

PRIMER ON ABORIGINAL OCCUPATIONS

Aboriginal occupations and protests are often poorly understood or misidentified. The Ipperwash Inquiry is the first systemic study of causes, prevention, and policing related to these events. This section is therefore intended to provide the context necessary for understanding the analysis and recommendations that follow. Subsequent chapters deal with many of the issues raised here in more detail.

Aboriginal occupations and protests can be large or small, short or long, peaceful or violent. They occur in urban areas, rural areas, and in the remote north. Members of the Mohawk, Anishnabek, Cree, and many other First Nations have initiated them. Nevertheless, there are enough similarities among them to identify many systemic features and characteristics. Most importantly, Aboriginal occupations and protests often have systemic roots or catalysts.

The immediate catalyst for most major occupations and protests is a dispute over a land claim, a burial site, resource development, or harvesting, hunting, and fishing rights. The fundamental conflict, however, is usually about land. Contemporary Aboriginal occupations and protests should therefore be seen as part of the centuries-old tension between Aboriginal peoples and non-Aboriginal peoples over the control, use, and ownership of land.

The frequency of occupations and protests in Ontario and Canada is a symptom, if not the result, of our collective and continuing inability to consistently resolve these tensions. This means that Aboriginal occupations and protests are very likely to continue until we design institutions or implement processes that can resolve these issues more effectively. The Chiefs of Ontario told the Inquiry very plainly that “[u]ntil the fundamental issues that give rise to conflict are resolved, future protests are a certainty.”¹

2.1 Why Do Aboriginal Peoples Occupy Land and Blockade Roads?

Why do Aboriginal peoples occupy land and blockade roads? Professor John Borrows answers this question simply and eloquently:

Aboriginal peoples have a pre-occupation. It is *of* land. They occupied land in North America prior to others arrival on its shores. Over the past two-hundred and fifty years Aboriginal peoples have been

largely dispossessed of their lands and resources in Canada. This dispossession has led to another Aboriginal pre-occupation. It is *with* land. It is crucial to their survival as peoples. Its loss haunts their dreams. Its continuing occupation and/or re-occupation inspires their visions.

Aboriginal peoples regard their traditional lands as sacred; it is integral to their culture and identity. They want to continue living on territories that have sustained them for thousands of years. Yet the Crown now claims occupation of traditional Aboriginal lands. When the Crown claims more land, this leads to conflict. Aboriginal peoples desire to hold onto their lands and resources to be more productive and preserve their ancient relationships. They struggle to resist further removal from their territories. They do not want the size of their territories further diminished . . . ²

...

Aboriginal peoples resist other's occupation of lands without their consent because it threatens their political, economic and cultural survival.³

Professor Borrows tells us that Aboriginal peoples often try to maintain their lands though the continued occupation or reoccupation of significant sites. He says that Aboriginal peoples engage in civil disobedience as a response to the perceived or real loss of lands and/or resources. He notes, however, that Aboriginal peoples have sometimes engaged in occupations, reoccupations, and civil disobedience to influence the allocation of resources even if no land, resource, or treaty right was involved. He concludes that "[t]his form of resistance or insistence usually only occurs if other avenues of relief are exhausted."⁴

The core of Professor Borrows's argument and conclusion was reiterated, over and over again, by parties with standing at the Inquiry, Aboriginal organizations, police services, our background researchers, and in many reports pre-dating this Inquiry:

[T]he province of Ontario (and Canada) has been slow to resolve the underlying issues regarding First Nations' access to lands and resources. Unless and until these issues are addressed to the satisfaction of all parties, future conflict is inevitable.⁵

Chiefs of Ontario

In the OPP's view, there is no greater imperative than to ensure that the resolution of Aboriginal treaty and rights claims is timely, fair and well-resourced. Frustration with existing processes has overwhelmingly been shown to be a significant catalyst for occupations, blockades and other protests.⁶

Ontario Provincial Police

[Direct action] signals a new approach by leadership, traditional land practitioners and people in general. The government processes that have manipulated the treaty and aboriginal rights of First Nations have totally exasperated the patience and goodwill of First Nations. The price of doing nothing is too costly to First Nations. The cost to First Nations is to live in continual abject poverty, high mortality rate, declining health status and a hopeless future. The new approach is a wake up call to governments, private sector and public at large that First Nations will not tolerate marginalization while society continues to experience wealth from their resources.⁷

Nishnawbe-Aski Police Services

The fact that there are Aboriginal disputes is, to put it quite simply, indisputable. The fact that such disputes have been a feature of the history of Ontario from its inception is also indisputable. The reason for these Aboriginal rights disputes is simple to identify. Aboriginal peoples resist dispossession from their lands and resources.⁸

Jean Teillet

Aboriginal peoples have not been simply the passive victims of this process. They have used any means at their disposal to halt the relentless shrinkage of their land base. From an Aboriginal perspective, treaties were one means to that end. But Aboriginal people insist that the Crown has failed to uphold those agreements and has generally broken faith with them. And since the nineteenth century, they have continuously protested — to government officials, to parliamentary inquiries, and in the courts — what they see as the resulting inequity in the distribution of lands and resources in this country ... [C]onflict over lands and resources remains the principal source of friction in relations between Aboriginal and other Canadians. If that friction is not resolved, the situation can only get worse.⁹

Royal Commission on Aboriginal Peoples

I discuss the catalysts or flashpoints for land or treaty-based Aboriginal occupations and protests in detail in chapters 3, 4, 5, and 6. In chapters 9, 10, 11, and 12, I consider a range of policing issues and measures to reduce violence once an Aboriginal occupation or protest has begun.

2.2 Aboriginal Occupations and Protests in Context

Land and resources have been allocated between and among Aboriginal and non-Aboriginal peoples in the territory now known as Canada for more than 400 years. Over this period, Aboriginal and non-Aboriginal peoples have used occupations and protests to trigger the transfer of land and resources from one community to another. The historical record shows, however, that non-Aboriginal peoples have used such measures to secure lands and resources to much greater effect than Aboriginal peoples:

Land has passed from Aboriginal peoples to other Canadians through non-Aboriginal blockades and physical occupation. Sometimes treaties preceded non-Aboriginal occupation of land. Treaties attempted to secure the consent of Aboriginal peoples for non-Aboriginal settlement of land and resource use. At other times non-Aboriginal people occupied Aboriginal territories without Aboriginal treaties or consent. In such cases non-Aboriginal peoples might blockade Aboriginal access to important sites and refuse to leave until the government secured non-Aboriginal claims through treaty or some other act. The historic use of occupations and blockades by Aboriginal and non-Aboriginal peoples has significant consequences for the allocation of land and resources today.¹⁰

Professor Borrows also reminds us that efforts by non-Aboriginal peoples to undermine Aboriginal peoples' use of their lands are prevalent throughout Canadian history:

Despite Aboriginal usage and English law recognizing this usage, there have been many attempts to undermine Aboriginal peoples' occupation of their lands. As noted by the Supreme Court of Canada in 1990: "For many years, the rights of the Indians to their aboriginal lands — certainly as legal rights — were virtually ignored." Unfortunately, for many Aboriginal peoples, this pattern has continued, despite fifteen years of political and legal action. Without recognition, Aboriginal peoples were and are removed from their lands in many ways.

