

INTRODUCTION

Public inquiries are often called in response to tragedies involving loss of life or serious harm to an individual or a community. In these circumstances, the public inquiry is often given a dual mandate. Its first mandate is to independently investigate the event in order to determine what happened and why. Its second mandate is to analyze the broader circumstances that may have contributed to the tragedy and recommend measures that may help prevent similar occurrences in the future.

The Ipperwash Inquiry had such a dual mandate. Dudley George was shot and killed by an Ontario Provincial Police officer at Ipperwash Provincial Park on September 6, 1995. The Order-in-Council establishing the Inquiry gave me the responsibility to:

1. Inquire into and report on events surrounding the death of Dudley George; and
2. Make recommendations directed to the avoidance of violence in similar circumstances.¹

Volume 1 of this report (*Investigation and Findings*) deals with my findings regarding the events surrounding the death of Dudley George. This volume contains my “recommendations directed to the avoidance of violence in similar circumstances.”

Dudley George was the first Aboriginal person to be killed in a land rights dispute in Canada since the nineteenth century. Mr. George’s death was an important reason to consider the broader issues of Aboriginal occupations and protests in detail. The circumstances of his death raise several important public policy issues which are properly the subject of public scrutiny, including the resolution of treaty and Aboriginal rights claims, the policing of Aboriginal occupations and protests and the relationship between Aboriginal peoples and the police, and the relationship between government and the police.

Until recently, some people may have believed that the events at Ipperwash were unique and unlikely to be repeated. Unfortunately, Caledonia and other recent events have demonstrated that Aboriginal occupations and protests continue to be features of the political and policing landscape in Ontario. Ipperwash and Caledonia are not isolated incidents. Aboriginal occupations and protests occur frequently.

People may also have assumed that the central controversies raised by Ipperwash were largely the allegations of political interference in policing and of police racism. There has been considerable focus on these issues in the media and in public debate, which has tended to overshadow the very significant issues around land claims and other Aboriginal issues that are at the heart of the Ipperwash story and that of so many other Aboriginal occupations and protests across Ontario and Canada. This is not to say that police/government relations or police racism are not important issues. They clearly are, and I consider both in this report. However, other issues are equally important to my Part 2 mandate.

Ipperwash is, of course, only one in a series of well-known Aboriginal occupations and protests in recent Canadian history, which includes Oka, Burnt Church, Gustafsen Lake, and Caledonia. For many non-Aboriginal Ontarians, these incidents probably evoke images of confrontation, lawlessness, and violence. Or they may suggest a seemingly intractable conflict between Aboriginal and non-Aboriginal worldviews or between “ancient history” and the practical demands of contemporary society. Most Aboriginal peoples, on the other hand, probably see these incidents as an inevitable and perhaps legitimate reaction to decades, if not centuries, of broken promises, dispossession, and frustration.

This Inquiry is the first systemic analysis of this Canadian phenomenon. Accordingly, this report considered both the roots of Aboriginal occupations and protests and the appropriate policing response to them. My recommendations are listed in Appendix A.

My analysis has convinced me that Aboriginal occupations and protests are not inevitable, nor are they inevitably violent. If I could sum up this report in a single thought, it would be this: The provincial government and other institutions must redouble their efforts to build successful, peaceful relations with Aboriginal peoples in Ontario so that we can all live together peacefully and productively. There have been significant, constructive changes in the law and to key public institutions in the twelve years since Ipperwash. Yet more is needed. We must move beyond conflict resolution by crisis management. And we cannot be passive; inaction will only increase the considerable tensions that already exist between Aboriginal and non-Aboriginal citizens in this province. Research in the course of the Inquiry showed that the flashpoints for Aboriginal protests and occupations are very likely as intense today as they were during Ipperwash, Oka, Burnt Church, or Gustafsen Lake. No one can predict where protests and occupations will occur, but I am convinced that the fundamental conditions and catalysts sparking such protests continue to exist in Ontario, more than a decade after Ipperwash. Indeed, it appears that the flashpoints for Aboriginal protests and occupations may be intensifying.

