is ridiculous...and I want something done." (p. 9)	Carson's response immediately following these comments demonstrates his indifference: "Well okay and and so that you know we have 4 ERT Teams. Two were on the ground all night and two new ones are in there now." (p. 9) Carson also indicates to Lacroix that the OPP does not intend to use CMU to evict the occupiers: "Well we don't intend to go into that mode". (p. 10)
John Carson H/W Police Scribe Notes P-427, p. 390	"Marcel Beaubien calling Premier" (Sept. 5 at 8:34 am)	The complete handwritten scribe entry referencing this call states: "Marcel Beaubien calling Premier. That's fine. Sit tight. Get intelligence info. Preference get ERT guys working in park – get discussions...take it slow" [emphasis added] (Sept. 5 at 8:34 a.m.) Carson testified that "I think what I'm saying here is, Do your job as we've planned to do." (June 29, 2005, p. 206)... "Well we're still going to do our – our job as – as we have contemplated, as we have planned and as the direction that I have provided to them right from the outset." (June 29, 2005, p. 207)
John Carson to command team H/W Police Scribe Notes	"Federal local member Marcel talked to Lacroix – updating Premier" (Sept. 5 at 9:25 a.m.)	Immediately before this entry, the scribe notes record Carson discussing the injunction application: "Court where appear party has option to appear [-] doubts it will happen today." (Sept. 5 at 9:25 a.m.)

Source	Comment Conveyed	Response
P-427 , pp. 400-01		
<i>John Carson to Tony Parkin</i> <i>Telephone Call b/w J. Carson & T. Parkin on Sept. 5 at 9:50 a.m.</i> P-444A, Tab 6	<i>"Yeah he ah [Beaubien] called Lacroix". (Sept. 5, p. 38)</i>	<i>Immediately after this comment, Carson says: "The Lacroix's handled that ah so he's kind of run ah interference for us that way." (p. 38)</i>
<i>John Carson to command team</i> <i>H/W Police Scribe Notes</i> P-427, p. 421	N/A	<i>During the 11:04 a.m. briefing, there is no reference to the Premier. However, Carson does refer to the injunction application: "JC: Meeting looking for consensus on injunction. All Ministries together." (Sept. 5 at 11:04 a.m.)</i>
Deb Hutton to Ron Fox (and others) – Jai IMC Notes P-536 (Inq. Doc. 1012579)	<i>"Prem. is hawkish on this issue" (Sept. 5, p. 4)</i>	<i>(See entry below referencing September 5 call between Ron Fox and John Carson.)</i>
Deb Hutton to Ron Fox (and others) – Hipfner IMC Notes P-510 (Inq. Doc. 1011739)	<i>"this may be the time/place to move decisively" (Sept. 5, p. 4)</i>	<i>(See entry below referencing September 5 call between Ron Fox and John Carson.)</i>
Premier/Deb Hutton to Ron Fox to John Carson <i>Telephone Call b/w J. Carson & R. Fox on Sept. 5 at 2:47 p.m.</i> P-444A Tab 16, p. 116	<i>"Premier's made it clear to her [Hutton] his position that there be no different treatment ah of ah the people in this situation in other words ah native as opposed to non-native" (Sept. 5 at 2:47 pm)</i>	<i>During the call, Carson and Fox also state the following:</i> <i>"Carson: I mean if we're going to do that over trespassing.</i> <i>Fox: That's exactly right and I said you know you just can't do that.</i> <i>Carson: That's right. I mean if we're going to do that I we have to have the force of the law behind us to provide some recognition by a</i>

Source	Comment Conveyed	Response
		<i>court in this land.</i> <i>Carson: Well and and I'm I'm ah hesitant at getting too excited about moving on ah the park until we have some court injunction like ah.</i> <i>Fox: That's right."</i> <i>(Sept. 5 at 2:54 p.m.) (P-444A ,Tab 16, pp. 122, 125)</i> <i>Carson testified that even having heard the opinions conveyed by Fox in this call, Carson was not going in until an injunction had been obtained. (June 29, 2005, pp. 214-16)</i>
John Carson to command team H/W Police Scribe Notes P-427, p. 439	"Premiers no different treatment from anybody else" (Sept. 5 at 2:35 pm)	<i>The complete handwritten scribe entry referencing this direction states:</i> <i>"JC: Ron Fox sitting on committee. Sounds like they are going to get an emergency order.</i> <i>Kob: Having someone search title.</i> <i>JC: Premiers no different treatment from anybody else. We're ok on right track. Concern notice wasn't accept. Ron Fox dealing with legal issues. Checking over Press Release. Don't have paperwork for injunction going." [emphasis added] (Sept. 5 at 3:07 p.m.)</i> <i>Carson testified that by his words he intended to convey, "that's what the Premier may be saying, but this is what we're doing". When asked what the "right track" referred to, Carson replied: "We were just going to pursue – hold – hold for lack of a better term hold the status quo, waiting for the injunction to be processed." (June 29, 2005, pp. 210, 213)</i>
John Carson to Tony Parkin Telephone Call b/w J. Carson and T. Parkin on Sept. 5 at	N/A	<i>During his 4:11 p.m. conversation with Parkin, Carson does not mention the Premier or his views.</i>

Source	Comment Conveyed	Response
4:11 p.m. P-444A, Tab 21		
Wade Lacroix to John Carson P-444A Tab 22 pp. 182, 183	Lacroix: "Harris is involved himself and ah quite uptight about it" Carson: "Okay." Lacroix: "And the Ministry I guess the Solicitor General I imagine is to do a press release momentarily or soon saying law will be upheld no matter who is involved." Carson: "Okay." Lacroix: So I would say the signal is that ah we're gonna end up evicting." Carson: "I would suspect." <i>Lacroix: "So anyhow I it sounds like the government is on side."</i> <i>Carson: Oh good.</i>	<i>(See entry below referencing unit commander briefing.)</i>
John Carson H/W Police Scribe Notes P-427, p. 443	"Wade Lacroix briefed Carson re discussion with Marcel Beaubien" (Sept. 5 at 4:31pm) <i>[The entry actually states: "16:31 Called Wade Lacroix briefed Carson re discussion with Marcel Beaubien.]</i>	<i>(See entry below referencing unit commander briefing.)</i>
John Carson to command team	"J.C.: Updated Chief. Marcel Beaubien has contacted Premier. Press	<i>During this same briefing, Ed Vervoort of the MNR advised: "Dan Elliott meeting tomorrow. Spokesperson identify for them. Seem to be</i>

Source	Comment Conveyed	Response
H/W Police Scribe Notes P-427, pp. 444, 446 Vervoort's notes Ex. P-1008, p. 3	release by Sol. General. Not Indian issue – MNR and Provincial issue. Meeting at 6:15 before new crowd comes in. Insp. Linton relieving. Everyone knows who's taking over responsibilities for evening. Be back for 7:00 in the morning." (Sept. 5 at 4:45 p.m.) "-MNR/Prov. of Ont. Issue – may get statement from Sol. Gen./Premier".	moving for an injunction as soon as possible." (Sept. 5, at 4:45 p.m.) Carson testified that their responsibilities for the nighttime were "to maintain the status quo... To keep it quiet, the same as the night before. Basically, just use the term, for – hold the line, maintain the status quo." (June 29, 2005, pp. 221-22)
John Carson to command team H/W Police Scribe Notes P-427, pp. 450 Vervoort's notes Ex. P-1008, p. 4	"Heat from political side" (Sept. 5, 6:05 pm) "lots of political pressure – strong in-house comments by Premier/Sol. Gen."	The complete handwritten scribe entry referencing this direction states: "J.C.: If someone can get it do it tonight bring here to office. Skinner be part of Command team. Heat from political side. Made strong comments in the House. Court injunction moving along. Keep tonight quiet. Keep on checkpoints, wherever you are let logistics know....Keep it up" [emphasis added] (Sept. 5, at 6:05 p.m.) Carson testified that while he did not specifically caution his officers not to allow political pressure to influence them, he was telling them, "that's what they have to say, this is what we're doing". (June 29, 2005, p. 225)
Evidence of Carson, May 18, 2005 at p. 31	"Obviously, the – the information that's being passed along through Staff Sergeant Lacroix. There's also the comments from Mayor Thomas, Ken Williams. I mean there's – there's a number of people at the various areas of responsibility who are voicing concerns and issues, so it's, quite frankly, coming from all angles."	The question and answer that immediately follow this excerpt state: Q: And, what – at six o'clock on September 5th, what effect, if any, did the political heat, as you put it, have on you and your planning with respect to this incident? A: Well, certainly what we had been planning and what we continued to plan was our approach to this incident was by means of an injunction. All it meant was that we had to stay the course. I was informing people of some information that I had received. But the reality of it all is, we simply

Source	Comment Conveyed	Response
		<i>continue to move forward and there – there may be some obstacles at the Ministry level in regards to how the injunction or what type of injunction, but that we were going to continue to pursue our injunction process and that, quite frankly, it's just business as usual.</i> [emphasis added] (May 18, 2005, pp. 31-32)
September 6, 1995		
John Carson Typed Police Scribe Notes P-426, p. 53	“Les Kobayashi states Deputy Minister called we not going for an injunction, basically, we are, they want him to retract that position, and I just told Darryl to hang tight, check with Pete.”	Immediately following this entry, the scribe notes state: “John Carson we are pursuing that option, until some court gives us a stamp we haven’t got it.” [emphasis added] (Sept. 6 at 8:27 a.m.) “John Carson, if they say they are not getting an injunction someone will be upset.” [emphasis added] (Sept. 6 at 8:39 a.m.) Carson explained what these entries meant: Q: ...Can you tell us what this is about? A: I believe Kobayashi was at the command post at that point in time and it indicated the Deputy Minister had called and we’re – they’re not going for an injunction. Basically, they want him to retract that position and indicates that he told Darryl just – Darryl, that’s one of the MNR people, to hang tight, check with Peter, who is Peter Sturdy. And I indicated to Kobayashi that we, the OPP, are pursuing the option of the injunction until we have a court order that gives us a – I put here “a stamp” which means gives us some direction, we simply don’t have anything. Q: And then, there’s a note? A: Yes, I indicate that if they say they’re not getting an order – some – an injunction, someone will be upset. Q: And, what are you referring to there?

Source	Comment Conveyed	Response
		<i>A: Well, I was – in my mind, it would be our chain of command, because, I mean that's the – the – our position right from Day 1 that we had shared with the – with the Ministry of Natural Resources, but one of the people that someone was going to be, was going to be me.</i> <i>I certainly was not going to be too pleased to continue the – the checkpoints and trying to manage a situation if the property owners weren't going to take the steps necessary to provide -- provide us with the legal assistance that we felt we needed.</i> <i>Q: And were you under the impression, at this point in time, that MNR wanted the Ontario Provincial Police to remove the occupiers from the Park without the force of an injunction?</i> <i>A: I never had a sense of that, no.</i> <i>Q: And, if the MNR had decided, as it's being discussed here, not to get an injunction, what, as of 8:39 in the morning of September 6th, what would the OPP do? Would they –</i> <i>A: Well, my – I – I can tell you clearly what I would have done, I would have picked up the phone and called Chris Coles, and I would have certainly put – put it to him very strenuously that he would have to get on the – the line with the Ministry of Natural Resources people and – and resolve it. I'm not in a position to do much about it.</i> <i>I've got too many things on my plate. But, I would currently [sic] have my Chief Superintendent take whatever steps necessary to get to the bottom of whatever's going on here. (May 18, 2005, pp. 97-98)</i>
<i>John Carson to Tony Parkin</i> <i>Telephone Call b/w J. Carson and T. Parkin on Sept. 6 at 9:56 a.m.</i>	<i>N/A</i>	<i>During his 9:56 a.m. telephone conversation with Parkin, Carson does not mention the Premier or his views. He does, however, advise Parkin that the MNR is "plugging along with the ah injunction ah affidavit"...but ah it will be some time yet by the looks of it."</i>

Source	Comment Conveyed	Response
<i>Ex. P-444A</i> , Tab 27, p. 220		
John Carson to command team Typed Police Scribe Notes <i>Ex. P-426</i> , p. 61	N/A	During the 10:19 a.m. unit commander meeting, Carson does not mention the Premier or his views. There is discussion about the injunction. Carson indicates that “things are moving on with affidavit”. (Sept. 6, at 10:19 a.m.)
Deb Hutton to Ron Fox (and others) – Jai IMC Notes P-536 (Inq. Doc. 1012579)	“He wants them out in a day or two” (Sept. 6, p. 3)	(See entry below referencing September 6 call between Ron Fox and John Carson.)
Deb Hutton to Ron Fox (and others) – Hipfner IMC Notes P-636 (Inq. Doc. 1011784)	“Premier’s view that the longer occupiers are there, the greater the opportunity they have to garner support, arm selves” (Sept. 6, p. 5)	(See entry below referencing September 6 call between Ron Fox and John Carson.)
Ron Fox to Mark Wright P-444A Tab 34, p. 252	“And that’s as I said to John that’s my big job is to keep the political folks out of the hair of the operational people so.” (Sept. 6 at 12:06 pm)	No one examined Ron Fox as to what he meant by this comment. No one examined John Carson as to what he took from this comment. Mark Wright said the following about the comment: Q: ...And what did you understand him to mean when he said that you? A: Well, sir, I wasn’t really sure what he was talking about. As you can tell from this – like he wanted to speak to Carson and – and what happened at the command post was often was, when Inspector Carson wasn’t available, as we’ve seen is, the next thing was, well, Mark Wright’s here, and I commonly took those calls. So this happened to be one of those calls

Source	Comment Conveyed	Response
		<i>again and I didn't know who Inspector Ron Fox was and I didn't know what it was he was doing, but he was an Inspector and he was asking me questions and I was going to give him answers.</i> <i>So I took from his questioning that he had something to do with the – the political side but I was intent on passing the information on to Carson as accurately as I could. (February 22, 2006, pp. 218-19)</i>
Ron Fox to Julie Jai– Jai h/w note of phone call with Fox, Sept. 6 P-515	“he [Taman] cautioned about rushing in with an ex parte injunction – can't interfere with police discretion – but Prem. and Hodgson came out strong”	<i>(See entry below referencing September 6 call between Ron Fox and John Carson.)</i>
<i>Mark Wright to Command Team</i> <i>Typed Police Scribe Notes</i> Ex. P-426, pp. 62-63	N/A	<i>During the 2:27 p.m. unit commander meeting, there is no mention of the Premier or the Premier's views. However, there is discussion about the injunction. Vervoort states the following:</i> <i>“Les Kobayashi is waiting for a copy of the new wording of the affidavit, he will be signing it, Trevor Richardson has given them photographs to substantiate the affidavit, may have it today.”</i> <i>Wright then states:</i> <i>“There will be a leg [sic] time, second party has to have an opportunity to attend. Ed Vervoort feels probably will be Friday.” (Sept. 6 at 2:27 p.m.)</i>
Ron Fox quoting Premier Harris to John Carson and Chris Coles P-444A Tab 37 Sept. 6 at 2:00 p.m.)	“the political people are really pushing” (p. 260) “John we're dealing with a real redneck government” (p. 262) “Well John I'm here to tell you this guy [Premier Harris] is a redneck from way back” (p. 263)	<i>During this same call, Carson said to Fox: “All right they just want us to go kick ass... We're not prepared to do that yet.” (pp. 262-63)</i> <i>Carson testified that he knew full well that the Premier did not have the authority to direct the Commissioner. He further stated:</i> <i>Q:... The tape will speak for itself, but I – I don't want to kind of parse the thing terribly</i>