Aboriginal political, economic and cultural power is disrupted to make it easier for non-Aboriginal peoples to strengthen their claims over Aboriginal lands. To assist in their removal, some non-Indigenous peoples have regarded Aboriginal occupation of land as unworthy of recognition or protection. Legal theories often diminish Aboriginal land holdings and deny Aboriginal ownership. Historically the Crown, Courts, Parliaments and Legislatures applied versions of these theories to discount Aboriginal rights to land and resources. These historic presumptions continue to undermine Aboriginal peoples' occupation of their territories in the present day.¹¹

2.2.1 How Many Are There?

Aboriginal occupations and protests are much more common than most non-Aboriginal Ontarians likely realize. Most people in the province have probably heard of Ipperwash, Oka, and Caledonia. A smaller number of people may have heard of Burnt Church or Gustafsen Lake. It is fair to conclude, however, that only Aboriginal peoples are likely to truly appreciate how prevalent Aboriginal occupations and protests are in this province and in Canada.

Despite their frequency and importance, reliable statistics on Aboriginal occupations and protests are hard to find, and it is difficult to determine exactly how many Aboriginal occupations and protests have occurred in Canada. One researcher reports that there were roughly 100 incidents between 1968 and 2000.¹² Another researcher, using a much broader definition, found 616 incidents or actions between 1951 and 2000.¹³ These researchers relied primarily on media reports in the mainstream and Aboriginal media. Both researchers found occupations and protests beginning in the late 1960s, growing steadily in the 1970s, skyrocketing in the mid-1980s to 1990, entering a quieter period in the 1990s, and then increasing again in the late 1990s.¹⁴ The analysis of occupations and protests would benefit considerably if there were a single database or source of reliable historical information about the number, type, and outcome of Aboriginal occupations and protests across the country.

The OPP reported to the Inquiry that it has dealt with more than 100 "Aboriginal critical incidents" since Ipperwash in 1995. Of this total, blockades "represent a significant number of the incidents."¹⁵

2.2.2 Types of Occupations and Protests

Aboriginal occupations and protests can take place in rural, remote, or urban areas. They can be intra-band or directed externally, and focused on specific

issues or general issues. It is also possible to distinguish occupations and protests by the level or type of police response. Intra-band occupations that involve few or no outsiders, have little impact outside the community, and are narrowly focused represent the low end of the scale of police intervention. At the other end of the spectrum are occupations and protests like Burnt Church, Oka, and Caledonia, which involve intensive use of police resources.

2.2.2.1 Intra-Band Occupations and Protests

In their fieldwork, Inquiry researchers Professor Don Clairmont and retired RCMP Inspector Jim Potts found that most occupations and protests were intra-band incidents, engaging the federal Department of Indian and Northern Affairs but few other government agencies. These incidents tended to be concerned with intra-band issues such as reserve elections or the allocation of band resources or benefits. This type of occupation and protest was usually very low key. These researchers also found a second, less common, type of intra-band occupation or protest, undertaken to challenge band policies or agreements on resource development. They concluded that this second type of occupations or protests had greater “disruptive potential” because they were frequently accompanied by claims that individual native rights had been violated. The persons interviewed by Professor Clairmont and Inspector Potts generally agreed that intra-band occupations and protests, regardless of type, were the basic prototype for Aboriginal occupations and protests.

Intra-band occupations and protests are significant for the individuals and communities involved, and they should never be minimized or ignored by governments or the police. Although the impact of intra-band occupations and protests tends to be localized or specific to a particular First Nation or community, very often they are catalysts for, or at least components of, more widespread or far-reaching occupations and protests. Most observers would attribute the occupation at Caledonia, in part, to intra-band disputes.

2.2.2.2 Major Occupations and Protests

The primary focus of this Inquiry was on major or far-reaching occupations or protests. Major occupations and protests are directed toward mainstream governments or institutions. These include the most widely known incidents such as Ipperwash, Caledonia, Burnt Church, Oka, and Gustafsen Lake. They also include less widely known, but still significant, regional protests such as the highway and railway blockades in British Columbia and Manitoba, protests to demonstrate solidarity with other communities, such as the protest by Tyendinaga

Recent Major Aboriginal Occupations and Protests in Canada

(Dates and locations are approximate.)

- Anishinabe Park (northern Ontario, 1974)
- Moresby Island, Queen Charlotte Islands (British Columbia, mid-1980's)
- Algonquins of Barriere Lake (Ontario, 1988-89)
- Lubicon Cree (Alberta, 1988)
- Temagami Anishinabe (northern Ontario, 1988)
- Oka/Kanesatake (Ontario/Quebec, 1990)
- Lillooet, Mount Currie Band (1990-91)
- Peigan Lonefighters Society (Alberta, 1991)
- James Bay Cree (Quebec, 1991-92)
- Chippewas of the Nawash (southern Ontario, 1992-93)
- Revenue Rez (Toronto, 1994-95)
- Gustafsen Lake (British Columbia, 1995)
- Ipperwash (southern Ontario, 1993-)
- Clayoquot Sound (British Columbia, 1985-1993)
- Constance Lake (northern Ontario, 1997)
- Burnt Church (Nova Scotia, 1999-2000)
- Sun Peaks (British Columbia, 2000-)
- South-West Nova Fishing protest (Nova Scotia, 1999-2000)
- Days of Rage Protest (Akwesasne, Ontario, 2001)
- Aroland First Nation blockades (northern Ontario, 2001-2003)
- Red Hill Valley Occupation (Hamilton, Ontario, 2002-2004)
- Grassy Narrows (northern Ontario, 2003-Present)
- Kitchenuhmaykoosib Inninuwug First Nation (northern Ontario, 2006)
- Caledonia (Southern Ontario, 2006-)

warriors in support of the Caledonia protesters, and protests in remote parts of the province or country that raise significant legal, economic, or land issues.

Professor Borrows and others confirm that land and treaties are the central sources for these incidents. There are multiple and complex reasons for each dispute, but most of the examples cited in the Inquiry research papers and submissions point to three major catalysts: land claims, natural resources regulatory regimes, and the actual or potential desecration of Aboriginal burial grounds and other sacred sites.