Throughout this process, I strived to identify reasonable and achievable recommendations for measures to improve the lives of Aboriginal and non-Aboriginal peoples in Ontario and to improve the governance and administration of some of our most important public institutions. The result, I hope, is a plan of action that fair-minded Ontarians can understand and support.

In the balance of this introductory chapter, I briefly discuss the mandate, process, and structure of Part 2 of the Inquiry. A more detailed description of the Inquiry process, including the Part 2 process, is found in Volume 3 of this report (*Inquiry Process*).

1.1 Issues Considered in Part 2

My Part 2 mandate was to “make recommendations directed to the avoidance of violence in similar circumstances.”

My staff and I consulted widely to help us determine which issues should be included in this potentially very broad mandate. I subsequently concluded that the Inquiry had to take into account both systemic and operational policy issues related to “the avoidance of violence in similar circumstances.” Broadly speaking, systemic issues are factors that may have led Aboriginal people to mount protests or occupations in the first place; operational issues come into play once the occupation has begun. As a result, I decided that the Inquiry should focus on three issues in Part 2: respect for treaty and Aboriginal rights, the policing of Aboriginal occupations and protests and the relationship between Aboriginal peoples and the police, and the relationship between government and the police.

1.1.1 Respect for Treaty and Aboriginal Rights

Frustration with existing land, treaty, and Aboriginal rights processes occasionally lead Aboriginal people to blockade or occupy public and private places in locations across Ontario and Canada. Several of the research papers commissioned by the Inquiry contain extensive inventories and case studies of Aboriginal occupations and protests precipitated by a dispute over treaty or Aboriginal rights.²

It is clear to me that the absence of timely, fair, and effective procedures that can be reasonably relied upon to address disputes will likely lead to more occupations and protests in the future. Incidents in the Caledonia and Big Trout Lake regions are but two recent examples pointing to a consistent trend. The risk of violence is present every time police and Aboriginal peoples confront each other in this manner, but confrontations and occupations also contribute to a continuing atmosphere of insecurity and uncertainty with respect to the lands or resources at issue.

I believe, therefore, that it is vital to consider reforms to reduce the number or risk of Ipperwash-like protests in the future, to reduce uncertainty, and to improve relations between Aboriginal and non-Aboriginal peoples for the benefit of all Ontarians.

Because this is a provincial inquiry, the Inquiry necessarily focused on the role and responsibilities of the provincial government. Nevertheless, where I believe it to be appropriate, I comment on the role and responsibilities of the federal government in this report. The federal government chose not to participate in this Inquiry despite several requests that they do so.

1.1.2 The Policing of Aboriginal Occupations and Protests and the Relationship between Aboriginal Peoples and the Police

The mandate of the Inquiry to make recommendations to avoid violence in similar circumstances obviously raises questions about police objectives, strategy, and practices related to policing protests, particularly Aboriginal occupations and protests. I have been very mindful of post-1995 developments in these areas. There have been considerable changes in policies with respect to the policing of Aboriginal occupations and protests and the relationship between Aboriginal peoples and the police in the last twelve years, and I describe and comment on those changes in this report.

1.1.3 The Relationship between Police and Government

The third major issue I consider is police/government relations. The Ipperwash Inquiry is the fifth major Canadian public inquiry in the last twenty-five years to consider this issue in detail.³ I consider this issue both in general and in the context of the specific dimensions of policing Aboriginal occupations and protests.

Most of this report is devoted to these three issues, but I also address a number of important issues that are necessarily related to them.

1.2 Process

I adopted four principles to govern the process and deliberations in the Inquiry: thoroughness, expedition, openness, and fairness.

Very early in the Inquiry process, I decided that Part 2 needed a policy-development process, not a legal process, to meet its substantive objectives. Evidentiary hearings like those in Part 1, and their attendant formal legal procedures, could not provide the coordinated, multidisciplinary, participatory, and systemic analysis of the issues which this part of Inquiry required. Thus, the

Inquiry used a wide range of public policy tools in Part 2 (including research papers, consultation forums, and other resources, as discussed below) rather than formal, evidentiary hearings.