Source	Comment Conveyed	Response
	“the OPP in my opinion made mistakes they should have done something right at the time and he said that will I’m sure all come out in an inquiry sometime after the fact” (p. 263-64) “He believes that he has the authority to direct the OPP” (p. 264) “Okay the Premier is quite adamant that this is not an issue of Native rights and then his words ah I mean we’ve tried to pacify and pander to these people for too long. It’s now time for swift affirmative action. I walked in the tail end Chris with him saying things like well I think the OPP have made mistakes in this one. They should have just gone in. He views it as a simple Trespass to Property that’s in in his thinking.” (p. 274)	<i>much.</i> <i>What is clear I’m going to suggest, is that whatever they may want, this is what we’re prepared to do and not do.</i> <i>A: Correct.</i> <i>Q: Right?</i> <i>A: Absolutely.</i> <i>Q: I mean, it would have been interesting if he’d said, well, they’re prepared – they want you to kick ass, I said, well then, we’ll kick ass. Did – did you say that?</i> <i>A; Absolutely not.</i> <i>Q: Were you prepared to say that?</i> <i>A: No, sir.</i> <i>Q: Well why not? If you were so influenced by the political pressures of the day, why didn’t you say that?</i> <i>A: I was not influenced by them at all. (June 29, 2005, pp. 238-39)</i>
Tim McCabe to John Carson P-444B Tab 39 at p. 271	“I think the thing that has gotten people particularly concerned here is the reports of gunfire last night” (Sept. 6 at 2:36 pm)	<i>Further into the conversation, Carson makes it clear that he is unprepared to overstate the significance of gunfire:</i> <i>‘Ah the gunfire was back ah in the ah in the bush. I have I have to be frank with you we have not ah ah had a weapon pointed at us ah we haven’t seen one fired in any direction and there is no reason to believe that the firing that we heard last night ah was anything more that [sic] audio for our benefit.’ (p. 272)</i> <i>“Okay so so when when you hear that there’s gunfire ah you can’t really use that while you you I mean it it’s a significant factor from from a safety point of view from my perspective in that I know that obviously there’s weaponry</i>

Source	Comment Conveyed	Response
		<i>in there...But but to say from a safety point of view that it's been ah that our officers have been threatened with weapons I can't say that."</i> (pp. 272-73) <i>"Okay (u/i) I mean they're just as long as it's understood in the big picture not in isolation okay cause I don't want people to think or or that your affidavit to suggest that that we have been fired upon or any of those kinds of things."</i> (p. 274)
John Carson to Jim Hutchison P-444B Tab 42 at p. 282	Carson: "Well we've had some alligators." Hutchison: "Oh is that right" Carson: (laughs) Hutchison: "Friendly ones or ones on the outside." Carson: "Oh well we just just some political pressures if you would." (Sept. 6 at 3:41 pm)	<i>Further into the conversation, Carson advises Hutchinson about the anticipated injunction order:</i> <i>"Yeah we it looks like ah we're going to see ah ah an application for injunction tomorrow morning....So at least that will give us paperwork....And how that will shake out I don't know but ah we will see."</i> (pp. 286-87) <i>The typed police scribe note entry regarding this call does not refer to political pressure:</i> <i>"15:47 hours: John Carson called D/Insp Jim Hutchinson advised him on status of injunction."</i> (Ex. P-426, p. 63)
<i>John Carson to Command Team</i> <i>Typed Police Scribe Notes</i> Ex. P-426, p. 68	N/A	<i>During the 6:12 p.m. unit commander meeting, there is no mention of the Premier or his views. However, the injunction is discussed:</i> <i>"Les Kobayashi heading off to Sarnia tomorrow at 8:15 court at 9:00 a.m. for emergency injunction...Hopefully an injunction tomorrow."</i> (Sept. 6 at 6:12 p.m.)
Marcel Beaubien to John Carson and Dale Linton Typed Police Scribe notes P-426, p. 69-70	"Marcel Beaubien advised that he had sent a fax to the premier advising of his intentions and that he wanted a return phone call regarding his intentions" (Sept. 6 at 6:42 pm)	<i>Immediately after this entry, the typed police scribe notes state:</i> <i>"Insp. Carson advised that there is a court hearing for an injunction at 9:00 a.m., 07 Sep 95. Marcel Beubien [sic] aware of situation."</i> (p. 69) <i>And immediately following this entry, the handwritten scribe notes state:</i>

Source	Comment Conveyed	Response
		<i>"J.C.: normally try to serve them, gives them chance to leave, [illegible] they won't be cooperative then sit down and talk about peaceful resolution without confrontation." (p. 468)</i>
Dale Linton to Marcel Beaubien Typed Police Scribe Notes P-426 , p. 69-70	"Linton questioned if there is anything from the Solicitor General?" (Sept. 6 at 6:42 pm)	<i>(See entries above and below for 6:42 p.m. meeting.)</i>
<i>Marcel Beaubien to John Carson and Dale Linton</i> <i>Typed Police Scribe Notes</i> Ex. P-426 , p. 70	<i>"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." (Sept. 6 at 6:42 p.m.)</i>	<i>Immediately after this entry, the scribe notes state:</i> <i>"John Carson states that we want it resolved but we don't want anyone to get hurt, wants everything that can be done to stress the point of no one getting hurt." [emphasis added] (Sept. 6 at 6:42 p.m.)</i>
Marcel Beaubien to John Carson and Dale Linton H/W Police Scribe Notes P-427 , p. 472	"Premier is in constant touch good communications" (Sept. 6 at 6:42 pm)	<i>Carson testified that throughout this discussion, he was "trying to inform [Beaubien] of the process that was underway, and the steps we were taking to try to alleviate the concerns, on everyone's part, so that he could allay concerns with his constituents to the degree he could..." (June 29, 2005, p. 249)</i>
<i>John Carson to Dale Linton</i> <i>Typed Police Scribe Notes</i> Ex. P-426 , p. 72	N/A	<i>During Carson's 7:10 p.m. briefing of Linton, they do not speak of the Premier or his views, or the Solicitor General or Beaubien. Carson does speak of the injunction:</i> <i>"John Carson to Dale Linton tomorrow at 09:00 hours court injunction.</i> <i>Mark Wright will be our representative to give evidence for police." (Sept. 6 at 7:10 p.m.)</i>
<i>Evidence of Fox, July 14, 2005 at p. 98</i>	Q: Yes. So when the Premier said in the House, on May 29, 1996 "	<i>Supt. Fox took no issue with the assertion that Premier offered an opinion. The more relevant point, as demonstrated by the</i>

Source	Comment Conveyed	Response
	we would not have offered any opinion”, that is not consistent with your memory of exactly what he did with you, correct? A: Correct. Q: And it's fair to say that what this Premier did on September 6, 1995 as far as you read this Hansard, is fairly inconsistent with the Hansard, isn't it? A: It would be, yes.	<i>contents of this table, is that the OPP did not act on the opinion.</i>
Wade Lacroix to Brian Deevy (P-1361 p. 5)	Lacroix: “I wonder what the government is saying.” 	<i>Lacroix testified to what prompted this question:</i> <i>“Because who also came into our hotel when we were staying at the Pinedale Hotel was all the government officials including Ovide Mercredi, showed up at the hotel and went into a back room and had some kind of ceremony.</i> <i>So I knew that high level – to me this whole thing takes the Federal, Provincial, and First Nations government. It's not a police matter. We can never solve this.</i> <i>And I saw them come into the hotel and I was glad and I realized they had some kind of a consultation going on in there and I was hoping that something was going to come out that, that police officers were going to get pulled off the line. (May 9, 2006, p. 95)</i> <i>“When I look at this quote, my state of mind is thank God the calvary [sic] have arrived and I'm hoping that the Fed and the province and the First Nation leaders like Ovide Mercredi can go into that room and come up with some kind of an answer to this. And those young police officers can get pulled back off the line and the young First Nations people can go back to the community and we</i>

Source	Comment Conveyed	Response
	Lacroix: "...political – it couldn't have been better." (Sept. 7)	<i>can all go home.</i> <i>That's exactly what I was thinking." (May 9, 2006, pp. 262-63)</i> <i>Lacroix testified what he meant by this comment:</i> <i>"Let me just tell you what the biggest politics that Deevy and I would be worried about...We'd be more worried about internal politics than external politics...I just – talking about that we – I'm thinking that we come under fire and now knowing that the crime scene and everything else was going to become the way it happened, is that we – we were holding our line and we felt we got under attack...And we weren't the aggressors, so I'm referring to, we are in a good position, in the sense that we didn't do anything." (May 8, 2006, pp. 265-66)</i>

ALST's Proposed Finding 10: *There is no way to precisely or meaningfully measure the degree to which members of the command team were inappropriately influenced by the government messages with respect to the Ipperwash Park occupation. (p. 146)*

129. With respect, there are at least two ways to evaluate the degree to which, if at all, members of the command team were inappropriately influenced by government messages:

(1) the testimony of the unit commanders was telling on this very issue:

(a) Sgt. Korosec testified that he did not recall the political references that were mentioned at the Command Post. This speaks volumes for the fact that they left no impression on him; and

(b) Sgt. Richardson had this to say:

Q: -- it says:

“Inspector Carson updated Chief Coles that Marcel Beaubien had contacted the Premier. There is to be a press release by the Solicitor General stating that this is not an Indian issue, it is an MNR and a Provincial issue.”

Do you recall that information being said at the meeting?

A: I don't recall it, but it's in the minutes so I – I would adopt it, yes.

Q: And you take no dispute with it at all?

A: No dispute at all.

Q: And this would be part of the information that you would have been aware of at this point in the operation?

A: Yes.

Q: And it would have been added to all of the information that's part of your thinking now at this time about the operation?

A: Well, personally I wouldn't care if the Premier was notified or not. It had nothing to do with my job. So –

Q: It's still –

A: -- whoever – whoever wants to notify the Premier or anybody may do so.

Q: But it's still part of the information that you're now aware of with respect to this operation?

A: Yeah, but it didn't affect me.

(2) the consistency with which each of these officers acted in accordance with the objective of *Project Maple* also provides a valuable measure. At no time did anyone under Deputy Carson's command ever urge him to deviate from the OPP policy regarding the approach to First Nation occupations. Moreover, no one under his direction deviated from his instructions to maintain the *status quo* pending the outcome of the injunction application.

- Evidence of J. Carson, June 29, 2005, p. 195
- Evidence of S. Korosec, April 6, 2006, pp. 88-94
- Evidence of T. Richardson, June 8, 2006, pp. 294-96

ALST's Proposed Finding: *The Reason Deputy Carson, Insp. Linton, Insp. Wright and Sgt. Korosec wanted "to take back the park" was because they were embarrassed that they were not able to keep containment of the park on September 4, 1995. (page 72, paragraph 122)*

130. The discussions surrounding the development of *Project Maple* contemplated the very scenario that ALST claims would be a cause for embarrassment. This issue is addressed in our Part I Submissions at page 37, paragraph 26. The relevant excerpt from the September 1 planning meeting states:

If the park is taken over, possibly approximately 20 people will enter the park and not willing to leave. MNR will be responsible to tell these individuals to leave because they are trespassing. If they do not, then the OPP will be advised and we will attend to advise them they are trespassing. *If they do not, MNR will issue a court injunction to have these people removed. This may take some time to obtain. The problem is to keep the people out, rather than trying to get them out.*

Try and manage the area to keep the people out. We have to maintain security of the fence line around the Park and control of vehicular traffic down the Army Camp Road and down the Township road.... [emphasis added]

.....

Situation variables will arise within the operation, it is up to each person to expect to deal with all situations.

.....

No one should assume that this incident will occur a certain way. There may be many variables that could change any situation...

It defies logic that Deputy Carson or those under his command would be embarrassed by a scenario that was contemplated and for which plans had been made. As Deputy Carson stated to Insp. Linton in their telephone conversation on the morning of September 5, 1995, having lost control of the Park, they moved on to plan "B":

Carson: Yeah and brief you on you know what's what's going on. All I'm going to try to do is hold the line. Ah we lost the park last night. We're not in the park at all. We've got ah more or less ah lack of a better term run out before somebody got hurt. A cruiser rear window smashed out of it and there was a nose to nose and it wasn't good for a little while and we didn't have

enough ERT guys. We only had eight there, so we just didn't have the horses to do it.

Linton: Uhum.

Carson: *Ah so rather than get somebody into a confrontation and get hurt we ah chose plan B and just maintained the area outside of the park...[emphasis added]*

- Transcript of Telephone Call between J. Carson and D. Linton, Ex. P-444A, Tab 7, p. 46
- Minutes of September 1, 1995 meeting, Ex. P-421, pp. 1, 3, 6

131. ALST points to an excerpt of a telephone conversation between Deputy Carson and C/Supt. Parkin on the morning of September 5, 1995 to support its theory:

Parkin: Ah ah I'm only going to ask this question because I'm sure that the Chief is probably going to ask it. How did we ah given the fact we have people there when this all happened. How did we lose containment? (u/i)

Carson: Ah well it was a matter of safety. Like somebody is going to get their head caved in if we'd of stayed in there.

Parkin: Okay.

Carson: Cause they were really getting getting irate with our guys and ah ah I would suggest the damage to the cruiser was you know indicative of what more we were going to get into.

The three relevant parties to this issue testified unequivocally regarding the sentiments underlying this exchange:

(1) C/Supt. Coles testified as follows:

Q: Did it bother you at all that containment had, in fact, been lost; that is, that the – the Park was essentially evacuated by your officers?

A: No, sir. The person made the decision, there had been a plan in place, events changed some direction short-term, more people than officers were there, and the decision was made to leave. It did not concern me and I – I understand some of the things and I read some of the transcripts of this – of this Commission, but it did not concern me.

I think they made the right decision to move. No one was hurt on either side, and there was a plan in place to go and seek an injunction.

And, as far as I was concerned, that was the path that I wanted in any event because of the ambiguities that surround some of these issues.

(2) C/Supt. Parkin testified as follows:

Q: Now the suggestion, Mr. Parkin, may be brought that your questioning of Inspector Carson in losing containment was in fact being critical of him. Do you have – do you have a view on that?

A: No I – I wasn't being critical at all. That's probably in my position as basic a question as I could ask an Incident Commander knowing full well that at some point in time I'm going to have the discussion with the Chief.

I'm having – I'm talking to the Incident Commander and it's – it's basically a fact that as I said earlier, you may be the Incident Commander, but at the end of the day, you're still accountable.

And the question what happened, is – is a pretty basic one. I'm sure if I hadn't have asked John at some point in time, he would have simply told me.

Q: And in terms of the explanation he had given you as to why containment was lost, you were obviously accepting of that, of – of his decision?

A: More than – more than accepting, I was supporting it because in fact Stan Korosec was the one who made the decision not John Carson.

Again, for the safety of everyone involved, he made the decision to back off and escort the day campers out of the Park.

.....

Q: Okay. Now, I want to ask you a little bit about purported criticism of John Carson over losing the Park.

And you've told Commissioner Linden that you didn't criticize the decision to withdraw the – from the Park or you didn't criticize the fact that John Carson had insufficient resources in place to prevent the takeover of the Park.

Do I have your evidence correct?

A: Yes, you do, sir.

Q: Now, you've told Commissioner Linden that it was not known exactly when the Park would be taken or if it would be taken. I want to ask you a question in hindsight. Are – are you of the view that even with the benefit of hindsight that John Carson should have deployed sufficient officers in the Park indefinitely to prevent the takeover of that Park? Does that make sense to you?

A: No, sir.

Q: Why not?

A: We could have been there for months. With no timeframe you wouldn't have the resources to simply sit and wait and you could have put all the resources you wanted in there and then it would have simply been a matter of being outwaited until the resources left. And then if that was still the intent they could have moved into the Park at any time.