Some of the major Aboriginal occupations and protests in Canada in the last twenty years or so, as compiled from our research papers, submissions to the

Inquiry, and publicly available media and research, are shown in the table. The list is not exhaustive, but it demonstrates the persistence and geographic range of occupations and protests. Occupations and protests often continue for long periods, and the barricades may rise and fall several times. The larger disputes that trigger an occupation or protest often precede the event by years or decades.

Again, this is by no means an exhaustive list. For example, Professor Clairmont and Inspector Potts report that there have been “numerous” occupations and protests in the lower mainland and upper Fraser Valley of British Columbia, in northern Manitoba, in the Elsipogtog region of New Brunswick, and in south-west Nova Scotia.¹⁶ There have even been occupations and protests on the Gardiner Expressway in Toronto, and a forty-five-day occupation of a Revenue Canada office in Toronto in 1994-95.

As noted earlier, the OPP reports that blockades represent a significant number of the more than 100 Aboriginal critical incidents it has dealt with since 1995. Examples include a protest where a local Aboriginal group entered a provincial park to assert hunting rights, a blockade on a bridge to show support for Aboriginal people in Burnt Church, and a highway and railway track blockade to protest the shipment of garbage to Northern Ontario.

Aboriginal occupations and protests can vary considerably in duration. Some last only a few hours; others last for weeks, months, or even years. The protest at Oka, for example, lasted seventy-eight days. The standoff at Gustafsen Lake lasted for thirty-one days. By the time this report is released, the protest at Caledonia will have lasted for one year. Some occupations and protests have continued, with various levels of intensity, for longer than that.

Major occupations and protests do not necessarily involve the police. The significance and nature of the police response to occupations and protests varies considerably, depending upon the type of protest and the issues involved. For example, the police response to many intra-band occupations and protests is often to simply monitor the situation and quietly keep the peace. The second type of intra-band occupation or protest discussed above typically has a more intensive police response because of its potential to escalate.

The police response can vary widely even to major occupations and protests. Some very significant occupations and protests have had very little police involvement. The protest at Kitchenuhmaykoosib Inninuwug First Nation (Big Trout Lake), for example, could have very significant implications for resource development across Northern Ontario. To date, however, there has not been a very significant police role. The police response itself, therefore, is by no means the only indicator of the significance or impact of an Aboriginal occupation or protest.

2.2.3 Are Aboriginal Occupations and Protests Violent?

Images of Aboriginal occupations and protests often include disturbing scenes of real or presumed violence. Scenes of masked warriors standing behind barricades, dressed in military fatigues, with stacks of smoking tires in the background, very often characterize the media coverage of major Aboriginal occupations and protests. Many Canadians will no doubt remember the most enduring image from the Oka crisis in 1990: the face-to-face stand-off between Canadian Armed Forces Private Patrick Cloutier and Mohawk Warrior Brad “Freddy Krueger” Larocque.

Violence against persons and property does occur in the course of some Aboriginal occupations and protests. There have been at least two fatalities: Sûreté du Québec Corporal Marcel Lemay died at Oka and Dudley George died at Ipperwash.¹⁷ There were also hundreds of injuries to protesters, police officers, and military personnel at Oka, and serious injuries to occupiers and police at Ipperwash. Other occupations and protests have also included serious acts of violence to individuals and/or property. At Gustafsen Lake, the police fired thousands of gunshots. There was considerable property damage at Burnt Church, and in the confrontation in and around Owen Sound regarding the fishing rights of the Chippewas of Nawash, to name but a few incidents. The dispute at Caledonia has also seen considerable property damage, including blockades, the destruction of roads and a bridge, vandalism to electrical facilities, and thefts. There have also been a number of physical assaults and serious criminal charges have been laid. It is important to note, however, that both Aboriginal and non-Aboriginal people have been perpetrators and victims of physical injury and property damage. Both Aboriginal and non-Aboriginal people have been killed or hurt or have seen their property vandalized or destroyed in Aboriginal rights disputes.

Notwithstanding these incidents, Professor Clairmont and Inspector Potts report that Aboriginal occupations and protests in Canada over the past fifty years have been notable in their low levels of actual violence.¹⁸ Our analysis of the extensive case studies included in our background papers and in the submissions by parties with Part 2 standing supports this observation.

Thus, while it is important to acknowledge the tragic deaths of Dudley George and Marcel Lemay, and the significant injuries and property damage that have sometimes accompanied Aboriginal occupations and protests, it is also important to point out that, based on the evidence we have seen, violence seldom occurs.

In my view, violence against persons or property is always unacceptable. If the risk of violence is to be reduced effectively, it has to be identified and managed constantly, especially given that the potential for violence is present in every confrontation between police and Aboriginal people. Ipperwash is a sobering

example of an initially peaceful occupation that suddenly turned into a tragedy, to the stunned disbelief of almost everyone.

2.2.4 How Are They Different from Other Protests?

Aboriginal protests and occupations undoubtedly share many of the characteristics and dynamics of other public order events such as labour disputes, political demonstrations, or environment-related sit-ins and blockades. I consistently heard, however, that the law and context applicable to Aboriginal protests is fundamentally different, and they therefore form a unique and discrete category. The following are some of the major differences:

- The issues and the legal context in Aboriginal protests are different from labour or political disputes. The roots of Aboriginal protests lie in treaty and Aboriginal rights, which can date back hundreds of years and are very often protected by the Canadian Constitution.
- There is a history of very difficult relations between police and Aboriginal people, making it difficult to establish trust between police and protesters.
- Unlike most other public order incidents, Aboriginal protests often occur in areas far removed from urban centres.
- A greater number of parties tend to be involved in Aboriginal occupations and protests. In addition to Aboriginal peoples, both the provincial and federal governments may be involved, as well as municipalities, the media, non-Aboriginal third parties, and/or several police forces or other enforcement agencies.
- The potential duration of Aboriginal occupations and protests is longer than that of most public order events. Many Aboriginal protests span days, weeks, or months.
- Aboriginal occupations and protests probably have greater escalation potential than non-Aboriginal occupations and protests because of the solidarity among Aboriginal peoples across the province and country. Protests to show support are common.
- Aboriginal protests and occupations may require intervention by the federal and provincial governments. This is because Aboriginal protests and occupations very often raise public policy and legal issues beyond the scope and authority of police forces and public order policing.