Part 2 of the Inquiry proceeded at the same time as Part 1 did. Conducting the Inquiry in this manner had many advantages. Most significantly, it promoted better integration and sharing of information between the two parts of the Inquiry. Conferences, meetings, or other Part 2 events were scheduled on non-hearing days so that I and other Inquiry participants could attend them.

1.2.1 Part 2 Research, Consultations, and Forums

In large part, Part 2 of the Inquiry was based on an ambitious and innovative research and consultation plan, designed to generate sophisticated yet accessible research on the relevant issues and to promote debate.

The foundation for the research and consultation plan was the more than twenty high-quality research papers commissioned by the Inquiry from experts across the country. These papers include many significant and original contributions to the body of knowledge in the fields they explored. For example, our research included the first comprehensive analysis in Canada that compared and contrasted Aboriginal land, treaty, and rights disputes across the country and the policing issues related to them. The Inquiry organized public consultations or expert roundtables on most of the papers.

These background papers contributed significantly to my understanding of the issues and I refer to them extensively in this report. They are available on the Inquiry website and on the compact disc released with this report, and I recommend them to anyone interested in learning more about these issues. A list of background papers commissioned by the Inquiry is found in Appendix B.

The Inquiry also organized many original and unique Part 2 events, on our own and in partnership with others, including the following:

- The “Ippeewash Inquiry/Osgoode Hall Law School Symposium on Police/Government Relations” in partnership with Osgoode Hall Law School
- An “Emergency Medical Procedures” roundtable in partnership with the Office of the Chief Coroner of Ontario.
- A two-day “Indigenous Knowledge Forum” to explore the differences between Anglo-Canadian and Aboriginal knowledge and to promote understanding of Aboriginal history and traditions

- A one-day community-based “Youth and Elder Forum” with Aboriginal youth and Elders to seek their views on police/Aboriginal relations and policing practices
- The “Evening with the Commissioner,” a town hall public meeting in Thedford, Ontario with residents of the Forest/Lambton Shores community

A complete list of Part 2 events is found in Appendix C.

The Inquiry also cosponsored special two-day sessions organized by the Ontario Provincial Police (OPP) and the Chiefs of Ontario. The OPP session, entitled “Aboriginal Initiatives: Building Respectful Relationships,” presented important initiatives in policing Aboriginal occupations, First Nations policing, and Aboriginal/OPP relations. The Chiefs of Ontario session, entitled “Special Assembly with the Ipperwash Inquiry,” presented the Chiefs’ perspectives on systemic issues affecting First Nations in Ontario.

Finally, the Inquiry produced summaries, DVDs, or webcasts of almost all Inquiry-hosted consultations and panel discussions. Most of these materials were posted on the Inquiry website.

I strongly believe that the background research papers and the record of our consultations and forums will be an important legacy for teachers, students, policy-makers, and the public at large, for years to come.

1.2.2 Part 2 Standing and Funding

The test for Part 2 standing was set out in sections 58–60 of our Rules of Procedure and Practice.⁴ Rule 58 stated the following:

Persons or groups may be granted standing by the Commissioner for Part II of the Inquiry if the Commissioner is satisfied that:

- a) they are sufficiently affected by Part II of the Inquiry; or
- b) they represent distinct ascertainable interests and perspectives essential to the discharge of his mandate in Part II, and which the Commissioner considers ought to be separately represented before the Inquiry. In order to avoid duplication, groups of similar interests are encouraged to seek joint standing.

The Inquiry received thirty-five applications for standing in Part 2. I heard the standing applications, in Forest, from April 20 to 23, 2004. My Ruling on Standing and Funding, issued on May 7, 2004, granted Part 2 standing to twenty-six parties, including several parties also granted standing in Part 1.⁵

Parties with Part 1 and Part 2 Standing

1. Aazhoodena and George Family Group
2. Aboriginal Legal Services of Toronto
3. Charles Harnick
4. Chief Coroner
5. Chiefs of Ontario
6. Chippewas of Kettle and Stony Point First Nation
7. Estate of Dudley George
8. Marcel Beaubien
9. Michael Harris
10. Municipality of Lambton Shores
11. Ontario Provincial Police
12. Ontario Provincial Police Association
13. Province of Ontario
14. Residents of Aazhoodena
15. Robert Runciman