(3) Deputy Carson testified as follows:

Q: Deputy Commissioner Carson, when I listen to that transcript, it's – it's clear to me and I'm asking you to tell me whether it's – was clear to you that the loss of containment of the Park was a major concern of Superintendent Parkin in that conversation?

A: I would disagree with your conclusion.

Q: The fact that you kept discussing a number of different aspects of the thing and he keep – kept coming back to the issue of how disappointed he was that containment had been lost, did not suggest to you that that was a serious concern in his mind as to how containment had been lost and how that was going to be explained? That didn't suggest that to you?

A: Not at all.

Q: And, the fact that he said, Well, I'm going to ask you this because the chief is going to ask me this, how did we lose containment, that didn't suggest to you that he was a bit surprised and disappointed to hear that you'd lost containment?

A: I would suggest he would prefer we could have done it differently, but it didn't work out that way and he wanted the facts and that's his role to ask those questions and I wouldn't be surprised for him to ask that question.

.....

Q: Would you agree with me, at minimum, that Superintendent Parkin and Chief Coles would have been disappointed that the containment was lost in the Park; they would have been disappointed?

A: No, I – I don't agree with that.

Q: Oh, all right.

A: He would expect us to do the best we could do with whatever the circumstances, and they would certainly expect, at some point, an explanation as to what took place.

But I certainly didn't get any sense that there was disappointment because we couldn't do A or B. I mean, he –

he is my superior, I was reporting to him, and I – and I was informing him of what had – what information I knew.

Q: So it's not as if he viewed you as having gotten run out of the Park?

A: *I certainly didn't sense that.*

Q: Okay. And that's not what happened?

A: No.

Q: No. And it's not as if he viewed you as not having assigned sufficient men to the Park?

A: No.

Q: *And that's not what you thought?*

A: *No.* [emphasis added]

.....
Q: Now what's interesting as well is, I mean, Mr. Falconer took from this telephone conversation that this was kind of the – the origins or – or a manifestation of the origins of a – of a deep disappointment within the ranks of the OPP about having lost the Park which – which caused you, down the road, to – to act in a different way.

Do you see any of that resentment or disappointment in that taped conversation?

A: I – I can't see that.

Q: Did you see it when – when – in any of your subsequent dealing with Tony Parkin or Chief – Chief Superintendent Coles? I mean were you being – were you being criticized by them at any stage for the failure to keep the Park?

A: Never.

- Evidence of J. Carson, June 27, 2005, pp. 233-34; June 28, 2005, pp. 261-62; June 29, 2005, pp. 234-35
- Evidence of C. Coles, August 16, 2005, pp. 18-19

- Evidence of T. Parkin, February 6, 2006, pp. 179-80; February 13, 2006, pp. 121-23
- Transcript of Telephone Call between J. Carson and T. Parkin, Ex. P-444A, Tab 6, pp. 35-36

132. ALST alleges that “with the embarrassment of losing the park the senior command staff decided it necessary to retake the park and atone for their mistake. Such was the attitude of acting Staff Sergeant Mark Wright and Sergeant Korosec.” It points to Sgt. Korosec’s comments during his call with Sgt. Jacklin late on the evening of September 5, 1995 to support this position. Leaving aside that the conversation makes it apparent that Sgt. Korosec’s comments were a reaction to the stone-throwing incident of September 5 and not the loss of containment the night before, there is a fundamental flaw in ALST’s theory: there is no evidence that either Sgt. Korosec or Insp. Wright were even aware of the impugned conversation between Deputy Carson and C/Supt. Parkin. Furthermore, regardless of the views of his commanding officers, Sgt. Korosec was entirely comfortable with the decision to withdraw from the Park:

...I spoke with Inspector Carson on the phone and suggested, basically get – painted the picture as best I could as to what was going on, given what was going on at the time.

I said, for safety concerns that we’re outnumbered, didn’t know all the locations of where everybody was, the women and children, flares, the windshield being smashed, I suggested to him that we withdraw and regroup as – as planned at Forest Detachment.

Now, that as planned part might have been from, I think I’d made a couple of phone calls to him immediately when this was going on and later on as – as things seemed to escalate.

At that point he told me to withdraw from the Park and regroup at Forest Detachment. I was very happy to do so.

- Evidence of S. Korosec, April 6, 2006, pp. 36-37; April 18, 2006, p. 111
- Transcript of Telephone Call between S. Korosec and W. Jacklin, Ex. P-1154, pp. 2-4
- ALST Part I Submissions, p. 75, para. 125

133. A second fundamental flaw in ALST's theory is that the OPP's purported "embarrassment" resulted in no changed instruction when C/Supt. Coles and C/Supt. Parkin attended the Command Post on September 6, and resulted in Deputy Carson's departure for the evening, with instructions to maintain the *status quo*.

ALST's Proposed Finding 11: Both the second in command, Detective Sergeant Mark Wright, and the officer in charge of the Emergency Response Team, Sergeant Stan Korosec, displayed, through their words and actions, a sense of urgency and aggressiveness out of proportion to the objective facts relating to the actions of the occupiers at Ipperwash Provincial Park. (p. 146)

ALST's Proposed Finding 12: A regrettable vacuum of leadership existed at incident Command in the hours between 7:30 p.m. and 9:30 p.m. on September 6, 1995, that represents a significant contributing factor to the deficiencies in the Ipperwash police operations in the hours leading up to the death of Dudley George. (p. 146)

134. Insp. Wright's alleged role in taking an aggressive approach to the events of the evening of September 6 and undermining the authority of the Incident Commanders has already been addressed. Insp. Wright's alleged role in compromising the accuracy of the Gerald George complaint is addressed in Section VIII of our Part I Submissions at page 181, paragraph 180 *ff.* There are, however, two specific issues raised by ALST that will be addressed here.

135. ALST observes, "it is also interesting to note that Wright, in the [8:25 p.m. telephone conversation with Tim McCabe], appears to be contradicting a decision made by Inspector Linton with respect to the serving of the occupiers. With respect, this characterization leaves a misimpression as to the sequence of relevant events:

(1) Insp. Linton speaks with Mr. McCabe at 7:41p.m. at which time Linton agrees to assist in effecting service of the Notice of Application for the injunction. This conversation takes place *before* the developments in the sandy parking lot were brought to Insp. Linton's attention;

(2) in his 8:25 p.m. discussion with Tim McCabe, Insp. Wright expresses concern about the feasibility of effecting service in light of what had transpired in the preceding 45 minutes. Mr. McCabe appreciated the change in circumstances:

McCabe: A little while ago Carson ah isn't wasn't there but ah Linton ah he agreed that if we were to fax our Notice of Motion ah you know I mentioned it was getting dark...

Wright: Hmm hmm.

McCabe: And you fellows may not want to ...

Wright: No no I know what he said *no way not now*.

.....

McCabe: Ah well...alright well he at that time he said yes but / *guess ah events overtook the ah...*[emphasis added]

Nonetheless, Insp. Wright advises Mr. McCabe that the police will try to serve the occupiers with the paperwork if at all possible:

Wright: Well we can try I mean we can try at CFB Ipperwash at the front gate but like..my advice to the command staff here is no way...

.....

McCabe: So if we could if we could say either yes we did they were provided with notice...

Wright: Yeah.

McCabe: Last night, or if we said we tried we tried to give them notice last night and they wouldn't listen they wouldn't take the paper.

Wright: yeah.

McCabe: You know.

Wright: *Well we can give it a shot sure.*

McCabe: Yeah just you know so that you can say that ah you know...

Wright: Yeah.

McCabe: There was a lot of activity last night...

Wright: Yeah.

McCabe: We tried.

Wright: Well I'll tell you what, the best I can do ah Tim if I may call you Tim...

McCabe: Yeah.

Wright: I I'll keep that in mind but *I'm not going to sacrifice personal safety* and I'm ...[emphasis added]

(3) it is noteworthy that in his 9:18 p.m. telephone call with Mr. McCabe, even Insp. Linton acknowledges that service is no longer feasible by reason of the situation's escalation:

Linton: So I guess the point I'm getting to is it would be very difficult for us to go in there now

McCabe: right,

Linton: and serve any kind of document.

McCabe: right, well, we, we spoke to, er I spoke to the Detective Sergeant about that and he ah, and it's almost as good if he can explain why it was impossible to do it last night.

Accordingly, both Insp. Linton and Insp. Wright were of the same mind that, following the developments at the Park, effecting service was likely no longer a viable option.

- Transcript of telephone call between D. Linton and T. McCabe, Ex. P-750, p. 5

- Transcript of telephone call between M. Wright and T. McCabe, Ex. P-464, pp. 21-23
- Transcript of telephone call between D. Linton and T. McCabe, Ex. P-347, pp. 2-3

136. ALST alleges that upon his return to the Command Post, “Inspector Carson was simply rubber stamping a decision [to deploy the CMU] made by Wright and Korosec.” If that were the case, then there would be no discussion about possible approaches to the situation between Deputy Carson and Insp. Linton upon Carson’s return to the Command Post. This very discussion is captured in the background of the telephone call between Insp. Wright and Mr. McCabe commencing at 8:25 p.m.

- Transcript of telephone call between M. Wright and T. McCabe, Ex P-464
- Mobile Command Unit Logger Tape, Track 2 at 20:25 (corrected time)
- ALST Part I Submissions, p. 103, para. 166

ALST’s Proposed Finding 14: Poor negotiation planning and execution by the incident commander and his command team was a significant contributing factor in the circumstances leading to the death of Dudley George of September 6, 1995. (p. 146)

137. A detailed review of the OPP’s efforts to open a dialogue with the Stoney Point people appears in Section IV of our Part I Submissions at page 41, paragraph 30 *ff.*

138. ALST alleges that “while face-to-face contact is typically avoided in crisis negotiation, no steps were taken or contemplated to facilitate a means of telephone communication within the Park in anticipation of the occupation”.

This assertion appears to ignore the following 11:04 a.m. entry in the September 5, 1995 scribe notes:

11:04 hours Sgt. Seltzer updated that the negotiators have all been contacted. Insp. Carson suggested a face to face meeting with the occupants, to have Mark Wright, Brad Seltzer and himself present. *Sgt. Korosec advises that the emergency phone is still hooked up if they want to make contact by telephone.* [emphasis added]

- Scribe Notes (typed), Ex. P-426, p. 32
- ALST Part I Submissions, p. 121, para. 206

ALST's Proposed Finding 15: The March on the Occupiers: the deployment of the crowd management unit along with the deployment of the T.R.U. team in the circumstances of September 6, 1995, represented an ill-advised unnecessary exercise of force that led to the death of Dudley George on September 6, 1995.
(p. 146)

139. The factors which informed Deputy Carson's decisions to deploy the CMU and subsequently release it to proceed down East Parkway Drive are contained in Section VI of our Part I Submissions, commencing at page 118, paragraph 108. ALST and the Chiefs of Ontario have argued many common points on this

issue. They are addressed in Section VII (Chiefs of Ontario). A number of points specifically raised by ALST will be addressed here.

140. In an effort to undermine the significance of the increased movement of vehicles within the park on the evening of September 6, 1995, ALST points to Deputy Carson's admission that he made no investigation as to the cause of the vehicle movement in the Park. However, the occupiers' own testimony in this regard was significant:

(1) Elwood George told the Inquiry that the occupiers moved vehicles around to mislead the police into believing there were more of them in the Park:

Q: All right. As a result of – of that feeling, did you do anything or did you see the Park occupants do anything to – to respond to that?

A: Only thin I could remember is – is I mentioned that we should – we should drive our vehicles around and this was getting to be dark then, get a little bit of movement within the Park I – I guess to – to lead the police to believe that there was actually more of us there than – than there actually was.

Q: So you recommended that people bring their cars to the Park?

A: No. Simply ride around in and out of the Park around just so that they could be visibly seen going in and out to give the impression that there was more and more people in the Park than there actually was.

Q: All right. And – and why did you think that was a good idea?

A: I – I really don't know. *I just thought they would think that there was actually a greater number there, the police would*

think there would be a greater number – greater number of us in the Park and it was actually for that simple reason.

- Q: And based on your observation, did people follow your advice? Did – was there more vehicle activity?
- A: Well, I don't know if it was my actual advice, but yes there [sic] a increase on – on traffic with the Park and on our side.
- Q: And did you – did you then begin to drive your car back and forth along the Army Camp?
- A: I believe so, yes. I was in and out half the time anyways.
- Q: And specifically that night you were in and out of the Park a lot?
- A: Yeah. [emphasis added]

(2) Marlin Simon told the Inquiry that he brought the school bus to the Park as it had been useful in the past. The unchallenged evidence is that it had, at times, been used in the past as a means of aggression.

- Q: ..And what role if any or what did you – what did you do that day to ready yourself and – and secure the Park?
- A: Myself? I don't know. I got – let's see. What did I do? I got...
- (brief pause)

A: I got the bus.

Well, I didn't know if the police were going to be coming in and moving everybody out, so I loaded up all the gas cans I could find and started loading up the gas into the gas cans and moving those all over, stashing them all over the army base and then – then went and got the bus going.

Because the bus was very helpful and, like, earlier things that we used it for.

Q: All right.

A: *So I got the bus running again and got – Parked that down at the place down there.*

Q: *Parked in the – in the Park?*

A: *Yeah.* [emphasis added]

- Evidence of E. George, November 3, 2004, pp. 86-87

- Evidence of M. Simon, September 29, 2004, p. 93

141. ALST refers to a telephone conversation between Insp. Linton and C/Supt. Parkin which occurred at 9:48 p.m. on the evening of September 6 during which Linton conveyed what *he* knew had transpired during the preceding two hours. ALST claims that “Superintendent Parkin testified that Inspector Linton’s concerns...were not sufficient enough to intervene, preferring the approach to lock down the area and let things settle.” With respect, that is not entirely accurate. Insp. Linton advises C/Supt. Parkin that CMU and TRU are down at the site and Parkin does not voice any concern over their deployment as long as Deputy Carson or Insp. Linton is in control. In addition, the transcript of the conversation makes it clear that C/Supt. Parkin would prefer a roadblock to be erected, *if it is possible to do so*:

Parkin: Uhm you know but this is typical where we get kinda caught, and ah ultimately the ball’s gonna be our lap anyway if they get this injunction tomorrow.

(background conversation)

ah but I guess what we would rather have *happen if we can*, if you can lock that place down so that you know the general public isn’t put in any danger.
[emphasis added]

Deputy Carson's reasoning as to why that was not a feasible option is set out above. Further, when all of the contributing factors as *Deputy Carson understood them* were put to C/Supt. Parkin, he had the following to say about the appropriateness of deploying the CMU:

Q: Well here's the bottom line question and that is if John Carson had called you and told you all those facts and indicated to you that what he intended to do was send the CMU down the road with clear instructions not to go into the Park, if the occupiers run into the Park, they'll let them go back, that he intended to do so with sufficient numbers to deter any confrontation and that if nobody was in the parking lot when the CMU arrived, he'd have his officers withdraw.

If he told you all those things and sought your input, would you have had the same reaction that Mr. Falconer elicited from you, it's too weak to act upon, go slow?

A: No, sir. It would be a reasoned approach.