2.2.5 *Are They Effective?*

It is fair to ask whether Aboriginal occupations and protests achieve their objectives, but it is not an easy question to answer. Success or failure is often difficult to determine, even in the case of specific, time-limited incidents. Moreover, an occupation or protest may have both multiple objectives and complex results:

[The] fact that they [occupations and protests] end in peace or violence does not necessarily indicate that they were a failure or a success. There could be larger objectives behind an occupation or blockade indicative of success.¹⁹

There have been several cases where an occupation or protest has resulted in a transfer of land to the protesting First Nation. In 1997, the federal government purchased the land at the centre of the 1990 Oka occupation and blockade and turned it over to the Mohawks for the purpose of expanding their burial ground. While this piece of land was only a small part of the Mohawks' much larger land claim, it had both practical and symbolic importance. In 1992, the Chippewas of Nawash Unceded First Nation occupied an unceded burial ground within the city limits of Owen Sound, on which a housing development had been built, to protest the desecration of their ancestral burial site. In the end, the houses were removed from the burial site, the site was re-consecrated, and the federal government compensated the homeowners.

These examples notwithstanding, most Aboriginal occupations and protests have not resulted in the transfer of lands to the protesting community.²⁰ However, it is too simplistic to evaluate the success or failure of an Aboriginal occupation on the sole basis of whether land was transferred. In many cases, if not most, the protesters were also seeking to *prevent* something from happening to the land, including resource development generally or development that excludes Aboriginal peoples specifically. Or the occupation or protest may have wider or larger political objectives, including raising the profile of an issue or claim or pressuring governments or others to negotiate or recognize a dispute. Nor can we underestimate the importance to individuals and communities of using protest and direct action as a means (or expression) of self-determination. On these grounds, it can be argued that Aboriginal occupations and protests are often successful.

2.2.6 *The Broader Social and Economic Context*

Occupying land requires a commitment of time and energy on the part of protesters and a willingness to sacrifice employment and personal comforts. It requires

an understanding that the occupation could lead to encounters with law enforcement officials that might result in physical injury, or to criminal charges that could lead to jail. If these risks were not known before Ipperwash, they are certainly known now.

Occupations (and other, less-extreme protests) are thus usually the resort of people who feel that they have no other way to make their voices heard and little left to lose. That Aboriginal people in Ontario resort to occupying land indicates not only the depth of their feelings about the issues, but also the depth of their despair.

Aboriginal people are at the bottom of almost all socio-economic indicators in Canada and Ontario. For example, Aboriginal people have shorter life spans and experience higher rates of infant mortality and suicide. Diseases that result from poor living conditions, such as tuberculosis, are much more prevalent among Aboriginal people.²¹

While conditions for off-reserve Aboriginal people tend to be slightly better than for those on-reserve, that is nothing to be proud of. As the Supreme Court of Canada noted in *Lovelace v. Ontario*,

[it] is important to acknowledge that all aboriginal peoples have been affected “by the legacy of stereotyping and prejudice against Aboriginal peoples.” Aboriginal peoples experience high rates of unemployment and poverty, and face serious disadvantages in the areas of education, health, and housing.²²

Aboriginal involvement with the criminal justice system is another indicator of the problems Aboriginal people face, and it also explains why Aboriginal peoples do not view the police as favourably as many other Ontarians do. The statistics show that Aboriginal people are over-represented, both as offenders and as victims of crime.

Across Canada, Aboriginal men now represent one in five inmates in provincial and federal jails. The percentage of Aboriginal women in custody is even higher: one in three women in custody in Canada is Aboriginal.²³ This over-representation continues to grow, even though it has been recognized as a problem for more than fifteen years, and even though governments and judges repeatedly decry it.

Most people think that Aboriginal over-representation in jails is confined to Western Canada. However, as the research paper by Jonathan Rudin reveals, the rates of Aboriginal over-representation in Ontario jails are just as high as they are in Manitoba, and Ontario has the third highest rate among the provinces.²⁴ These statistics apply to youth as well as to adults.

Many people are aware of Aboriginal over-representation in prisons, but fewer know that Aboriginal people are also over-represented as victims of crime. Statistics Canada has reported that Aboriginal people are at greater risk of being victims of sexual assault, assault, and robbery.²⁵ They are also significantly over-represented as victims of homicide. Between 1997 and 2004, Aboriginal people represented 3% of the population, and 17% of homicide victims. The homicide victim rate for non-Aboriginal people was 1.3 per 100,000 of population in Canada between 1997 and 2000. For Aboriginal people it was 8.8 per 100,000, or almost seven times higher.²⁶

2.3 Caledonia

As I write this report, the protest at Douglas Creek Estates, in the town of Caledonia (near Hamilton, Ontario), is one of the longest continuous Aboriginal occupations in Canadian history. One year after the occupation began, Aboriginal protesters remain on the site.

I do not comment extensively on the Caledonia occupation in this report, but I refer to it from time to time as an illustration of systemic historical, legal, or policy issues. In my view, the recommendations and analysis in this report apply to all major Aboriginal protests, but the Caledonia occupation shows the urgency and relevance of the issues before us. It also serves to demonstrate the current practices of police and governments in responding to Aboriginal occupations and protests. Finally, it provides critical lessons about the effects and dynamics of Aboriginal occupations and protests at a local, regional, and provincial level. For all these reasons, it is important to provide some background on the Caledonia occupation to assist readers in understanding it better.²⁷

On February 28, 2006, a group of members of the Six Nations of the Grand River began a protest on a building site bordering Caledonia, Ontario, claiming that the site is on lands which have never been surrendered and which therefore remain part of Six Nations territory. The site is part of a 385,000-hectare plot of land known as the “Haldimand Tract,” which was granted by the Crown to the Six Nations of the Grand River in 1784 for their use as a settlement.

Six Nations has repeatedly presented grievances to the Crown regarding the Haldimand Grant and the Crown handling of Six Nations trust accounts since the early nineteenth century. More recently, Six Nations submitted twenty-eight formal claims to the Department of Indian Affairs and Northern Development between 1982 (when the federal government adopted its “Specific Claims Policy”) and 1995. One of these claims, the “Hamilton-Port Dover Plank Road” claim (now known as the “Highway 6” claim), includes Douglas Creek Estates. This

claim was filed in 1987. It alleged that no lawful surrender exists for lands in the area of Highway 6 and that Six Nations had never been properly compensated for the lands.

By March 1995, none of the twenty-eight claims had been resolved through the federal Specific Claims process and only one of the claims was the subject of ongoing negotiations. The elected council of Six Nations then began litigation on its claims against Canada and Ontario. The Statement of Claim sought an accounting by the Crown for all lands and moneys held in trust by the Crown since 1784 and compensation for any improper dealings with those assets. It identified fourteen cases of alleged misdealing by the Crown as examples of the transactions for which the Crown should provide compensation. One of those cases pertained to how the Crown dealt with the Hamilton-Port Dover Plank Road lands.