Parties with Part 2 Standing Only

16. Aboriginal Peoples Council of Toronto
17. African Canadian Legal Clinic
18. Amnesty International
19. Canadian Civil Liberties Association
20. Centre Ipperwash Community Association
21. Chippewas of Nawash Unceded First Nation
22. Law Union
23. Mennonite Central Committee Ontario
24. Nishnawbe-Aski Police Services Board

25. ONFIRE

26. Union of Ontario Indians

Part 2 standing entitled a person or organization to receive the research papers of the Inquiry, participate in Inquiry consultations, and apply for project and participation funding.

In accordance with the Order-in-Council, I made recommendations to the Attorney General on funding for parties with Part 2 standing “to the extent of the party’s interest, where the party would not otherwise be able to participate in the Inquiry without such funding.”⁶

Part 1 funding was essentially for counsel to represent parties in the evidentiary hearing process. For Part 2, two types of funding were available:⁷

- Project funding to undertake research, prepare submissions, organize meetings, and for other relevant projects
- Participation or disbursement funding to help parties participate in Part 2 consultations and panel discussions

Parties requesting funding were required to submit detailed proposals describing their projects and demonstrating relevance to the Part 2 mandate. I reviewed the proposals and made recommendations to the Attorney General of Ontario. The Attorney General then considered my recommendations and decided whether to grant funding. The Attorney General accepted all of my recommendations.

In general, I believe that the Part 2 parties worked well with me and with Inquiry staff. Their contribution to the Inquiry was significant and considerably assisted my understanding of the issues.

1.2.3 Projects of the Parties

A number of parties with Part 2 standing applied for and received funding for specific projects. The purpose of project funding was to provide resources to parties to assist them in preparing submissions, undertaking research, organizing meetings or consultations, or in carrying out other relevant projects that advanced the objectives of Part 2 and assisted the Inquiry in fulfilling its mandate. Two parties, the OPP and the Government of Ontario, undertook many projects for the Inquiry without applying for specific funding.

The projects undertaken by the parties addressed a broad range of topics and perspectives and they are an important part of the research legacy of the Inquiry. Like the background papers, they contain many significant and original contributions to the body of knowledge in their fields and they contributed significantly

to my understanding of the issues. A list of projects submitted to the Inquiry is found in Appendix D.

The OPP, the Chiefs of Ontario, and the Government of Ontario also prepared extensive and helpful materials in response to specific requests by the Inquiry.

Like the commissioned research papers, the written reports submitted to the Inquiry by parties are available on the Inquiry website and on the compact disc released with this report, and I recommend them to anyone who is interested in learning more about these issues.

1.2.4 Public Participation

I considered it important to give parties with Part 2 standing and interested members of the public a meaningful and ongoing opportunity to participate in Part 2 events or proceedings. I tried to ensure that the parties and public had every reasonable opportunity to participate in our process, or at least be aware of what we were doing.

The starting point for our public participation strategy was the Inquiry website. All of our background papers, party projects, and submissions were posted on the website. We also posted summaries, DVDs or webcasts of almost all Inquiry-hosted consultations and panel discussions.

In addition to parties with Part 2 standing, we invited interested individuals or stakeholder organizations to many of our Part 2 meetings. We issued press releases for most events, and also advertised some meetings in the media.

Several organizations outside the Inquiry process also provided very valuable research or support to the Inquiry, including the Royal Canadian Mounted Police.

Finally, Part 2 staff attended or spoke at several public meetings or conferences over the course of the Inquiry to promote understanding of the work of the Inquiry.

1.3 Research Advisory Committee

I appointed a Research Advisory Committee (RAC), composed of leading academics and practitioners, to assist me in identifying research topics and to provide ongoing advice and support to the Inquiry. The role of the RAC was to advise and assist the Inquiry, but not to determine the recommendations or the process.