- Evidence of T. Parkin, February 13, 2006, pp. 101-10, 117
- Transcript of Telephone Call between D. Linton and T. Parkin, Ex. P-469, p. 14
- ALST Part I Submissions, p. 90, para's. 147 - 149

142. ALST criticizes Deputy Carson's choice to combine TRU with CMU. It contends that "it is difficult to conceive of the respective missions of TRU and CMU as anything other than mutually exclusive" and that "the simultaneous deployment of the CMU and TRU would necessarily create impossible burdens on the police officers involved, in particular the snipers responsible for addressing any firearms threats and protecting the CMU formation." With respect, this submission is completely incompatible with the uncontested

evidence of Sgt. Hebblethwaite, who was a crowd management instructor and trainer from 1994 to 2002, a period that straddled the events of September 1995:

A: TRU – *I was going to say TRU team is deployed as a matter of course whenever the Public Order Team is deployed, they take – if it's an urban setting, they'll take the high ground as counter sniper.*

They go with us because should someone in a crowd pull a firearm, then we're – we're albeit that we do have sidearms with all of our equipment, we're less capable of adequately responding to it than ... those less encumbered by the equipment we wear.

And it's important in – in the case of a firearm being produced, that the members of the Crowd Management unit would – would seek best cover that they could. Those in position to respond to the firearm would do so be it the Crowd Management members or – or a TRU team.

Q: So it was – was it your understanding at this time that it was standard for the TRU team to be deployed whenever the CMU was to be deployed?

A: Well this was early in the program and it – *it certainly made common sense at the time and it is a standard operating procedure. It was then and – and it continues to be.*

Q: To be now?

A: Yes.

- Evidence of G. Hebblethwaite, May 10, 2006, pp. 398-99; May 11, 2006, pp. 135-36
- ALST Part I Submissions, p. 108, para. 176 to p. 109, para. 179

143. ALST also criticizes Deputy Carson for having deployed two specialized units which suffered from “almost a total lack of advanced planning and

reconnaissance.” With respect, that contention is also not supported by the evidence:

(1) Insp. Lacroix testified as to his familiarity with the area:

Q: ...And were you familiar with the area of the sandy parking lot, East Army Camp Road and East Parkway Drive?

A: Fairly familiar sir. I was – I had just taken my grandparents there and I – I knew that Park. If you park there you didn't have to pay to go into the Provincial Park, so. I – I was aware that if you parked out there he could walk down and use Ipperwash Provincial Park without paying the day fee.

Q: And you had – so you were familiar with – prior to the evening of September 6th you were familiar with the – with that area?

A: Yes. And I always took my family, actually to the Army Camp Beach which would be just the other side.

If you go around Matheson Drive, right around the Park, and there was parking over on the army beach, that you could walk in. So I spent a lot of my own family picnics at either side of Ipperwash Provincial Park and in – I've camped in Ipperwash too.

(2) as for the TRU team's level of preparedness, the Inquiry heard the following evidence:

(a) Sgt. Korosec stated:

Q: And can you tell us what you did on August 31st, 1995?

A: Well, I was on duty at 7:00 in the morning and about eight o'clock I was at the Forest Detachment.

At 9:30 I met – I met with – with Ken Deane from TRU, went down to the, I've got recon area, redeployment positions,

which means went down to the Provincial Park to take a look at the different access points and just introduce him to – to the area, and – and to – to get his – his expertise on – on the possible deployment locations, checkpoints, and where we could located [sic] the Tactical Operations Centre.

(b) P/C Beauchesne stated:

Q: And did Kenneth Deane or Kent Skinner or anyone else speak to you about the planning, prior to September 4, 1995? And September 4th was Labour Day.

A: I can't specifically tell you who would have advised me or – or told me of – of the planning and what was going on. But just prior to that weekend, myself and another officer did drive up to the park and just did a quick drive around to look at the area and the layout of the roads.

Q: And that – so that was just prior to the Labour Day weekend?

A: Yes.

Q: And can you recall today who the officer was who went with you?

A: Yeah. It would have been Constable Zupancic.

Q: Zupancic. And the purpose was to familiarize with the Provincial Park and the roads around it?

A: The roads in the Park, the roads surrounding the Park, and I believe we also looked at – at a TOC site.

P/C Zupancic confirmed this evidence:

Q: ...And perhaps I can just ask you to read for the record, if you don't have an independent recall of that, sir, the entries commencing at August 31, 1995.

A: I'll refer to the actual notes instead of the photocopies. I have an independent recollection of that day. I can – I can describe what we did without looking at the notes on that day.

Q: Perhaps you can go ahead and do that and then I'm going to ask you to read for the record your note entries.

A: On – on that date Constable Beauchesne and myself drove up to the Ipperwash Provincial Park area for – to – there was information that the First Nations people were going to occupy the Provincial Park.

And in the likelihood of that happening, we decided to drive up there to check routes in and routes out of the Park in case TRU was needed.

Q: You were familiar with that area in any event?

A: I – I knew the area and I was to show Constable Beauchesne the area.

(c) Insp. Skinner stated:

Q: Okay. And we know for example from the evidence from Stan Korosec that on August 29th [sic] he met with Ken Deane in Forest and they went to Ipperwash Park together. And they did a number of things.

They looked at access points, they looked at a possible TOC site, they looked at checkpoint locations, thought about a number of officers, looked at observation sites, thought about the number of type and vehicles that might be required.

And is that activity consistent with pre-planning?

A: Yes, it is.

Q: And are – were you satisfied when you got back from your annual leave in September of 1995, that sufficient pre-planning had been done for this?

A: I don't have a specific recollection of that, ma'am.

Q: Of?

A: Of having a satisfaction or a memory of that even, sorry.

Q: Okay. Can – can I take it if you had concerns that something should have been done that hadn't been done, you would have addressed it at the time?

A: Yes, ma'am, I would have.

Q: And do you recall or you didn't take any steps to address any –

A: I didn't take any steps.

Notwithstanding the amount of pre-planning that was done, Insp. Skinner explained that the TRU team is trained to respond to situations in unfamiliar territory:

Q: Okay. You were also asked some questions about whether or not you or other members of TRU prior to the night of September the 6th, 1995, ought to have spent more time in terms of looking at terrain or evaluating terrain.

A: Yes.

Q: And in terms of that, is TRU trained to work in terrain that – which it is not intimately familiar?

A: It's often part of the training to put people into unfamiliar areas, yes.

Q: And I take it in fact that would be the norm and not the exception when you're actually deployed that you would be in an area that you're not intimately familiar with?

A: Absolutely. Given the geographic area we have to cover it's nigh on to impossible to be familiar with the entire area.

Q: And in terms of the area around Ipperwash Park, I take it that's the kind of situation where it would be impossible to be familiar intimately with the terrain around it. It's a large area.

A: Yes. It is a large area.

Q: And would there be any benefit in your view to spending time doing that when you don't know what you're going to be responding to?

A: When I don't know what I'm going to be called for and specifically where in that large geographical area, it makes it fairly – it would be extremely time consuming and take them away from their standby role.

- Evidence of S. Korosec, April 5, 2006, pp. 290-91
- Evidence of K. Skinner, April 20, 2006, pp. 347-48; 350-51
- Evidence of R. Zupancic, April 24, 2006, pp. 51-52
- Evidence of W. Lacroix, May 9, 2006, p. 33-34
- Evidence of M. Beauchesne, May 24, 2006, pp. 351-86
- ALST Part I Submissions, p. 111, para. 182 to p. 113, para. 186

IX. THE EVIDENCE RELATING TO RON FOX: CHRISTOPHER HODGSON, MICHAEL HARRIS AND DEB HUTTON

144. The submissions of Christopher Hodgson, Michael Harris and Deb Hutton all address the credibility and/or reliability of aspects of Supt. Fox's testimony at this Inquiry. In the OPP Part I Submissions, relatively little was said about the conflicts in the evidence amongst Supt. Fox, Mr. Hodgson, Mr. Harris and Ms. Hutton, largely because the evidence overwhelmingly demonstrates that, regardless of what was said to, or in the presence of Supt. Fox, the government did not direct or influence the OPP in its operational decisions. Indeed, Supt. Fox, whose evidence is so heavily relied upon by other parties as an accurate depiction of the government's attitude, was confident that the OPP was uninfluenced by government. This confidence was based on his knowledge of Deputy Carson; the absence of any exchange of information between the government and the OPP concerning the operational decisions that are truly in issue here; his own lack of knowledge of those operational decisions; and the timing of his exchanges with Deputy Carson. That being said, it is necessary to briefly respond to various challenges to Supt. Fox's testimony. Some preliminary remarks are warranted:

- (1) Supt. Fox was regarded, without contradiction, as a man of great personal integrity, who had shown excellent professional judgement, and

calmness. He was not prone to exaggeration. Even Mr. Hodgson conceded that he found Fox to be very professional, and very calm;

(2) Supt. Fox, like other witnesses, was being asked to recall with precision events and details that took place over ten years ago. However, he had an advantage not shared by others. He related what had transpired at the September 5 and 6 IMC meetings and at the dining room meeting to others very shortly after those meetings had occurred – and his recollections were recorded either on audiotape or in Julie Jai's contemporaneous notes;

(3) when Supt. Fox spoke with Deputy Carson on September 6, his conversation contained opinions or characterizations of the Premier, Minister Hodgson and others. He has candidly acknowledged that these opinions were best left unspoken, and apologized for some of the language employed. But he nonetheless has been vigorously attacked for the expression of those opinions as if he had intended that they be acted upon. Others can debate their accuracy. Various parties draw upon other witnesses' accounts of what was said either at the IMC meetings or at the dining room meeting to challenge or support Supt. Fox's opinions. But they were his *opinions*. He was, on his own admission, "venting". The expression of these opinions do not reflect upon his credibility. Indeed, his candid treatment of those opinions when testifying enhances his credibility;

(4) the opinions he expressed to Deputy Carson must be distinguished from those clear examples in which he related what the Premier, Minister Hodgson and others actually said. These examples are prefaced by phrases such as “he came right out and said”, “he said”, “I said with all due respect” and so on. These are not mere expressions of opinion, but factual assertions by a bright and articulate officer very soon after the events. Further, because they are recorded, they are not dependent upon his or John Carson’s present recollection of what he said at the time;

(5) when counsel for the OPP Mr. Sandler cross-examined Mr. Hodgson, Mr. Harris, Mr. Harnick and Dr. Todres, much of that cross-examination was designed to establish just how much of what Supt. Fox related to Deputy Carson and Julie Jai as factual assertions was, in substance, acknowledged by the participants, including Mr. Harris and Mr. Hodgson. Effectively, almost all of what Supt. Fox factually asserted in his conversations with Deputy Carson and Julie Jai has been corroborated by admissions or circumstantially through other witnesses. Supt. Fox’s factual assertions are put one-by-one in cross examination by counsel for the OPP to each of these witnesses, together with the evidence of other participants at the dining room meeting who described what they heard. Although the evidence does not always corroborate the precise words related by Supt. Fox, the content is unmistakable. Indeed, a compelling

case can be made, in the face of this corroboration, that Supt. Fox is the witness at this Inquiry most likely to have accurately captured the words spoken;

(6) when Supt. Fox testified, he recalled certain statements made that are not captured in his recorded conversations with Deputy Carson or Julie Jai. This is not an indictment of Supt. Fox's reliability: After all, he did not purport to relate everything that was said at the IMC meetings or at the dining room meeting. Far from it. But it is unnecessary to even address these less significant recollections, given the materiality of what has been recorded. So, for example, Supt. Fox and Inspector Patrick recall that the Premier said something about the holocaust. Others denied or did not recall such a comment. The OPP (and Michael Harris) both recognize that it is unnecessary to make a finding in that regard. (Harris Submissions, p. 291) In any event, Supt. Fox could not give adequate context to what was said and why. Similarly, Mr. Hodgson denies that Supt. Fox said anything to him about co-management at Serpent Mounds. Supt. Fox recalls citing that arrangement with approval. On one hand, a formal co-management agreement did not exist at Serpent Mounds on or before September 6, 1995. On the other hand, the Hiawatha First Nation and the MNR had a cooperative arrangement at Serpent Mounds for many years prior to September 6, 1995. The First Nation owned part of the Park that was

entirely managed by the MNR. (See Exhibit P-1018, P-824 and P-802) It is unnecessary to make a finding in this regard.²

- Evidence of E. Todres, November 30, 2005, p. 252
- Evidence of C. Hodgson, January 12, 2006, pp. 153-157
- Evidence of G. Boniface, June 15, 2006, p. 153

² Mr. Hodgson suggests that Ron Fox is making up part of his conversation with Hodgson about the co-management at Serpent Mounds to cast himself in a more favourable light. (Hodgson Submissions, p. 24) This submission, with respect, is patently absurd. Fox acknowledges that his conversation with Deputy Carson was a lapse in judgement, and his language about the Premier and Minister of Natural Resources inappropriate. He has made no effort to cast himself in a more favourable light.

X. CHRISTOPHER HODGSON

145. As earlier reflected, Christopher Hodgson's testimony that government did not direct or interfere with OPP operational decisions was accurate, and conformed to the totality of the evidence.

146. Mr. Hodgson challenges the reliability of Supt. Fox's testimony, insofar as it conflicts with his. At this stage, the Inquiry is very familiar with the positions of the parties, and they need not be summarized in detail. Suffice it to say, there are several significant points of departure between Mr. Hodgson and Supt. Fox:

(1) Mr. Hodgson maintains that on September 6, 1995, he attended a fifteen- minute meeting in the room where the IMC meeting had just wrapped up. During that meeting, someone who Mr. Hodgson believes was Fox, raised the prospect of serving the injunctions on the occupiers through the use of a helicopter. Hodgson purportedly told Fox that he thought that dropping 300 or so copies of bulky injunction materials from a helicopter might injure people, making the point by relating an episode from a situation comedy about dropping live turkeys from a helicopter. Supt. Fox denied that he met with Mr. Hodgson at this time, or that anyone discussed service of documents by helicopter on September 6, 1995. Any discussion about this means of service only came the following day;

(2) Mr. Hodgson testified that at that same meeting, Fox raised concerns about the political optics of arresting the occupiers as trespassers without getting an injunction, which Mr. Hodgson found inappropriate coming from a civil servant. Hodgson eventually told Fox that, just as the politicians have no authority to direct the police, the politicians were not looking to the IMC or the civil service to give political advice. Fox responded that he was describing the reality of the situation, and Mr. Hodgson reacted by noting that the reality was that all of the contingency planning that had been done seemed to be directed at removing occupiers from the Park, not at preventing them from getting there in the first place. Supt. Fox again denied that he met with Mr. Hodgson at this time. He and Mr. Hodgson had a similar conversation, but it occurred at the end of the dining room meeting; and

(3) Mr. Hodgson denied that he spoke at the dining room meeting. Supt. Fox testified, in accordance with Julie Jai's notes and the recorded conversation with Deputy Carson, that he had a somewhat animated discussion with Mr. Hodgson at the end of the dining room meeting.

147. It is submitted that these material differences can only be resolved, on the totality of the evidence, in favour of Supt. Fox.