At the time of the initial occupation, the owner of the site was Henco Industries. Henco, a land development company, purchased the property in 1992 and was in the process of building a seventy-two-home subdivision on the site—the Douglas Creek Estates. Construction of homes had begun at the time the protesters entered the site.

The protesting group described the action as “reclamation” of the land rather than occupation. The protesters appear to have entered the lands, which are close to the current Six Nations reserve, without prior direction from the elected council of Six Nations or from the traditional Confederacy Chiefs of Six Nations. The Confederacy Chiefs subsequently decided that they supported the continuing protest on the lands.

In addition to occupying Douglas Creek Estates, protesters also erected barricades on the surrounding streets within the community of Caledonia and on the local railway line. In and around Douglas Creek Estates, the protest and the blockades were followed by acts of civil disobedience, vandalism, thefts, and assaults.

In March 2006, Henco obtained an interim civil injunction from a judge of the Ontario Superior Court which required the protesters to vacate the property. Thus began a confusing and unusual series of legal proceedings, including several criminal contempt of court proceedings and orders against protesters who remained on the lands. The Court of Appeal of Ontario would later dismiss most of the lower court orders and comment extensively on the propriety of judicial intervention in police operations and discretion.²⁸

On April 20, more than three weeks after a second contempt order, the OPP went to Douglas Creek Estates and arrested twenty-one protesters. The arrests did not end the occupation. Later that morning, the protesters returned to the site in greater numbers, and the conflict between the protesters and the government

intensified. Many more protesters occupied Douglas Creek Estates. The occupation expanded to include the surrounding roads. A local bridge was burned, fires were set, and another rail line was blocked. Unidentified vandals subsequently set fire to a nearby power transmitter, which caused a blackout in a significant part of Haldimand County.

Part way through the conflict, representatives of the governments of Canada and Ontario and Six Nations began to meet regularly and to work to ease tensions, restore calm, preserve order, and, ultimately, to attempt to resolve the dispute. Soon thereafter, the provincial government agreed to purchase Douglas Creek Estates from Henco.

As of late January 2007, the negotiations appear to be moving slowly, but they are progressing. A level of peace and order has been restored to the community. The blockades on the local highway and on the rail line and elsewhere have been removed. However, there has been no final resolution to the occupation or to the underlying land claims. As noted earlier, Aboriginal protesters remain on the site almost one year after the occupation began.

Presently, the remaining protesters are a comparatively small group and occupy Douglas Creek Estates only. The Ontario government, which now owns the property, has agreed to let the protesters remain and has put the land in trust pending the resolution of the land claims issues. The OPP has laid a total of fifty-three charges, against twenty-eight people, for breaches of the injunction and other breaches of the peace. Both Aboriginal and non-Aboriginal people have been charged.

In addition to purchasing the Douglas Creek Estates, the provincial government has provided Caledonia-area businesses with a financial assistance recovery program to mitigate economic losses suffered as a result of the road blockades.

The Caledonia dispute has been the catalyst for several confrontations between Aboriginal protesters, non-Aboriginal residents of the Caledonia region, and the OPP. Non-Aboriginal residents have held several large public rallies during which there have been violent confrontations with the OPP and Aboriginal protesters. The non-Aboriginal residents have been very critical of the OPP. One website run by opponents of the OPP strategy at Caledonia asks the following questions:

Is it a question that the OPP are completely inept? Is it a question that the OPP are completely clueless? Or is it just that they don't care about the safety of people? Whichever it is, it is time to talk about disbanding the whole OPP force.²⁹

Throughout the occupation, the provincial government has reiterated its

support for the OPP and its desire for a peaceful, negotiated solution. The Premier and provincial ministers have repeatedly urged calm and patience. The Premier, for example, stated the following in the Legislature:

I understand that there is, in some quarters, some impatience and some frustration, but we are dealing with this in a peaceful manner ... We are determined to resolve this, but we will do this in a way that results in no incident and in no compromise to public safety.³⁰

2.4 Occupations and Protests in the Future: What Have We Heard?

In addition to Caledonia, police, provincial officials, and members of the Aboriginal community see a number of other current conflicts or disputes in the province as having the potential to escalate (or re-escalate) into direct action. Rather than listing these disputes specifically, I believe that the Inquiry can assist policy-makers in all sectors by setting out some very general criteria for identifying when an Aboriginal rights dispute may escalate into a wider occupation or protest.

I was told repeatedly that occupations and protests can and do occur anywhere in the province and that the catalysts for them are often unpredictable. The course a protest might take—its duration or intensity, the level of the police response, whether it will become violent, and the government response—can likewise not be predicted with certainty. I have therefore not attempted to set out definitive criteria for determining where and when major protests might occur. Most emphatically, I am not attempting to identify the site of future conflicts like Ipperwash or Caledonia. Rather, what follows are some general observations based on our research and consultations.³¹ They are indicators or conditions which, alone or in combination, appear to make Aboriginal occupations or protests more likely.

Longstanding, Unresolved Treaty Issues

The existence of long-standing, unresolved treaty disputes is perhaps the most important indicator of the potential for an occupation or protest. Frustrations with the inability of governments or existing institutional processes to acknowledge or resolve treaty and Aboriginal rights disputes often leads Aboriginal peoples or communities to initiate occupations and protests.

A History of Previous Occupations or Protests

Aboriginal communities with a history of occupations and protests will often re-establish an occupation or protest if the disputed issue has not been resolved to the satisfaction of the community. Also, a community may have a history of erecting blockades to show support for protesters elsewhere.

Current or Potential Resource or Land Development Controversy

Occupations and protests are more likely where there is some kind of external catalyst or threat to the Aboriginal community or its traditional territory. The threat may take the form of real or potential resource or land development pressure or the real or potential desecration of an Aboriginal burial site.

Poor Relationships between a First Nation and Local Police or Government Officials

Aboriginal occupations and protests appear to be more likely if the First Nation or Aboriginal community has a history of poor relations with local police or with government officials. This is because the trusting relationship or ongoing dialogue often necessary to prevent occupations and protests before they begin may be lacking. Aboriginal people may believe that local officials do not acknowledge their concerns or that they are actively frustrating efforts to resolve them.

Faction within a First Nation

Experience has shown that minority groups or factions within larger First Nations often initiate occupations and protests.

Social and Economic Deprivation

Aboriginal people who are poor or otherwise desperate may feel they have no option but to initiate an occupation or protest to assert their rights.

Important or Prominent Location

In an isolated location, Aboriginal occupations and protests appear less likely to generate the media attention or external support necessary to sustain a protest or to generate consequences beyond the immediate setting of the protest.