Over the course of the Inquiry, the RAC provided invaluable advice and assistance, both as individuals and as a group. The content of this report has been immeasurably enhanced through their involvement, and I want to thank each of them for their indispensable contributions:

Professor Darlene Johnston

Professor Johnston joined the Faculty of Law at the University of Toronto in 2002 as an Assistant Professor and Aboriginal Student Advisor. Her teaching areas include Aboriginal Law and Property Law and some of her research focuses on the relationship between totemic identity, territoriality, and governance.

Mr. Wally McKay

Mr. McKay is from Sachigo Lake First Nation. He has over thirty years' leadership experience, including terms as Grand Chief of Nishnawbe Aski Nation and Ontario Regional Grand Chief. Mr. McKay is a consultant specializing in First Nations governance and policing issues. He is also a member of the OPP Commissioner's Select Liaison Council on Aboriginal Affairs, among other appointments.

Mr. Philip Murray

Mr. Murray was Commissioner of the RCMP between 1994 and 2000. He retired in September 2000. Mr. Murray holds a Bachelor of Business Administration and a Certificate in Personnel Administration from the University of Regina. He is a graduate of the Canadian Police College Advanced Police Studies Program. He is also a graduate of the National Executive Institute of the United States Federal Bureau of Investigation (FBI). Mr. Murray served with the RCMP for thirty-eight years. He has broad experience in operational policing and management, progressing from a uniformed peace officer to the most senior position of Commissioner of the RCMP.

Professor Kent Roach

Professor Roach is a professor of law and criminology at the University of Toronto. He holds degrees in law from Yale and the University of Toronto, and a degree in political science and history from University of Toronto. He served as research director for the Ontario Law Reform Commission Project on Public Inquiries, and as Dean of Law at the University of Saskatchewan. Frequently, he has appeared before the Supreme Court of Canada as counsel for a number of public interest groups, acting pro bono.

Mr. Jonathan Rudin

Mr. Rudin was the co-author and researcher of the Royal Commission on Aboriginal Peoples report on criminal law, *Bridging the Cultural Divide*.⁸ He is the Program Director at Aboriginal Legal Services of

Toronto, where he assisted with the development of the Community Council Program and the Gladue (Aboriginal Persons) Court at the Toronto Old City Hall courthouse.

Professor Peter Russell, O.C.

Professor Russell taught political science at the University of Toronto from 1958 to 1996, specializing in judicial, constitutional, and Aboriginal politics. He is a past President of the Canadian Political Science Association and an Officer of the Order of Canada. He is the author of *The Judiciary in Canada: The Third Branch of Government, Constitutional Odyssey: Can Canadians Become a Sovereign People?* and co-editor of *Judicial Power and Canadian Democracy*. His book on the Mabo case and Indigenous decolonization was published in 2005.⁹

The RAC also included two members who had to withdraw from the committee for personal reasons: Mr. Earl Commanda and Ms. Tonita Murray. Mr. Commanda is from Serpent River First Nation and is a former Grand Chief of the Union of Ontario Indians. Ms. Murray is a former Director General of the Canadian Police College and Director of the Police Futures Group, a policy think-tank on policing associated with the Canadian Association of Chiefs of Police.

1.4 Part 2 Team

Nye Thomas, Director of Policy and Research, led the Part Two team for the Inquiry. Under his thoughtful stewardship, the Inquiry isolated and thoroughly explored the many complex issues of relevance to the policy component of my mandate. Mr. Thomas brought his extensive policy and research background to our work, and I am particularly grateful for his assistance in helping to prepare this volume of my report.

Mr. Thomas's legal credentials, his knowledge of the workings of government, and his significant experience in research, policy development, consultation, and report-writing (notably, the skill and experience he gained in crafting the 1999 blueprint published by Professor John McCamus on the future of legal aid in Ontario) were ideally suited to shaping and executing the policy research agenda for this Inquiry. His skill and energy allowed him to "hit the ground running" to move the Inquiry forward.

Mr. Thomas was supported by policy counsel Noelle Spotton and part-time policy advisor Jeffrey Stutz. Ms. Spotton and Mr. Stutz brought considerable experience, knowledge, and sensitivity to the issues requiring attention and analysis.