148. The following points (many of which were developed through Mr. Hodgson in cross-examination on January 16, 2006) are of significance:

(1) he made no notes of either the dining room meeting or his purported meeting just after the IMC meeting;

(2) the IMC minutes for the September 6, 1995 meeting make no reference to his attendance;

(3) the extensive notes of those who did attend the IMC meeting make no reference to his attendance;

(4) those who attended the IMC meeting made no mention in their testimony of the Minister's presence. One would think that the appearance of a Minister would have stood out in their minds;

(5) shortly after the IMC meeting, Supt. Fox spoke with Insp. Wright. The call was recorded. There is no reference to Fox having met with Minister Hodgson;

(6) shortly after the dining room meeting, Supt. Fox also spoke with Deputy Carson. The call was recorded. There is no reference to Fox

having spoken with Minister Hodgson in advance of the dining room meeting;

(7) in that recorded call, Supt. Fox advised Deputy Carson that when he left that meeting (the IMC), he “got a page to go to the legislative building immediately.” (Exhibit P-444A, Tab 37, p. 6). Not only is Minister Hodgson not mentioned, but also this recorded call reflects that Fox had moved directly from the IMC meeting to the dining room meeting;

(8) items (1) to (7) support Supt. Fox’s account that he and Mr. Hodgson did not speak immediately following the IMC meeting;

(9) in Mr. Hodgson’s examination for discovery back in September 2001, he could not remember whether he had attended the Cabinet meeting on September 6/1995;

(10) in response to undertakings made at that discovery, counsel indicated on Mr. Hodgson’s behalf that he did attend the Cabinet meeting Mr. Hodgson said he “assumed” that his own counsel just “assumed” he was present (despite his uncertainty at his own discovery);

(11) in Mr. Hodgson’s examination for discovery, he testified that he did not know what he had done before the Cabinet meeting;

(12) in Mr. Hodgson's examination for discovery, he testified that he did not recall any conversations between himself and Bangs and Vrancart as he walked from the MNR offices to the dining room meeting. This is to be contrasted with his current recollection;

(13) without the benefit of Ron Fox's taped conversation, he had no recollection of any discussion with Fox, his own participation at the IMC, or the content of any conversation with Vrancart or Bangs .

(14) items (9) to (13) show the frailties in Mr. Hodgson's recollection, unaided by contemporaneous records. The content of the taped conversation cannot reasonably be said to assist him in any of the conflicts between his evidence and that of Supt. Fox;

(15) Justice Daudlin ordered that service of the injunction documents be made by dropping them from a helicopter on September 7. No one from the OPP or government had proposed such a means of service, nor had it even been discussed at the injunction hearing. Indeed, unsuccessful efforts were made to have Justice Daudlin revisit the order, failing which the order was amended the following day by Justice Flinn. Deputy Carson testified in support of the amendment;

(16) there is nothing in the taped conversation between Supt. Fox and Deputy Carson (which has been Mr. Hodgson's source for refreshing what is otherwise his lack of recollection) that refers to service by helicopter or any discussion that has taken place about it. Ultimately, Mr. Hodgson agreed that it was possible (though it is not his recollection) that the service of documents was only discussed *after* the judge made the order;

(17) Mr. Hodgson conceded that he would expect discussion about the means of service to occur within the involved Ministries after the judge so ordered.

(18) Scott Patrick's contemporaneous notes show that on September 7 at 5:30 pm, a meeting was held that included discussion about the service of the injunction documents. (Exhibit P-517) Ultimately, Mr. Hodgson could not deny that he was present, although he did not have a recollection that would support his presence;

(19) items (15) to (18) support the irresistible inference that no discussion about the service of documents by helicopter took place until September 7. It is Mr. Hodgson's position "that the subject of the method of service would have come up quite naturally at any time that an injunction application was under discussion" (Submissions, page 30). With respect, it is implausible that Ron Fox, an experienced officer, would have

supported such an untenable means of service, or even discussed it, prior to a judge raising this same untenable means of service on that judge's own initiative the following day. In fact, it defies coincidence;

(20) Ron Fox recounted to Julie Jai very shortly after the dining room meeting what had happened there. His account included specific assertions borne out by the evidence. He told Julie Jai that "*both Premier and Hodgson* came out strong. Larry, Elaine Todres were at Cabinet. Ron was there for part of discussion. Decision to go *ex parte* appeared to have already been made." Mr. Hodgson confirmed that the decision to pursue the injunction *ex parte* appeared to have already been made;

(21) Ron Fox recounted to Deputy Carson very shortly after the dining room meeting what had happened. His account included detailed recitals of what Mr. Hodgson had said. Those detailed recitals are addressed later in these submissions;

(22) Although Inspector Patrick did not have a perfect recollection of what was said, he corroborated that an exchange between Supt. Fox and Mr. Hodgson had taken place;

(23) Elaine Todres had a vivid recollection of Mr. Hodgson saying "get the f-cking Indians out of *my* Park". She was struck by the possessive "my"

used in connection with the Park. The use of that descriptor only makes sense emanating from the Minister of Natural Resources, Mr. Hodgson. Scott Patrick corroborated this account. He testified that Minister Hodgson was quite angry because his officials had been assured by the OPP that the Park's occupation could be prevented; that *he* was the property owner; that it was *his* Park and he wanted it back.;

(24) the evidence of Dr. Todres and Insp. Patrick support Mr. Hodgson's active participation in the meeting, as well as the animated state described by Supt. Fox;

(25) items (20) to (21) (in addition to the testimony of Dr. Todres and Insp. Patrick) lead to the irresistible inference that Mr. Hodgson did not remain silent at the dining room meeting. It defies reason and common sense that Supt. Fox would inaccurately describe whom he had spoken with so shortly before he related this information to Julie Jai and Deputy Carson. The detailed recitals by Supt. Fox that are contemporaneously recorded also support the accuracy of his account;

(26) Mr. Hodgson submits that he was looking to disengage from any responsibility concerning the Park, consistent with his quiet and immediate exit from the dining room meeting, rather than a spirited exchange with Mr. Fox. (Submissions, p. 22) With respect, his discomfort with taking the

public lead is irrelevant to his state of upset concerning the Park. It must be remembered that he acknowledges saying much of what Supt. Fox attributes to him, only earlier on the same date. His desire for disengagement did not inhibit him on that earlier occasion.

- Evidence of R. Fox, July 12, 2005, pp. 46-50
- Evidence of T. McCabe, September 28, 2005, pp. 189-200
- Evidence of S. Patrick, October 17, 2005, pp. 109-111
- Evidence of E. Todres, November 30, 2005, p. 57; December 1, 2005, pp.18-19, 22-24, 47
- Evidence of C. Hodgson, January 16, 2006, pp. 61-74, p. 114

149. As indicated earlier, a careful examination of Supt. Fox's factual assertions made to Deputy Carson find much support in the testimony of other witnesses, including Mr. Hodgson and Mr. Harris. What follows are excerpts of the September 6, 1995 recorded call with Deputy Carson, with the factual assertions highlighted in bold face followed by the relevant evidence of other witnesses:

Excerpt 1

FOX: **And he came right out and said I just walked in on the tail end of this the OPP in my opinion made mistakes they should have done something right at the time and he said that will I'm sure all come out in an Inquiry sometime after the fact.**

150. Mr. Hodgson said this in cross-examination:

Q: First of all, I'm going to suggest to you that, as you've already described, the Premier did say that it's easier to avoid these situations than it is to remove people once an occupation has begun, correct?

A: Correct.

Q: The Premier did express a lot of frustration at that. This was manifested in a loud, firm voice, right?

A: Yes.

Q: The Premier did say that if mistakes have been made it would all come out at an inquiry, correct?

A: I believe he referenced something to that effect, yes.

- Evidence of C. Hodgson, January 16, 2006, p. 77

151. Mr. Harris said this in cross-examination:

Q: Chris Hodgson testified here that he did recall a comment made by you that if matters worsened it would all come out in an inquiry some day. If there's mistakes made here it will all come out at an inquiry. And Scott Patrick testified that – that you indicated that this story or information will come out some day and at that time the OPP will have to account for their actions. Now, I'm not terribly fussed about whether the term 'inquiry' was used by you. What I'm going to suggest is, whether the word 'inquiry' was specifically used, you may very well have communicated the notion that the OPP will have to account for its actions at some point in allowing the Park to be occupied, am I right?

A: Perhaps I can put it into context. What I indicated yesterday and my recollection is that there were questions that I would have asked of Ms. Hutton or I would have asked at the meeting. And – and whether I gleaned the information and where the answers came from, it -- it could have either, it could have been both. I believe there were questions asked

and there could have been some by me because I wanted an understanding of how this event took place; how it happened, were the police prepared, should they have been prepared? Those were all -- all questions that I or others, particularly I think perhaps from -- from the angle of the Ministry of Natural Resources would have been asking at the meeting so we'd have a good understanding. The -- the evidence that others have given that I have reviewed would be consistent with someone, perhaps me, at some point saying, Can we forget all that. Let's get on with why we're here. After the fact we'll review -- somebody will review whether the appropriate resources were there, whether more resources should have been there, whether the occupation could have been prevented. In the meantime let's get on with why we're here which is dealing with the situation we have. That's all consistent, I would say, with the type of thing I would might have said at the meeting or somebody else may have said at the meeting.

Q: Okay. So -- and there's a lot in that answer and I'm going to deal with certain aspects of it in a moment, but just trying to focus on -- on the -- on the one concept that I put to you that -- and I take it that in effect you are agreeing with me that -- that you may well have communicated that at some point in the future the OPP will have to account for its actions in allowing the Park to be occupied?

A: I -- I think that would be a given, that the OPP always has to, after the fact, account for their actions and they always do. And I -- I don't recall saying that but I may have and I see nothing wrong if somebody or I said that.

Q: All right. And -- and as you say, not only may you have said it but it accurately reflected how you felt?

A: I do feel that way. I think that -- that's how I feel today too.

Q: Okay. Now, going back to Ron Fox's testimony that you made comments with respect to the police operations that had taken place to-date and I think you've conceded as much that in the course of dialogue that took place you were posing questions --

A: Yeah.

Q: -- about the OPP actions that had taken place to-date. Fair so far?

A: I -- I asked to ascertain what had happened, how it happened. You know, I think those were appropriate questions because I felt those were questions I was going to be asked or the Government would be asked in explaining to -- to the media and to the public.

Q: So the answer to my question is yes?

A: Yes.

Q: All right. And when Ron Fox says that you expressed displeasure that the matter had gone on as long as it had I take it that accurately reflects how you felt. You were displeased that the matter had gone on in the way that it had?

A: Well, it was displeased it occurred in the first place. So --

Q: Of course.

A: -- yeah, one (1) second of occupation was not a pleasure to me.

Q: And -- and just putting together everything that you've said yesterday and today we have you saying you wanted answers about what actions the OPP had taken to keep the Park secure in the first place, right?

A: Right.

Q: You were aware that the OPP had some foreknowledge that the occupation was possible, right?

A: Yes.

Q: That you did question whether the potential was being taken, or had been taken seriously enough by the OPP, right?

A: I -- I don't know whether that's exactly the -- the wording but I think given --

Q: That sentiment?

- A: -- I think that sentiment, yes, is correct.
- Q: Fair enough. That if the intent was to keep the occupiers out of the Park, something had gone wrong?
- A: Yes.
- Q: You indicated that sentiment?
- A: Yes.
- Q: And that you had the impression at the end of the meeting that the OPP was not as prepared as the MNR would have liked them to be, right?
- A: That was my sense, yes.
- Q: Okay. And -- and that sense would have come from someone at the meeting representing the MNR. Whether Mr. Hodgson or -- or someone else there.
- A: Or it could have come from -- from previous briefings that I'd received from Ms. Hutton from other meetings that had taken place.
- Q: And it's fair to say that all of the sentiments that I've just articulated in my questions to you, were expressed at some point without being precise as to the language you used, during the course of the dining room meeting. Am I right?
- A: Or at briefings that I had received that had taken place in discussions in Interministerial Committee meetings. I indicated to you that -- that I'm not clear in my mind whether it was Ms. Hutton reporting to me the sentiments of discussions that took place at the Interministerial Committee meetings or at the dining room meeting. But through that period of briefings that I received and the one meeting that I attended to receive information, that by the conclusion of the meeting of the 6th was my impression.
- Q: All right. So -- and what we can say with certainty is that -- that you may very well have communicated all of those sentiments at the dining room meeting?
- A: Others may have and I may have.

- Evidence of Michael Harris, February 15, 2006, pp. 22-28

Q: Mr. Hodgson testified here that you said that:

"It was easier to avoid these situations than it is to remove people once an occupation had begun. There was a lot of frustration on the Premier's part when he made that statement. It was manifested in a loud firm voice." Is that an accurate reflection of what you may have said and done at the meeting?

A: Well, I don't recall the loud firm voice but I -- I think the sentiment that it is easier to prevent these situations than -- than correct them after the fact if you like, is -- is accurate. I -- I think that's true.

Q: It's accurate. You may well have said it and you --

A: May well.

Q: -- may well have said it in a sense that communicated some frustration on your part, fair?

A: May have.

- Evidence of Michael Harris, February 15, 2006, p. 29

Excerpt 2

FOX: So in any event he makes a couple wild ass comments gets up and leaves the room and then **the Sol Gen asks me to brief them as to you know what changes in the status of the situation are and I said well I've been talking to the Incident Commander and I am able to confirm that there were shots overnight. I said somewhere between**

fifty (50) and a hundred (100) and this is automatic weapon is what machine guns is what this Chris and I said, ah it's possible it could be ah I said but there is certainly no evidence to support that I said between fifty (50) and a hundred (100) rounds. I said it could have been a semi-automatic.

CARSON: Right.

FOX: **And I said there is no evidence that they were pointed at anybody.**

CARSON: Yep.

FOX: **They were not used in an untoward fashion.**

CARSON: Right.

152. Mr. Harris said this in cross-examination:

Q: Okay. Fourth, Ron Fox testified that he provided an update on what was transpiring on the ground at Ipperwash. And I can tell you that Chris Hodgson and David Moran also testified that Ron Fox gave an update on what was

happening on the ground. Now, to be clear, you recalled that an update was provided.

A: Right.

Q: Right. You can't recall who provided the update, right?

A: Correct.

Q: You can't recall whether you knew the person personally who did provide the update, am I right?

A: I -- I think if I did know the person personally, I might be able to recall that, so I think --

Q: Better still. So it's likely that the person who provided the update was someone not previously known to you, am I right?

A: Correct, yes.

Q: And so Ron Fox may well have been the individual who provided the update to the assembled group?

A: Could have been.

Q: Could have been, okay. Now, Ron Fox then testified that one topic communicated by him in his update on what was happening on the ground had to do with automatic gunfire and that he discussed the fact that automatic gunfire can be mistaken for semi-automatic gunfire. And again, leaving aside the identity of the person providing the report, that accords entirely with your recollection, am I right?

A: Yes.

Q: Okay. Indeed, semi-automatic can be mistaken for automatic; if I reverse those, you understood what I meant?

A: Yes.

Q: And -- and indeed, that accords with your recollection because you made the point yesterday that -- that from your perspective you didn't see what difference it made, gunfire is gunfire, right?

A: Right. I think that was a more relevant point as opposed to what type of weapon it was. Yes, that's correct.

Q: And -- and what I'm going to suggest to you is that the point that was be made -- was being made, and let's assume it was Ron Fox so I don't have to keep qualifying --

A: Okay.

Q: -- my questions by -- by the unknown identity of the person providing the update. The point that was being -- being made by Ron Fox was that undue reliance shouldn't be placed upon the report of automatic gunfire, am I right?

A: I believe somebody made the point that -- that there were reports of automatic gunfire and -- and that somebody, and if was Ron Fox, made the point that -- that it could have been semi-automatic gunfire mistaken for it -- a automatic, I guess. I mean, I think this point would be made and to be honest with you, I couldn't see the relevance of what type of weapon it was.

- Evidence of Michael Harris, February 15, 2006, pp. 18-20

153. Mr. Hodgson acknowledged part, but not all, of what Supt. Fox related in this regard:

Q: All right. We can all agree that, during the meeting, Ron Fox provided an update as to what was happening on the ground?

A: Yes.

.....

Q: ... Now, Ron Fox also recounts, in the taped conversation, that during his briefing on the situation he confirmed that between fifty (50) to hundred (100) shots had been heard over night and that he had a discussion with you about whether this was semi-automatic or automatic fire. And Fox said there was no evidence that the guns were pointed at anybody or used in an untoward fashion. Now, you've denied that you had that dialogue with Ron Fox?

A: That's correct.