Leadership or Community Capacity

Sophisticated, strategy-conscious Aboriginal leaders and communities may initi-

ate occupations and protests as part of a deliberate political plan to advance their rights or interests. This requires a level of community capacity and an ability to organize.

Potential for Converging Issues

Occupations and protests may be more likely if the Aboriginal community or protesters have the potential to converge with environmentalists or others who may support the protest or who have even initiated a related protest.

Many of these conditions are pervasive across Ontario today, and all of them need not be present before a protest will occur. This is a sobering realization, which must be appreciated by government policy-makers and police officials. With these indicators, we can at least begin to identify why Aboriginal occupations and protests occur, under what circumstances, and what steps can be taken to reduce their likelihood and reduce the potential for violence in the future.

2.5 The Wider Costs of Aboriginal Occupations and Protests

The costs of our collective failure to resolve treaty and Aboriginal rights peacefully and effectively are potentially very high. The most obvious costs are the risk of violence and the expenditure associated with major police operations.

Yet the risk of violence and immediate economic costs are not the only consequences of Aboriginal occupations and protests. The true costs and effects must be evaluated in a wider social, legal, historical, and economic context. All of these dimensions must be considered in order to appreciate that we must find another way of resolving disputes.

A significant portion of this report is devoted to analyzing the social and legal consequences of our inability to address the root causes of Aboriginal occupations and protests. Yet, a comprehensive analysis of the wider costs and effects of occupations and protests must also consider their impact on both Aboriginal and non-Aboriginal individuals and communities, on the police, and on governments and other institutions.

2.5.1 *Effect on Communities*

Often, occupations and protests are accompanied by non-violent but significant disturbances and interruptions in the lives and daily routines of many people. These include road blockades, police stops, disruption of employment and the operations of local businesses, and even school closings. The residents of communities in and around Ipperwash, Caledonia, Oka, Burnt Church, and

elsewhere, all experienced considerable disruption simply through their proximity to a major occupation and the corresponding police operation. Aboriginal and non-Aboriginal communities alike felt these effects.

It is difficult to quantify, but still crucial to acknowledge, the general feelings of insecurity brought about by living through a major police action and the attendant social and community disruption. There is often considerable upheaval in settled routines and in expectations about life in one's community.

The feelings of anger and resentment that these personal and community disruptions generate cannot be underestimated. Many remember the tensions over a road blockade on the Mercier Bridge during the Oka standoff in 1990. Tension erupted into violence when members of the Kahnawake reserve erected a blockade on the bridge to show their support for the Oka protesters. The blockade effectively closed the road that carried commuters from the south shore of the St. Lawrence River to Montreal. Tempers flared, and there were violent confrontations between Aboriginal and non-Aboriginal protesters on the bridge.

In Caledonia, the local non-Aboriginal residents have stated that they fear for their safety and the safety of their families because of threats of physical violence from protesters, acts of vandalism, throwing of rocks at houses, and the presence of police, sometimes in riot gear, in residential areas. They say that the protesters have interfered with the quiet enjoyment of residential property by revving car engines, playing loud music, chanting, and beating drums, all in the middle of the night. They also say that property values in the town have dropped because of the dispute, and that the dispute has caused them to suffer bouts of anxiety.

2.5.2 Effect on First Nations and Aboriginal Peoples

Occupations and protests have a profound effect on the protesters and on the immediate community. Several witnesses at the evidentiary hearings spoke of the deep and enduring trauma of their experiences at Ipperwash. Some Aboriginal witnesses who were not present at the occupation were also distressed.³²

A lengthy or particularly painful occupation or protest can also effectively overwhelm a First Nation or Aboriginal community by preoccupying its members. People may focus on the occupation or protest, at the expense of other aspects of their lives, thus hindering the ability of the community to focus on larger issues.

Moreover, it cannot be assumed that every Aboriginal person or community supports every occupation or protest. Experience at Ipperwash and elsewhere has demonstrated that considerably divergent views exist within and between Aboriginal communities about the appropriateness or efficacy of occupations and blockades.

Aboriginal communities may be divided on a number of issues, including the legitimacy of the protesters' position, the protesters' tactics, the roles of First Nations political organizations, elected and traditional leaders, Elders, clan mothers, or the protesters themselves in directing or otherwise influencing the course of the protest or negotiations, whether or how to conclude the protest, and the roles of the police and "outsiders." Or, there may be consensus over the legitimacy of the rights being asserted, but disagreement over who is entitled to assert those rights or benefit from them. As a result, Aboriginal occupations and protests have the potential to disrupt relations within a First Nation or Aboriginal community.

Finally, experience has demonstrated that conflicts and disputes can be major setbacks in attaining the shared goal of harmonious relations based on understanding and reconciliation. Occupations and protests are often catalysts for the expression of racist or hateful sentiments on both sides of the barricade, with an attendant corrosive effect on Aboriginal/non-Aboriginal community relations.

2.5.3 Effect on Police

Aboriginal occupations and protests can have a significant effect on the police services, and they can often involve major police operations costing millions of dollars. The policing costs at Caledonia, for example, have been considerable. News reports have stated that the provincial government is giving the OPP more than \$20 million to cope with heavy policing costs related to the Caledonia standoff. The reports have quoted the current commissioner of the OPP as saying that

[t]he policing needs there are quite significant ... We [the OPP] have been deploying people from every detachment in the province, general headquarters, you name it. That has been an extraordinary burden for us to sustain.³³

In the absence of dedicated or new resources to help offset the costs of policing an occupation, the pressure on the police budget can be significant. The inevitable effect will be to reduce or strain police resources elsewhere.

The "hard costs" of policing occupations and protests do not include the important, perhaps incalculable, effects on police officers as individuals. Several police witnesses at the Inquiry testified about the enduring stress and trauma of their experience at Ipperwash.

2.5.4 Effect on Police/Community Relations

Aboriginal occupations and protests can also have a significant effect on police legitimacy, credibility, and community relations. The 1997 Independent Commission on Policing for Northern Ireland (the “Patten Report”) discussed the importance of legitimacy and credibility on the ability of the police to provide service to the community:

In a democracy, policing, in order to be effective, must be based on consent across the community. The community recognizes the legitimacy of the policing task, confers authority on police personnel in carrying out their role in policing and actively supports them.³⁴

In the non-Aboriginal community at Caledonia and Ipperwash, and presumably elsewhere, there was and continues to be a strong perception of unfairness in the application of the rule of law. The Inquiry repeatedly heard from non-Aboriginal people who believed that governments and police favoured the protesters. The perception of police unfairness can result in a considerable loss of credibility or legitimacy for an institution that depends on public respect and consent to do its job. For example, several participants at our community consultation in Thedford in June 2006 believed that there was a “double standard or system of law being applied to Aboriginal people, and suggested that Aboriginal people should be arrested and charged for activities that would lead to the arrest of a non-Aboriginal person.”³⁵ This view is significant, because a perception of unequal application of the law affects the degree of trust which non-Aboriginal communities will place in the ability of the police to protect them and to police them fairly.