1.5 The Research Legacy of the Inquiry

I believe that public inquiries have a responsibility to ensure that their reports and research materials continue to be accessible to the public, organizations, researchers, students, and policy-makers. These materials represent an important research legacy, which is likely to outlive the initial release of the report and the immediate public comment on it. Accordingly, my staff and I will ensure that this report and its background documents are distributed widely. Our website (<<http://www.ipperwashinquiry.ca>>) will remain active for a period after the release of the report.

1.6 Organization of This Volume

This volume begins with a brief history and analysis of Aboriginal occupations and protests. Thereafter, it is organized thematically into three broad policy areas: treaty and Aboriginal rights, policing and Aboriginal peoples, and police/government relations.

The treaty and Aboriginal rights section includes chapters on settling land claims, natural resources, Aboriginal burial and heritage sites, education about Aboriginal peoples, and institutional arrangements to support the reforms I have recommended.

The policing and Aboriginal peoples chapters examine the policing of Aboriginal protests, First Nations policing, and bias-free policing.

The section on police/government relations analyzes this issue in detail, with particular emphasis on police/government relations during a critical incident involving Aboriginal people.

Each major topic area begins with an introduction and a brief summary of the relevant lessons from Ipperwash.

References to Inquiry Documents in This Volume

Research Papers Commissioned by the Inquiry

A list of all of the research papers commissioned by the Inquiry is found in Appendix B. All of these papers are available on the Inquiry website at <http://www.ipperwashinquiry.ca/policy_part/research/index.html>. They are also available on the Inquiry CD released with this report. These papers are cited as “Inquiry research paper.”

Inquiry Events

A list of Inquiry meetings, symposia, and training events is found in Appendix C. Notes, summaries, and other records of these events are available at the Inquiry website at <http://www.ipperwashinquiry.ca/policy_part/meetings/index.html>. These events are cited as “Inquiry event.”

Projects of the Parties

A list of all of the projects prepared by the parties to the Inquiry is found in Appendix D. All of the reports on these projects are available on the Inquiry website at <http://www.ipperwashinquiry.ca/policy_part/projects/index.html>. They are also available on the Inquiry CD released with this report. These papers are cited as “Inquiry project.”

Submissions by the Parties

The written closing submissions of the parties are available on the Inquiry website at <http://www.ipperwashinquiry.ca/closing_submissions/index.html>. Reply submissions are available at <http://www.ipperwashinquiry.ca/closing_submissions/replies/index.html>.

Testimony at the Hearings

Hearing transcripts are available on the Inquiry website at <<http://www.ipperwashinquiry.ca/transcripts/index.html>>.

Endnotes

- 1 See Appendix 1 (“Order-in-Council”), vol. 3: *Inquiry Process* of this report [Order-in-Council].
- 2 The precise number and frequency of Aboriginal disputes is difficult to determine, but they are quite common. Several of the research papers prepared for the Inquiry include inventories or examples of Aboriginal occupations and protests, including: John Borrows, “Crown and Aboriginal Occupations of Land: A History & Comparison;” Don Clairmont and Jim Potts, “For the Nonce: Policing and Aboriginal Occupations and Protests;” and Jean Teillet, “The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario.”
- 3 The McDonald Commission, the APEC Inquiry, Marshall Commission, and the Arar Commission all discussed police/government relations. I discuss these reports in chapter 12.
- 4 See Appendix 2 (“Rules of Procedure and Practice”), vol. 3: *Inquiry Process* in this report [the Rules].
- 5 By way of contrast, I granted standing to seventeen parties in Part 1. I originally granted standing to twenty-seven parties in Part 2, but one withdrew from the Inquiry.
- 6 Order-in-Council, section 6.
- 7 See Appendix 13(a) (“Commissioner’s Ruling on Standing and Funding, May 24, 2004”), vol. 3: *Inquiry Process* in this report. See also #62 in the Rules.
- 8 Canada. Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Royal Commission on Aboriginal Peoples, 1996).
- 9 Peter H. Russell, *Recognizing Indigenous Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism* (Toronto: University of Toronto Press, 2005).