Q: Well, let's examine that for a moment. You don't recollect the content of Ron Fox's briefing other than the meeting was assured that the situation was stable; am I right?

A: That's fairly correct. I know he gave, you know, a couple of minute presentation.

Q: Correct. And in the course of those couple of minutes, I'm going to suggest to you that he probably did talk about the gunfire heard the night before.

A: That's possible. I don't recall it, but it's possible.

Q: All right. Did you -- because I want to be clear what you're denying and what you're simply saying you can't recollect and that Ron Fox's conversation doesn't assist you on. It is possible and indeed probable, I'm going to suggest, that Ron Fox described the gunfire that had been heard the night before, as part of the briefing. Do you deny that?

A: No, I don't deny that, no.

Q: Fair enough. And if he did, he may have well have described the number of shots heard and that there may well have been a dialogue about semi-automatic as opposed to automatic fire. Do you deny that?

A: I don't believe I was present when he talked about that. I recall hearing about that from Jeff Bangs in a briefing of what took place in the Interministerial Committee, but I don't recall hearing that directly from Mr. Fox, no.

Q: All right. So you don't recollect it. Do you deny that, at the course of the dining room meeting, that Ron Fox discussed - - leave aside your role in that for a moment, discussed the distinction between semi-automatic and automatic fire? I just want the benefit of -

A: No, I -

Q: -- your evidence.

A: I deny that. My recollection -

Q: You deny that?

A: -- of that is from Jeff Bangs.

Q: All right. So that didn't happen?

A: I don't think that happened, no.

Q: And now you would be concerned about gun play within the Park, would you not?

A: Well, at that time, it was rumours that there was gun -- gun play.

Q: All right. I'll take that answer. Were you concerned about the possibility of gunfire within your Park?

A: Not particularly, no.

Q: No. So that if somebody told you that -- leave aside your recollection about what was and wasn't said, if somebody had told you that -- that there were reports of gunfire, whether automatic or semi-automatic, fifty (50) to hundred (100) rounds within the Park the night before, that wouldn't concern you?

A: I would have assumed the police were handling that.

Q: So it would not have concerned you, that's your answer?

A: Correct.

Q: All right. And you testified that -- that you remember Jeff explaining to Ron and to you that the discussion at the Interministerial Committee Meeting was around the difference between an automatic and a semi-automatic gun. And you were asked what was the significance of that and you couldn't figure that out, either. Do I accurately have that?

A: That's correct.

Q: Now, again, in fairness, there's nothing that you've heard in Ron Fox's tape that assists in refreshing your memory, for

the first time here, about that conversation with Ron Vrancart and Jeff Briggs [sic], am I right?

A: No, no.

Q: Fair enough. Now, what I'm going to suggest to you is, here you are, articulating for Commissioner Linden, that -- that you couldn't figure out the significance of the difference between an automatic and semi-automatic gun, right?

A: Right.

Q: Right. So does it not make sense, I'm going to suggest to you, very respectfully, that your inability to figure out the significance of that may have generated a question from you to Ron Fox about it?

A: No. I'm familiar with both types of weapons and the one is as fast as you can pull the trigger, the other you just hold the trigger. I don't see the significance of it. Whether it's a semi-automatic or an automatic, it's still a gun.

Q: It's still a gun. So -- so you wouldn't have been interested enough, had the topic come up to pose a question to Ron Fox about it. That's your evidence.

A: Absolutely not.

- Evidence of C. Hodgson, January 16, 2006, pp. 76, 82-86

Excerpt 3

FOX: So in any event to make a long story short this guy went (u/i) and I I **finally said well look I said with respect this is a property dispute I said what we're going to see at the end of the day is a disused Provincial Park closed for the season okay.**

CARSON: Yep.

FOX: **And what we're also then going to see is people who have been involved in Mischief. Yes the police know what Mischief is and certainly those folk in the AG we know about the Criminal Offence Mischief. Once read in the newspaper it sounds like stuff our kids get involved in.**

CARSON: You got it.

FOX: **You know what the prick says to me well I've just been told that I can have no influence over the police doing their job so I'm suggesting you let me worry about the political ramifications.**

CARSON: Oh.

FOX: So I I can't hold my tongue.

CARSON: Okay.

FOX: I thought you little prick I've got shoes older than you
and **I said with all due respect ah Minister I said
I'm not.**

CARSON: Is that Sol Gen?

FOX: Hum.

CARSON: The Sol Gen.

FOX: No no this is the Minister of Natural Resources.

CARSON: Oh oh okay yah I've got yah.

FOX: You know and **I said with all due respect (u/i) I said
ah here's the reality that's the way it's viewed and
I said perhaps we can survive the political back
lash. I said it may be that John CARSON and his
people will be able to work magic and these
people will simply walk away and abandon their
position.**

CARSON: Yeah.

FOX: **I said I doubt it.**

CARSON: That ain't gonna happen.

FOX: **And I said my guess is we're going to get a bloody nose or somebody is and I said at the end of the day if you're prepared that's up to you I'm not making a political statement I'm giving you a bite of reality.**

154. Mr. Hodgson did not concede that this exchange took place at the end of the dining room meeting. However, he did acknowledge much of what Supt. Fox related (albeit he said it took place earlier). He said this in cross-examination:

Q: Fair enough. Now back to Ron Fox's recollection. Ron Fox said that this is a property dispute, we're going to see at the end of the day a disused Provincial Park closed for the season, people involved in mischief. The police know what mischief is. It sounds like the kind of stuff our kids get involved in. Now again, leaving aside where the discussion took place, because your evidence is – is clear as to where you think it took place, you'd agree with me that Ron Fox said those kinds of things at the meeting that you attended; am I right?

A: Some of those things.

Q: Well, there was discussion about the fact that there's a disused Provincial Park closed for the season; am I right?

A: I never heard that.

Q: There -- there was discussion about these people are simply involved in mischief and police know what mischief is, right?

A: No it wasn't worded like that.

Q: Well, I thought that you had indicated to Ms. Vella that police know what mischief is and about criminal offences and so on. There was conversation around that and it wouldn't look good in the newspapers.

A: That's correct.

Q: Right. All right. So -- so here was a fellow --

A: He didn't -- he didn't -- just to be -- clarify that for you, he didn't say that these people are involved in mischief. He said that the police know what mischief is.

Q: All right. And this is from a person who -- who, according to you, wasn't a police officer.

A: That's right.

Q: But he's saying police know what mischief is and about criminal offences and there was conversation around that and that it wouldn't look good in the newspaper; am I right?

A: Yes.

Q: Okay. And what wouldn't look good in the newspaper was the suggestion that -- that the police go into the Park and -- and arrest these individuals for these kinds of offences, like mischief, right?

A: I'm assuming that, yes.

Q: Fair enough. And this was Ron Fox that was advising you of that.

A: Well he was advising the room. I don't believe I asked the question, it was somebody off to the side or behind that had asked the question, yes.

Q: Now Ron Fox said, in a dialogue with you, I'm going to suggest:

"I've just been told that I can have no influence over the police doing --"

I'm sorry, that you said, in the course of your dialogue with Ron Fox:

"I've just been told that I can have no influence over the police doing their job, so I'm suggesting you let me worry about the political ramifications."

He responded:

I'm not making a political statement, giving you a bite of reality."

The tenure [sic] of that conversation, not word for word, did in fact take place, did it not?

A: I never said, I've just been told. I said, on behalf of the room, We shouldn't be talking about policing issues and he shouldn't be talking about politics. That was my opinion.

Q: Well, let's --

A: And then he responded, fairly accurately to that, that he was just talking about reality.

Q: So he was saying, I'm giving you a bite of reality, I'm not making a political statement. He may very well have said --

A: That's correct.

Q: -- those precise words.

A: Yes.

Q: All right.

A: Fairly close to that.

155. It should be noted here that Mr. Hodgson's recollection that this exchange took place at the end of the IMC meeting is illogical. This point is captured in cross-examination:

Q: Now, I just want to discuss with you and break down, if I may, what it is that -- that you were talking about here. You said that -- that one of the things that you indicated to him was that -- was that we shouldn't be talking about police matters.

A: Hmm hmm.

Q: What -- what was it that he had said that generated that purported caution on your part?

A: It wasn't something he said, it was some of the questions that were being asked around the room on other options to an injunction. Some people were suggesting that, you know, if this isn't a recognized First Nation, are we dealing with a First Nation issue or just, you know, what would happen if somebody else broke the law, what -- what would take place. And somebody else said, you know, could you not just make arrests on -- on trespassing? And that's wrong answer to that. And I said, look we shouldn't be talking about police issues and you shouldn't be talking about politics. That's the extent of that exchange.

Q: Well, I'm just trying to understand this because here, at an Interministerial Committee Meeting, as you understood it, one of the things that the Interministerial Committee had to do was evaluate what action the Government should take in response to this incident; am I right?

A: I would assume that, yes.

Q: Right. And one of the things that the Government had to be informed on is the situation on the ground, in order to determine, for example, whether injunc -- injunctive relief should be sought. Am I right?

A: Hmm hmm.

Q: So, that when we talk in the abstract about operational information not being shared, I mean I take it you would agree with me that you'd expect the Interministerial Committee Meeting to be provided with a description of what was going on on the ground and the options that were available in order for Government to be informed on its choices, fair enough?

A: Okay.

Q: Right. So I go back to my original question. At an Interministerial Committee Meeting, on your evidence, what was it that Ron Fox or anyone else was saying that according to you was inappropriate and -- and had to be shut off by a caution from you? I don't understand that.

A: That was questions around, Could you not just go in and make arrests? They started to ask different questions from different parts of the room and Ron answered with a lengthy answer about how it wouldn't look good in the papers. And that's when I just chipped in that piece of advice.

Q: Now, you're aware that nobody else who was at that Interministerial Committee Meeting recalls you providing some sort of a caution not to talk about -- not to talk about police operational matters? You know that?

A: I'm -- that's fine.

Q: And -- and I read to you a little earlier on that Ron Fox described you as saying:

"I've just been told that I can have no influence over the police doing their job."

Now, stopping there for a moment, we've heard evidence that at the dining room meeting that the Deputy Minister Elaine Todres and/or Deputy Minister Larry Taman provided that caution to the Ministers at the meeting. Do you deny that?

A: No, that's possible. That caution was issued and it was common understanding in both meetings I was at.

Q: All right. So, do you recall what the circumstances might have been under which -- this common knowledge to the Ministers would nonetheless being imparted by Deputy Ministers at the dining room meeting?

A: I can't recall that, no.

Q: You can't recall. And of course if it was relayed in the way that -- that you say is possible and as was described by Larry Taman and Elaine Todres then you would have just been told that would you not?

A: And I would have been -- I understood it before I got into politics.

Q: But you would have just been told that would you not?

A: You're assuming that they said that at the meeting that we were at? Or are we talking about the dining room meeting right now?

Q: Yes.

A: Yes.

Q: Okay. Now, what I also want to understand is that here you're saying to Ron Fox, and your recollection in this regard isn't terribly different from Ron Fox's, that in effect you let -- I'll deal with the political matters or I'll deal with the political ramifications or something along those lines?

A: No.

Q: You're saying that -- that --

A: No.

Q: -- the IMC should have nothing to say about political matters?

A: Basically.

Q: So, now I'm trying to understand what was it that was going on at the IMC that would cause you to administer a caution not to talk about even political matters at that meeting?

A: Well, normally at all meetings we drew the line, whether it was Cabinet or briefings with Civil Service, the political level didn't talk politics at meetings.

Q: But, what I'm trying to understand is what it was that was being said at that meeting that in your view infringed this principle that political matters ought not to be discussed even at the Interministerial Committee Meeting.

A: That might be too strong a word for it. I just didn't feel that Mr. Fox needed to be talking about politics. We were there to discuss the situation around Ipperwash and talking about the optics, how it wouldn't look good in the news or this option wouldn't look good in the papers.

Q: Well, now –

A: I just thought from the Civil Service side that we didn't need to be talking about that.

- Evidence of C. Hodgson, January 16, 2006, pp. 90-95

What makes perfect sense is that this exchange took place following the cautionary notes provided to the dining room assemblage by the Deputy Attorney General and/or the Deputy Solicitor General.³

Excerpt 4

FOX: **Well even if we get this enjoining order like how long will the police sit on it two (2) weeks. He says I was told that the police knew about this ah before it happened and I said that's not correct.**

³ Mr. Hodgson's testimony that *the Premier* ended the meeting by expressing the caution does not conform to the evidence.)

- Evidence of C. Hodgson, January 16, 2006, pp. 103 ff

Well he said that's my information I said with respect it's wrong. I said the police certainly had a supposition that a logical next step for these protesters was to take over the park and I said in fact I've had discussions with the Incident Commander about that but I said did we have anything to base that on other than the odd little threat and inndo innuendo that came up no. What we did is we based it on our knowledge of Native people.

CARSON: Right.

FOX: And this was the likelihood.

CARSON: That's right.

FOX: And I said there was a contingency plan in place. Well then he got into well why didn't the police stop it.

CARSON: (laughs)

FOX: I understand they were at the park right at the time and I said ah really well I said let's put that into perspective shall we. I said how does one stop that from taking place given at that time of night there would be limited police resources and I.

CARSON: Well there was there was eight (8) ERT guys but they were just overwhelmed.

FOX: John if there was one-hundred (100) and eight (8) and there was two-hundred (200) and ten (10) I guess it would be overwhelmed.

Again, Mr. Hodgson did acknowledge much of what Supt. Fox related (albeit he said it took place earlier).

Q: Well, let me ask you this: That when, in your recollection, you said to Ron Fox at the Interministerial Committee Meeting that -- that it's easier to avoid these situations and prevent occupations from occurring, if you can, than to remove people. And you remember saying that?

A: Yes.

.....

Q: And -- and if I may say so, it's a fairly confrontational thing to say to someone, to ponder what they've been doing to

prevent the situation from occurring in the first place. Were you frustrated?

A: No, not particularly.

Q: So, that –

A: He'd just told me that that was a reality. And I pointed out that the reality also was, you knew you had an issue here for some time, I might not have been as eloquent as I probably should have, and what's -- you know, what was done to prevent this? And he gave a long response to that. But, I wouldn't say it was an argumentative meeting.

Q: All right. But what I'm going to suggest is, that you were expressing your frustration, whether he's at ONAS or whether he's a police officer or what have you, your frustration over the fact that he or others had not done something to prevent the situation from occurring. Isn't that fair?

A: No, I just asked the question, what-

Q: Just asked –

A: Yeah, what -- what -- the reality is, you knew that there's a situation here, what's -- what was done?

Q: So you didn't ask –

A: And –

Q: -- it out of any –

A: It's easier –

Q: -- was curiosity –

A: -- in my opinion, to prevent these things than it is to try to remove people.

Q: So you asked it out of curiosity, not of any frustration or -- or anger?

A: I don't recall being angry.

Q: So, the answer to my question is that you asked it out of curiosity, not out of any frustration or anger?

A: Yes.

Q: All right. Now, he gave an answer:

"About a thousand (1,000) officers linked arm to arm could not prevent the occupation."

Right?

A: That's correct.

Q: And not terribly different, in that respect, to what Ron Fox had had to say in the taped conversation.

- Evidence of C. Hodgson, January 16, 2006, pp. 80, 99-101
- See also, in fairness, pp. 95 *ff*

Excerpt 5

FOX: **Well this guy here Peter STURDY was getting fed by people who were there.**

COLES: Yep.