This view is no doubt ironic to Aboriginal peoples who tend to believe that, historically, the police have been an instrument of their oppression, not their protectors. The Inquiry was told repeatedly that, within Aboriginal communities, policing at Ipperwash, Oka, and Gustafsen Lake has left a legacy of ill feeling. I heard that Aboriginal communities have a very different view of the rule of law, and that the police were often seen to be frustrating their attempts to exercise treaty rights, long held but seldom protected.

The perception of unfairness, and its effect on police credibility, is particularly acute within Aboriginal communities when racist comments or objects accompany police operations, as they did at Ipperwash.³⁶ Ovide Mercredi, former Grand Chief of the Assembly of First Nations, explained their effect in his testimony:

[It] does nothing to restore normal relations between the Aboriginal community and the police. It does the opposite. It creates a greater divide. It reinforces in our minds the suspicions we have about the police and their role ... And it confirms our observations about their conduct in our lives.³⁶ Trust, credibility, and consent are also crucially important if the police are to police occupations and protests effectively.

2.5.5 Effect on Public Institutions

Occupations and protests can affect other public institutions as much as they affect the police. For example, the inability of a government to prevent or end an Aboriginal occupation may also result in a loss of public confidence in government institutions. Communities affected by the occupation may feel that they do not have a voice in the government response or that their future is being decided without their input.

Aboriginal occupations can also dominate the political and public service agenda for extended periods. Caledonia, for example, has preoccupied provincial political, civil service, and police leaders for months, taking time away from other issues.

2.5.6 Economic Loss and Uncertainty

The failure to resolve Aboriginal land issues peacefully and constructively creates economic loss and uncertainty at the provincial, regional, and local level.

I have already discussed the costs of policing large-scale Aboriginal occupations and protests. Substantial though they are, they are not the only costs, and perhaps not even the largest. The provincial government recently estimated that the cost to the provincial government, identified as related to the Caledonia occupation, was \$39.3 million as of October 31, 2006.³⁷

The cost of Oka was even greater. The total cost for the federal and Quebec governments was more than \$150 million.³⁸

The economic effect of unresolved claims, and occupations and protests, is probably felt most deeply at the local level. The Inquiry was advised by the Municipality of Lambton Shores that the West Ipperwash land claim and the occupation of the park had a “devastating” financial impact.³⁹ The municipality cited loss of property values, loss of business revenues (including tourism), loss of municipal tax revenues, loss of Aboriginal and non-Aboriginal jobs, and difficulties for residents in obtaining mortgages and property insurance.

At the provincial or regional level, Aboriginal occupations and protests and/or the continuing uncertainty over land, treaty claims, and burial sites have a considerable economic effect. Occupations, protests, and continuing uncertainty over the ownership, control, or use of land and other resources have delayed or impaired economic opportunities in resource development, land development, fishing, forestry, and tourism. Importantly, both non-Aboriginal and Aboriginal people feel the effect of lost economic opportunities. The following two examples illustrate this point.

The first example concerns the development of the Seaton lands. The Seaton lands consist of about 1,270 hectares of publicly owned land in Pickering. These lands are being prepared for development by the provincial government as part of a land swap with a private developer. The Seaton lands were also likely the hunting, gathering, and fishing grounds of numerous First Nations, and they are known to contain Aboriginal heritage and burial sites.

In the summer of 2006, seven First Nation communities in Ontario filed a judicial review application against the provincial government and others in respect of the proposed development. The application requested that the court quash the Notice of Completion of the Class Environmental Assessment, which was carried out as part of the development of the site. This has delayed the development of the site and has created a legal predicament that could take years to resolve.

The second example is the confrontation between the Kitchenuhmaykoosib Inninuwug First Nation (KI First Nation) and the Platinex mining exploration company, which occurred at Big Trout Lake in Northern Ontario in early 2006. This example illustrates what happens when the provincial government does not take the lead in ensuring that meaningful consultation takes place with a First Nation before permitting resource development to proceed on traditional First Nation lands.

Platinex had been granted rights by the Ontario Ministry of Northern Development and Mines to do exploratory drilling for platinum on traditional lands of the KI First Nation, close to its reserve. A lengthy dispute between the First Nation and the mining company resulted in both parties' filing lawsuits against each other and seeking injunctions from the Superior Court.

Mr. Justice G.P. Smith granted the injunction requested by the KI First Nation and ordered Platinex to cease its exploration program at Big Trout Lake. In the course of his judgement, Justice Smith commented that

[o]ne of the unfortunate aspects of the Crown's failure to understand and comply with its obligations is that it promotes industrial uncertainty to those companies, like Platinex, interested in exploring and developing the rich resources located on Aboriginal traditional land.⁴⁰

It is important to note that the economic consequences of delayed or frustrated opportunities apply to Aboriginal peoples and non-Aboriginal peoples alike. Economic development is hindered for everyone if lands or resources are tied up in Aboriginal rights litigation or if they are the subject of an Aboriginal occupation or protest.

2.5.7 Effect on the Rule of Law

The “rule of law” is a term often heard in the context of Aboriginal occupations and protests. Most often, it is used by critics or opponents of Aboriginal protesters who argue that Aboriginal protesters are somehow above the law or not subject to the same laws as non-Aboriginal persons.

In this report, I hope to demonstrate that Aboriginal occupations and protests are much more complicated, legally, than many non-Aboriginal Ontarians probably realize. Very often, an occupation takes place because a First Nation or an Aboriginal community cannot determine the legality of their claim using existing procedures. In other words, the ownership of the land being occupied may still be unresolved. Aboriginal protesters may also assert that they have a “colour of right” to be on the land in question.⁴¹ In other cases, laws protecting the right to protest may protect the occupiers.

The Court of Appeal decision in *Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council* in December 2006 discussed the complexity of the “rule of law” as it applies to Aboriginal occupations and protests. Justice Laskin spoke for the Court:

Throughout his reasons the motions judge emphasized both the importance of the rule of law and his view that “the rule of law is not functioning in Caledonia” and “the law has not been enforced.” As we said in our reasons on the stay motion, no one can deny the importance of the rule of law in Canada. The preamble to our Constitution states that Canada is founded on principles that recognize the rule of law. The Supreme Court of Canada has said that it is one of our underlying constitutional values.