FOX: **And of course it came up in the meeting about the automatic weapon fire and you know they're doing damage, there's heavy equipment roaring around at night and their**

COLES: That's the trouble and and they're going to react to that kind of stuff and it's the same thing I just told them here it might see my position is and now I can't do it. My position is just been here some a half an hour ago is Mark you downplay all the heavy weaponry because I'll have a fuckin safety and backup issue myself here and it was the same as I had at Akwesasne **everybody said oh there was automatic guns going off all of the friggin time and it wasn't it wasn't it was just semi-automatic it was just pulling the friggin triggers. But if you have three (3) or four (4) guys shooting nobody knows the difference.**

FOX: **Well that's what I said today.**

COLES: (Sighs)

FOX: **There's no evidence that there are automatic weapons I said certainly there was the sound of gunfire and I said I mean that's a qualified observation but it could be semi-automatic we**

don't know. There is no indication that the weapons were pointed at anybody okay.

156. Many witnesses confirmed the discussion about the automatic and semiautomatic gunfire at the IMC meeting. This aspect does not appear to be in dispute.

- Evidence of S. Hutchison, August 29, 2005, pp. 50, 59
- Evidence of J.Jai, August 31, pp. 85, 92; September 12, 2005, pp. 113, 186-87
- Evidence of E. Hipfner, September 15, 2005, pp. 88-89
- Evidence of E. Christie, September 26, 2005, pp.134-37
- Evidence of D. Moran, November 1, 2005, pp. 14, 16-17, 107
- Evidence of J. Bangs, November 3, 2005, pp. 73-74, 83, 86, 44. 55-57
- Evidence of D. Hutton, November 22, 2005, pp. 28-29, 140

Excerpt 6

FOX: And I walked in and there was the Deputy Solicitor General and the Sol Gen and the AG and the Deputy AG and ah (u/i) and the Minister for MNR and the Premier.

COLES: Yep.

FOX: **Okay the Premier is quite adamant that this is not an issue of Native rights and then his words ah I**

mean we've tried to pacify and pander to these people for too long. It's now time for swift affirmative action. I walked in the tail end Chris with him saying things like well I think the OPP have made mistakes in this one. They should have just gone in. He views it as a simple Trespass to Property that's in his thinking. He's not getting the right advice ah or if he is getting right advice he's certainly not listening to it in anyway shape or form.

157. In fairness, Mr. Harris did not concede that these words were used. However, he did concede much of the substance of what Supt. Fox related. He said this:

Q: Now, Mr. Taman also testified that -- that you made it clear at that meeting that, in a firm way, that the First Nations should be removed from the Park. And I -- and I take it that - - and he said there was nothing wrong with the Government saying that we have a zero tolerance of people who are illegally in a Provincial Park. I take it that sentiment would certainly have been communicated firmly by you at that meeting?

A: I thought that was everybody's view.

Q: Well, it was simply --

A: It was my view.

Q: It was -- of course it was your view.

A: Well, I would --

Q: I have to start somewhere, all right?

A: Well, I realize that but I think that I felt that was the view of everybody and I concurred with it.

Q: All right. And in fairness to -- to the former Attorney General, Mr. Harnick, who -- whose recollection at this Inquiry was that -- that you indicated:

"I want the fucking Indians out of the Park".

Leave aside the expletive, the sentiment that you did communicate at the meeting was that you wanted the occupiers out of the Park?

A: Yes.

Q: Right. I mean the debate is over the expletive. The substance of the balance of what Mr. Harnick remembers perfectly accurately reflects your sentiment at that meeting, doesn't it?

A: I think it reflected everybody's sentiment.

Q: Including yours.

A: Including mine.

Q: Fair enough. Now, Elaine Todres testified that -- that there was a heated discussion, there was a lot of frustration on the part of politicians; there was a great deal of sense of urgency about dealing with this issue as promptly as possible. Now, the last line you've already acknowledged that -- that there was, certainly, a sense of urgency about dealing with the issue as promptly as possible, am I right?

A: Yes....

.....

Q: Now, Ron Fox, in his taped conversation with John Carson he described the government as "redneck" and I -- I'm not going to ask you to comment upon his characterization, as I say. But he was asked to explain what was actually said at the meeting that gives context to the comment and he said that there's one (1) justice for all, there's no differential treatment for anybody. The Premier reflected that we should

not pander to the Native communities and they will be treated the same as everybody else. And in his taped conversation to Chief Superintendent Chris Coles, he uses these words:

"The Premier was quite adamant that this is not an issue of Native rights. And in his words we've tried to pacify and pander to these people for too long. It's now time for some swift affirmative action."

Now again, let's see where we have common ground here. You were of the view that this was not an issue of Native rights, the occupation was illegal, am I right?

A: That's correct.

Q: And you communicated that view?

A: I communicated that. I think that was -- that was the consensus that we all came to, that -- and -- and I think it's important that the Commission understand that -- that -- that the occupation was not sanctioned by the Chief. It was not sanctioned by the official elected representatives of the Kettle and Stony Point Band. That it was a dissident group that had taken over land that did not belong to them. So we viewed it as -- as an illegal occupation. There were no claims by this group of ownership of the land, the land claim of -- of what they wanted. And so in that sense I think we viewed this as -- as not a -- an issue of -- of Native versus non-Native that the -- the laws would be applied equally whether this was a group of Natives or a group of non-Natives. And I think that is the sentiment and I believe that -- that was the consensus of not the majority view of those at that meeting.

Q: So just responding to the very limited question that I'm putting to you now, when Ron Fox told Chris Coles in a contemporaneous taped message that the Premier was quite adamant that this is not an issue of Native rights, that was a perfectly accurate statement, wasn't it?

A: Yes. I believe that that was my viewpoint.

Q: Right.

- A: Whether I was adamant about it or whether I came to the conclusion as a result of -- of Ron Fox's and others concurring with that, I think would -would perhaps differentiate how it was explained.
- Q: And when he told Chris Coles that in your words "we've tried to pacify and pander to these people for too long", I'm going to suggest to you, you did not think it appropriate to pacify or pander to illegal occupiers, did you?
- A: I don't believe those were my words. But I -- I did not feel that it was -- that we should treat an illegal occupation any differently than other Governments had. I think the quote I was given I think was, we don't negotiate over barriers, from the NDP Government. So I -- I don't interpret my view at that meeting as any different than -- that other governments would have taken or -- or any reasonable person would have taken had they had the information that I had.
- Q: But I'm really putting to you, again, a very limited question, and that is that if Ron Fox took from your comments in his words, "We've tried to pacify and pander to these people for too long", you may very well have expressed that sentiment and in those precise words, I'm --
- A: I doubt it. He may have concluded that from a series of meetings that he -- he had on it. But I don't believe I would have used those words and I don't know what he -- his definition of those are because they're not my words.
- Q: Well, I'm not asking for his definition. I'm just saying that it's possible --
- A: Well, but I don't understand his definition. It's pretty tough for me to comment.
- Q: Is it possible that you used those words?
- A: No.
- Q: Are you quite certain about that?
- A: I -- I don't believe I used those words, no.
- Q: "It's now time for some swift affirmative action." It certainly was time as far as you regarded it for some swift action to be

taken. We can debate what the action should be but it's fair enough.

A: I -- I believe -- I believed we should be moving quickly to end the occupation, taking --

Q: Fair enough.

A: -- the measures that we should, yes.

Q: All right. Now both Ron Fox and Scott Patrick talked about a comment that had something to do with the Holocaust. And in -- and in fairness, because we know what a public inquiry how -- how these comments can -- can mushroom, they -- they were unable to put it in context, you certainly don't recollect saying anything to that affect and -- and they hadn't alleged that -- that anything beyond that. But I want to ask you one aspect of it and that is when Scott Patrick was asked to comment about -- about the context here, he was able to say in the course of his testimony, that -- that something was said about this being a test, that you were a new government and that this is how things get started. And what I want to ask you is this. Could you have communicated the sentiment in that meeting that -- that one had to deal with this situation in a decisive way because it is a test for our government?

A: Yeah, I don't -- don't recall the word test, but I -- I would agree with this sentiment that -- that -- that how -- how we acted would be viewed by others, Native and non-Native as to whether we would tolerate illegal action in -- in any sense.

Q: All right, so --

A: I think that's fair.

Q: And again, I think you can see the recurrent theme in the questions I'm asking you, is that apart from the precise language that was used, that kind of a sentiment namely that this would be looked to it as the way the Government would deal with an illegal occupation was something that you may very well have communicated?

A: I -- it certainly wasn't foremost on -- on people's minds, but I was always cognizant and I think the government's always

cognizant that -- that you need to be consistent in how you're -- you deal with situations, all situations.

Q: And the answer to my question is "yes"?

A: I -- it -- I'm sorry, what's your question again.

Q: Oh, there's the problem. What I was suggesting is that the sentiment that you may very well have been communicating in the course of the meeting was that -- that the Government had to act decisively on this matter, because --

A: No, no.

Q: -- it would be -- it would be looked to --

A: No, I think -- I don't agree with that. I think we felt it was appropriate to act decisively on this matter, that's one thing. I don't think it was appropriate to act decisively so we could set an example as how we would act in five hundred (500) situations that might occur during our tenure. I think it was appropriate to act decisively; that was an appropriate decision to make. Separate from that was a sentiment that -- that we -- we needed to be consistent. Would this be viewed by others, that that could be there, too. But I think the two (2) are disconnected and both true.

Q: All right. Well, see part of this is, as much as anything else, the tenor of the meeting that took place and as -- as you can hear, as I'm reading to you pass -- passages from various people who attended the meeting, there's a lot of talk about frustration and strength on your part and firmness on your part and -- and clear messages being sent on your part. And when I hear your testimony today and yesterday, I don't get any sense of that at all and I'd just ask you to comment on that.

A: I think I was pretty clear at the time and clear today that -- that we needed to take action as soon as possible to end the occupation as soon as possible. If -- I think that's -- was my view. Others have expressed the view in different ways and different language and different terms, but I do not deny that that was my view.

158. Apart from the testimony of Mr. Hodgson and Mr. Harris, other attendees provided circumstantial support for Supt. Fox's factual assertions (as again distinguished from his opinions). Much of this evidence has been referred to in the context of the cross-examinations of Mr. Hodgson and Mr. Harris.

David Moran

(1) the substance of the Premier's comments were that he was disappointed that the OPP had allowed the situation to get this far;

Larry Taman

(1) he recalls a conversation with Mr. Harris where he said he thought the police would have had the First Nations citizens out of the Park by this time;

(2) the Premier made it clear that it wasn't right for the First Nations to be in the Park and that it was the government's job to get them out;

(3) the tenor of the meeting was that the police should be acting to get the folks out of the Park;

(4) there was no mistaking the Premier's intention, he firmly thought that the First Nations should be removed from the Park;

(5) the Premier said he thought that police in other places would have been in there quickly getting people out.

Charles Harnick

(1) the Premier said “I want the f-cking Indians out of the Park..”; and

(2) the Premier was frustrated at the fact that the occupiers were still in the Park and also the Premier expressed dissatisfaction over the OPP’s performance in allowing this to happen in the first place.

Elaine Todres

(1) the Premier was communicating a level of frustration at the fact the occupiers were still in the Park;

(2) Dr. Todres agreed with Insp. Scott Patrick’s recollection that Mr. Hodgson indicated during the meeting that he was the property owner, it was his Park and he wanted it back and that he was angry when he spoke about the issue; and

(3) Dr. Todres was deeply concerned about his comment.

Robert Runciman

(1) the Premier appeared to be anxious. He wasn't shy about expressing his concern; and

(2) the Premier was expressing a level of concern or frustration at the fact that the occupiers were still in the Park.

Scott Patrick

(1) after the Premier left the meeting and before Insp. Patrick and Supt. Fox left, Mr. Hodgson began speaking to Fox and gave the appearance that he was angry. He indicated that his officials had been assured by the OPP that the Park's occupation could be prevented;

(2) Hodgson said that he was the property owner, it was his Park and he wanted it back;

(3) what he heard from Hutton on the morning of Sept. 6th was consistent with the impression he was getting from the Premier when he sat in the dining room on September 6. The Premier wanted fast action;

(4) the Premier was perplexed and frustrated because he wanted to see the occupiers removed from the Park more quickly;

(5) Minister Hodgson was critical of the actions of the OPP after the Premier left the room;

(6) the Premier was concerned that the longer the occupiers remained in the Park, the more difficult it would be to get them out. The OPP approach was seen as too slow;

(7) it was made clear that there was to be no negotiation, and that the Premier's position was that this is not a native rights issue, but a law and order issue; and

(8) the Premier said "this is a test, we're a new government, this is how things start" and then he referenced the Holocaust. The reference came within a sentence or two about the government being seen to take decisive quick action.

- Evidence of S. Patrick, October 17, 2005, pp. 109-110, 196, 220-221, 229; October 18, 2005, 29-30, 40
- Evidence of D. Moran, November 1, 2005, pp. 27-28
- Evidence of L. Taman, November 14, 2005, pp. 113, 115, 125, 135
- Evidence of C. Harnick, November 28, 2005, pp. 10, 77-78
- Evidence of E. Todres, November 30, 2005, pp. 263, 270-271, 274
- Evidence of R. Runciman, January 9, 2006, pp. 114, 127-128

XI. THE HONOURABLE MICHAEL D. HARRIS

159. The OPP's response to Mr. Harris's submissions have largely been addressed above. It is unnecessary for the OPP to debate – as do other parties – whether Supt. Fox's opinions about the government were correct or not. Nor is it necessary for us to parse those expressions of opinion, as was done when Supt. Fox testified. For example, cross-examination was directed to whether everyone was on a testosterone high, or whether it was more accurate to say (as Supt. Fox conceded) that his opinions did not extend to everyone and, as such, his comments to Deputy Carson were not "completely accurate."

- Evidence of R. Fox, July 13, 2005, pp. 47-48

160. Having said that, without entering the fray over the accuracy of Supt. Fox's opinions about the government, it must be said that his impressions were shared by many other attendees at the IMC meetings, such as:

Julie Jai

(1) Ms. Hutton was one of the people who was extremely frustrated at the relaxed, slow approach that was proceeding and wanted to move quickly;

(2) Ms. Hutton said that the Premier was hawkish on this issue;

(3) Ms. Hutton wanted an emergency injunction and did not want to wait two weeks and that attempts should be made to remove people;

(4) Ms. Jai told Mr. Harnick that according to Ms. Hutton, the Premier wanted to take a very aggressive approach;

(5) at the September 6 IMC meeting, Ms. Hutton was extremely forceful and very assertive in her views;

(6) Ms. Hutton's view was that these people are trespassers and should be treated like anyone else who is trespassing. The fact that they are Aboriginal or claim land is theirs or a burial ground is irrelevant; and

(7) Ms. Hutton said that the Premier feels the longer they occupy it the more support they will get. He wants them out in a day or two.

Scott Hutchison

(1) Ms. Hutton said things to the effect of this being viewed more as a law and order issue than a First Nations one; and

(2) it was clear from directions coming down that there was a desire to move the occupiers out of the Park and that was the focus of the options.

Eileen Hipfner

(1) Ms. Hutton told the group that the Premier was hawkish and wanted a proactive approach addressing the occupation of the Park; and

(2) Ms. Hutton said that the Premier's view was that the longer the occupiers were there the greater the opportunity they have to garner support and arm themselves.

Anna Prodanou

(1) Ms. Hutton said the Premier was hawkish; and

(2) in her notes, it is said that the Premier wants to deal with the group as if they were non-aboriginals, followed by "Ron is different." At this point, Supt. Fox was taking issue with Ms. Hutton's assertion that Aboriginal and non-Aboriginal people should be treated the same way.

Shelley Speigel

(1) Ms. Hutton made it clear that the Premier didn't want to negotiate. He wanted the occupiers removed;

(2) Ms. Hutton conveyed an urgency that it should be done quickly. What was wanted was a quick resolution; and

(3) Ms. Hutton was frustrated in not understanding the view that the police couldn't just come in and remove people who were illegally occupying Crown land.

Elizabeth Christie

(1) Ms. Hutton said the Premier's Office didn't want to be seen to be "working with Indians at all". Dr. Christie was shocked;

(2) Supt. Fox openly disagreed with some of the views expressed by Ms. Hutton; and

(3) Dr. Christie took issue with Ms. Hutton's assertion that Aboriginal and non-Aboriginal individuals were to be treated the same.

David Moran

(1) the impression given when he left the IMC meeting was that this was strictly a law enforcement issue and that other than the fact that the people who took over the park were natives, that was where the native issues ended; and

(2) Ms. Hutton said that the Premier was hawkish on the issue.

Jeff Bangs

(1) Ms. Hutton said the Premier was hawkish on the issue.

Scott Patrick

(1) Ms. Hutton said that she had spoken to the Premier and that the bottom line was to have the Park vacated;

(2) it was made clear that the Government was not reluctant to be seen as moving decisively and quickly. Ms. Hutton indicated that they wanted to be seen as actioning; and

(3) The occupation situation was to be treated as a policing matter as opposed to a Native issue.

- Evidence of S. Hutchison, August 25, 2005, pp. 291-294
- Evidence of J. Jai, August 30, 2005, pp. 222, 244; August 31, pp. 65, 71, 80, 90
- Evidence of E. Hipfner, September 15, 2005, pp. 51, 93, 123-24
- Evidence of A. Prodanou, September 20, 2005, pp. 157, 272
- Evidence of S. Spiegel, September 21, 2005, pp. 97-98, 111
- Evidence of E. Christie, September 26, 2005, p. 132; September 27, 2005, p. 44
- Evidence of S. Patrick, October 17, 2005, p. 78; October 18, 2005, pp. 31, 35
- Evidence of D. Moran, October 31, 2005, p. 207, 212
- Evidence of J. Bangs, November 3, 2005, p. 53

161. The above submissions should not detract from the primary point being made – namely, that although Supt. Fox's testimony should be preferred to that of Mr. Hodgson and Mr. Harris where a conflict exists, they all agree that the government did not direct or influence the OPP. Mr. Harris' testimony in this regard is fully supported by the totality of evidence:

Q: You've already testified in response to several questioners including Mr. Millar yesterday that you did not provide any instructions to the OPP on how to enforce the law or when to enforce the law. I have your evidence correct in that regard?

A: That's correct.

Q: Nor did you suggest to anyone within government that these kinds of directions should be provided to the OPP am I right?

A: That's correct.

Q: You saw nothing wrong then or now with your government officials, Ministers, Deputy Ministers, or their staff receiving updates on what had happened on the ground in Ipperwash am I right?

A: That's correct.

Q: And I'm going to suggest to you that that would enable your government to make informed decisions on whether an injunction should be sought, what type of injunction should be sought, and when such an injunction should be sought, correct?

A: Yes, I think it would be beneficial.

Q: All right. Now similarly, looking at it from the other perspective, you saw nothing wrong with government communicating to the OPP its decisions on whether an injunction would be sought, what type of injunction would be sought, and when it would be sought, am I right?

A: I -- I believe that would be appropriate, yes.

Q: Okay. And indeed from your perspective that was the kind of information that would have to be communicated to the OPP to enable it to make its operational decisions, right?

A: That's correct.

Q: Now similarly, if the Government wanted an OPP officer to provide evidence at an injunction hearing you'd see nothing wrong as a Premier with the Government contacting the OPP to identify that officer and what he would say at any court hearing, am I right?

A: That's all hindsight. I had no idea how the government went about preparing its case, preparing the injunction, but I would leave that to the Ministry of the Attorney General and - and assume that they would do the appropriate things and to the best of my knowledge they did.

Q: Well, you've anticipated my very next question you'll be delighted to hear, because you were asked about the channel of communication or the protocol between government and -- and the OPP and you -- you spoke briefly about communication taking between the Ministry of the Solicitor General and the Commissioner of the OPP. And I just wanted to be clear, you weren't -- I didn't take from your answers and I want -- I want to clarify this with you that were suggesting that the Commissioner of the OPP has to be personally involved in these kinds of communications?

A: No.

Q: Okay. Now, you've testified that consensus was reached on September the 6th about the Government seeking an injunction and you had been made aware by Ms. Hutton that various approaches to the issues had first been aired at the IMC meeting. Am I correct so far?

A: I believe so, yes.

Q: And -- and you'd been made aware that information was being provided by the OPP to the Interministerial Committee to help inform that decision, right?

A: Correct.

Q: And again, not difficulty with that from your perspective was there?

A: No, I thought that was appropriate.

Q: All right. Now, whatever views were being expressed in these various approaches at the Interministerial Committee Meeting as communicated to you, one (1) thing that we know for sure and that is that the consistent unvarying message that you were receiving and which was never deviated from was that the OPP was not prepared to enter the Park or take any action whatsoever to remove the occupiers from inside the Park before an injunction was obtained; right?

A: That's correct.

Q: Now, I've used that phrase 'not to enter the Park or to remove the occupiers from inside the Park' because as you pointed out yourself yesterday the message that was also being communicated consistently was that public safety might require some interim action to be taken by the OPP if the occupation extended beyond the Park; am I right?

A: That's correct.

Q: And again to be clear on that issue, namely whether and under what circumstances public safety might compel that kind of action, government could have nothing to say, right?

A: That's correct.

Q: So if, for example, and I'll deal with that in a hypothetical so as not to embark on a debate with some of my fellow Counsel as to the facts, if the occupiers left the Park brandishing clubs or bats in an intimidating matter it was the OPP's decision not your government's as to how the OPP should address that issue operationally, right?

A: Yes.

Q: And when the OPP should address that issue, right?

A: Yes.

Q: Now, on the evening of September the 6th I'm going to suggest to you that you had no knowledge whatsoever that

an issue had developed that very evening outside of the Park, am I right?

A: That's correct.

Q: You were not briefed on that issue prior to any OPP decision to send officers down the road to cause the occupiers to go back into the Park, am I right?

A: That's correct.

Q: You never sought to be briefed in advance of what the OPP intended to do in such a situation?

A: That also is correct.

Q: Now, up to and including September the 6th, you never sought to speak to the Commissioner of the OPP about the operational decisions that had made at Ipperwash or would have to make in the future at Ipperwash; am I right?

A: That's correct.

Q: You never instructed your staff to seek out the Commissioner or anyone else within the OPP chain of command about those kinds of operational decisions?

A: That's correct.

Q: Now was it your expectation that your staff, your Ministers or your Deputy Ministers would seek out the OPP to influence its operational decisions?

A: That was not my expectation, no. In fact, it would be the contrary.

Q: And -- and did you ever receive any information that they did that?

A: I did not.

Q: Now we've heard some evidence here that the Solicitor General, Mr. Runciman, back in the summer of 1995 had been briefed by the Commissioner of the OPP about a number of issues and that briefing likely included an outline of this OPP policy that blockades or occupations should

generally be contained, force used as a last resort, and an injunction sought before the Government's ownership rights were asserted. And we've also heard that the Solicitor General expressed his view that he had no difficulty with that policy. Did you ever express to the Commissioner of the OPP or anyone else disapproval of that policy?

A: I did not.

- Evidence of Michael Harris, February 15, 2006, pp. 8-14

XII. DEB HUTTON

162. Any reply to Ms. Hutton's submissions concerning Supt. Fox, with one exception, has already been subsumed in replying to Mr. Hodgson and Mr. Harris.

163. The suggestion that Supt. Fox's credibility is affected by his reference to Ms. Hutton as attractive or to Minister Hodgson's youth is unfortunate and baseless. Supt. Fox was shown to be highly professional, with an excellent working relationship with "empowered women" including Dr. Todres and Commissioner Boniface.

XIII. PROVINCE OF ONTARIO

164. The Province of Ontario's submissions also address Supt. Fox's testimony, almost exclusively in positive, factually accurate terms. Indeed, the OPP relies upon the Province's outline of the facts pertaining to Supt. Fox's interaction with government, except in one instance noted immediately below.

165. At page 70, paragraph 229 of its Part I Submissions, the Province of Ontario states:

229. Although Mr. Fox reported to Ms. Jai following the dining room meeting that "the Commissioner is involved", there seems to be no support for this information in any of the evidence. No one in attendance at the meeting reported saying or hearing that the OPP Commissioner was or should be involved and there is no suggestion elsewhere that Mr. Fox's information on this point was accurate.

166. The OPP agrees that there is no evidence to support the position that Commissioner O'Grady was somehow involved in the operational decisions regarding the occupation. Indeed, Supt. Fox clarified that he did not intend to convey this idea to Ms. Jai:

Q: And perhaps you would go to Tab 34 of your document brief. It's Inquiry Document number 3001088 and this appears to be the handwritten notes of Julie Jai, dated September 6th, 1995. It has her name on top of it.

A: Yes, I have.

Q: And does this reflect a conversation which you had with Ms. Jai?

A: I believe that it does.

Q: Is it likely that – do you recall whether or not this meeting or this conversation occurred before or after the meeting at the legislative building?

A: I believe it was after.

Q: Okay. And does the contents of this note accurately reflect the – the contents of your conversation with her?

A: *To a point.*

Q: Are there any corrections here?

A: Yes.

Q: Can you tell us –

A: Where she has a bullet in the second – it's a line bullet:

“Now OPP Commissioner is involved. Decision will be made at his level.”

I believe that would be the OPP field commander who would have been Chris Coles.

Q: And then why is that you believe that you likely indicated it was the field commander?

A: Having an understanding of the way the organization works, the Commissioner wouldn't ordinarily be involved in that type of day to day work.

Q: All right. And did you have any information or belief at that time, September the 6th, 1995 as to whether or not the Commissioner was playing any direct role at the decision-making level of this operation?

A: He would not be.

167. Indeed, in the telephone conversation between Supt. Fox and Deputy Carson that occurred very close in time to Fox's conversation with Ms. Jai, he referred to Supt. Coles' involvement:

Fox: I said be that as it may I mean that ah that's a problem. What um what he's looking for is um of course they have the affiance [sic] all lined up from MNR who are going to say it's their property and here's the deed and you know all the rest.

Carson: Sure.

Fox: But they need somebody from police perspective.

Carson: Okay.

Fox: And I said well you know I've talked to John about it. *I've talked to Chris Coles and they agreed John's probably the guy to do that.*

Carson: Uhum. [emphasis added]

- Transcript of Telephone Call between R. Fox and J. Carson, Ex. P-444A, Tab 37, p. 260

168. Having said that, Supt. Fox may well have assumed that the Commissioner was involved in the sense that he was aware of what was transpiring. An issue note dated September 6, 1995 which Supt. Fox saw at the time, reflected as much. However, there is no evidence that Commissioner O'Grady was involved in the operational decision-making leading to Ipperwash, and an examination of Supt. Fox's complete testimony supports that conclusion, as does Commissioner O'Grady's testimony.

- Evidence of R. Fox, July 13, 2005, pp. 81-83
- MSGCS Issue Note, September 6, 1995, Ex. P-930

XIV. CHIEF CORONER FOR ONTARIO AND THE OFFICE OF THE CHIEF CORONER (“CCO”)

169. CCO suggests that it was the OPP who deployed two EMS ambulances to the main gate of the Army Base at approximately 11:20 p.m., thereby leaving the St. John Ambulance attendants as the only medical personnel available to treat and transport Cecil Bernard George.

- CCO Submissions, p. 8, para. 30; p. 15, para. 56; p. 17, para. 64

170. The following sequence of radio transmissions demonstrates that it was not the OPP who asked for two ambulances or played any role in dispatching two ambulances in response to the request from the Army Base. Indeed, the sequence demonstrates that the CACC allowed both ambulances to leave the MNR parking lot when it knew that only one was needed at the main gate of the Army Camp:

Delta:	Lima 1 from Delta, we need <i>an</i> ambulance here at 21.
Unknown:	10-4 <i>an</i> ambulance at 21. An occupant from the camp out requiring <i>an</i> ambulance for her son.
Cousineau:	21 at the Camp?
Lima 1:	Delta from Lima 1.
Cousineau:	How many?
Lima 1:	Just <i>one</i> ambulance, and we'll get <i>it</i> rolling. Is that 10-4?
Alpha:	Lima <i>ambulance</i> is en route, <i>ambulance</i> is en route taking Ipperwash Road.

Cousineau: Okay so they've taken.

Korosec: Ambulance is en route, Mark ! We should have someone go with that ambulance, this guy we will want in custody.

CACC: Hello.

Cousineau: Hi

CACC: Yeah.

Cousineau: Okay. Apparently ah, somebody is coming out at the front of the Army Camp Base at 21 Highway.

CACC: Yeah.

Cousineau: Reporting somebody's been shot.

CACC: Okay.

Cousineau: From, so apparently somebody from down at the scene is going to come around and go to that scene, *so you're going to have to scramble one other ambulance south of the scene for coverage.*

CACC: 1146 go ahead.

Ambulance: *1146, 1145 10-8 code 4 to Base...i/a...10-4.*

CACC: *Roger up to the main entrance.*

CACC: *Yeah, they're both heading up to the Army Camp main entrance.*

Cousineau: Okay, both the ones down at the scene.

CACC: Yeah.

Cousineau: *Okay, so you're going to have to scramble a couple more down.*

CACC: Yeah, and you want them up on Ipperwash Road at the checkpoint.

Cousineau: Yes please.

CACC: Okay.

Cousineau; Okay.

CACC: Yeah.

Cousineau: Thanks. [emphasis added]

These transmissions further demonstrate that the OPP requested that the CACC replace the ambulances that had headed off to the Army Base.

- Transcript of Radio Transmission, Ex. P-1622
- Transcript of Telephone Call between R. Cousineau and Ambulance Service, Ex. P-351
- Affidavit of G. King, Ex. P-1333

171. CCO further suggests that the Strathroy Hospital personnel did not receive adequate notice of incoming patients and that the OPP bore some responsibility for such notification.

- CCO Submissions, p. 14, para. 51, p. 16, para. 62

172. As a result of the suggestion of OPP medic, Ted Slomer, the CACC called Strathroy Hospital at 10:48 p.m. to advise of the Ipperwash situation. This was approximately one hour before the ambulances arrived at the Hospital. At the time of the call, no shots had even been fired. It is difficult to imagine how additional notice would have been helpful given the unpredictability of the situation. Indeed, no hospital personnel suggested that additional notice would

have assisted them in administering care to the patients who arrived by ambulance.

- Evidence of T. Slomer, May 26, 2006, pp. 220-22
- Affidavit of G. King, Ex. P-1333

173. CCO further suggests that OPP personnel ought to have permitted hospital personnel access to Pierre George, Carolyn George and J.T. Cousins to gather information about Dudley George. Nurse Jacqueline Derbyshire explained why this was unnecessary:

A: ...So eventually we will find out what happened, but at – in the Emergency Department, we are doing what has to be done immediately. And that happens like patients that come in that have even had a heart attack and – but right away, we'll look after the patient.

After the patient is stabilized or has had all the initial treatment done, then we will go and look for a family.

Q: So, for example, whether someone was shot or not, you wouldn't want to know that when you begin to assess the patient?

A: Well, I think that the doctors do the assessment, and they knew that, and we had been told that that what's we were getting.

But was it going to make a difference to how we were treating them initially? No. [emphasis added]

- Evidence of J. Derbyshire, May 9, 2005, pp. 175-76
- CCO Submissions, p. 25, para. 6

All of which is respectfully submitted.

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