But the rule of law has many dimensions, or in the words of the Supreme Court of Canada is “highly textured.” One dimension is certainly that focused on by the motions judge: the court’s exercise of its contempt power to vindicate the court’s authority and ultimately to uphold the rule of law. The rule of law requires a justice system that can ensure orders of the court are enforced and the process of the court is respected.

Other dimensions of the rule of law, however, have a significant role in this dispute. These other dimensions include respect for minority rights, reconciliation of Aboriginal and non-Aboriginal interests through negotiations, fair procedural safeguards for those subject to criminal proceedings, respect for Crown and police discretion, respect for the separation of the executive, legislative and judicial branches of government and respect for Crown property rights. [Citations omitted.]⁴²

2.5.8 Effect on Harmonious Relations

The immediate cost of conducting relations with Aboriginal peoples through confrontations and over the barricades is very high. Unfortunately, all Ontarians risk even more if we leave long-simmering disputes with Aboriginal peoples unsettled until they boil over. The absence of effective and respectful means of resolving issues with Aboriginal peoples contributes to an atmosphere of insecurity and uncertainty with respect to the lands at issue, which threatens the well-being and the opportunities of all who have interests in these areas. It means that all Ontarians will continue to suffer lost opportunities to work cooperatively with Aboriginal peoples in the care and development of natural resources. And, perhaps most seriously, it means that we will fail to build and maintain a trusting relationship with the Aboriginal peoples in which all can take pride and from which all Ontarians can benefit.

Endnotes

- 1 Chiefs of Ontario Part 2 submission, para. 107.
- 2 John Borrows, “Crown and Aboriginal Occupations of Land: A History & Comparison” (Inquiry research paper), pp. 5-6.
- 3 Borrows, p. 24.
- 4 Borrows, p. 6.
- 5 Chiefs of Ontario Part 2 submission, paras. 107-8.
- 6 OPP Part 2 submission, para. 199.
- 7 Nishnawbe-Aski Police Services Board, “Confrontations over Resources Development” (Inquiry project), para. 30.
- 8 Jean Teillet, “The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario” (Inquiry research paper), p. 1.
- 9 Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples, vol. 2: Restructuring the Relationship* (Ottawa: Supply and Services Canada, 1996), p. 4.
- 10 Borrows, p. 34. Professor Borrows notes, dryly, that “[g]iven this history, it is passing ironic that Aboriginal blockades and occupations have received the lions-share of attention in the past few years when non-Aboriginal occupation of Aboriginal lands has been the predominant use of this device in Canadian history.”
- 11 Borrows, p. 25.
- 12 Rima Wilkes, “First Nation Politics: Deprivation, Resources, and Participation in Collective Action,” *Sociological Inquiry* (Nov. 2004): 570-589.
- 13 Don Clairmont and Jim Potts, “For the Nonce: Policing and Aboriginal Occupations and Protests” (Inquiry research paper), p. 20.
- 14 Ibid.
- 15 OPP, “Aboriginal Initiatives—Building Respectful Relationships” (Inquiry project), Appendix E. The OPP policy on policing Aboriginal occupations and protests, entitled “Framework for Police Preparedness for Aboriginal Critical Incidents,” defines these incidents as: “[An] incident where the source of conflict may stem from assertions associated with Aboriginal or treaty rights, e.g., colour of right, a demonstration in support of a land claim, a blockade of a transportation route, an occupation of local government buildings, municipal premises, provincial/ federal premises or First Nation buildings.”
- 16 Clairmont and Potts, pp. 27-8.
- 17 Geoffrey York and Loreen Pindera, *People of the Pines* (Toronto: McArthur & Company, 1991), p. 405. Two additional deaths have been attributed to Oka: Two elderly Mohawk men did not recover from medical conditions arguably precipitated by their experiences at Oka.
- 18 Clairmont and Potts, p. 18.
- 19 Borrows, p. 35.
- 20 Borrows, pp. 22-60. See generally Professor Borrows’s inventory of Aboriginal land and treaty disputes.
- 21 Health Canada. “First Nations Comparable Health Indicators, January 2005 ... First Nations and Inuit Health,” <http://www.hc-sc.gc.ca/fnih-spni/pubs/gen/2005-01_health-sante_indicat/index_e.html>.
- 22 *Lovelace v. Ontario*, [2000] 1 S.C.R. 950, at para. 69.

- 23 Statistics Canada. 2005. "Adult correctional services, 2003/04." *The Daily*. December 16, 2005, <<http://www.statcan.ca/Daily/English/051216/d051216b.htm>> (accessed December 2006).
- 24 Jonathan Rudin, "Aboriginal Peoples and the Criminal Justice System" (Inquiry research paper), p. 16.
- 25 Statistics Canada. 2006. "Aboriginal peoples as victims and offenders, 2004" *The Daily*, June 6, 2006, <<http://www.statcan.ca/Daily/English/060606/d060606b.htm>> (accessed December 2006).
- 26 Ibid.
- 27 Michael Coyle, "Results of Fact-Finding on Situation at Caledonia," April 7, 2006 (on file with the Inquiry). This history is based, to a large extent, on a report by Professor Coyle, an independent fact-finder appointed by the federal government to report on Caledonia.
- 28 *Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council*, [2006] O.J. No. 4790, Ontario Court of Appeal, released December 14, 2006 [*Henco Industries*].
- 29 See generally <<http://www.caledoniawakeupcall.com>> (accessed September 14, 2006).
- 30 McGuinty, Hon. Dalton (Premier, Minister of Research and Innovation). "Oral Questions." In Ontario, Legislative Assembly. *Legislative Debates (Hansard)*. 38th Parl. 2nd Sess. (April 19, 2006). <http://www.ontla.on.ca/hansard/house_debates/38_parl/Session2/L062.htm#P474_95201>.
- 31 Professor Don Clairmont and retired RCMP Inspector Jim Potts contributed significantly to this analysis.
- 32 Borrows, p. 58. Professor Borrows discussed the effect of trauma on Aboriginal peoples in his paper for the Inquiry. Citing the work of Dr. Judith Herman, Clinical Professor of Psychiatry at Harvard Medical School, Professor Borrows discussed the impact on contemporary occupations and protests of denying Aboriginal peoples' experience and rights for generations. He noted that "there is little awareness in Canada's official history of the lived experience of trauma by Aboriginal peoples, and how this continues to consume present generations."
- 33 Daniel Nolan, "OPP to get \$20m for policing in Caledonia," *Hamilton Spectator*, January 4, 2007.
- 34 Independent Commission on Policing for Northern Ireland, Rt. Hon. C. Patten, Chair, *A New Beginning: Policing in Northern Ireland* (London: 1999), p. 22.
- 35 Community Consultation at the Thedford Arena, June 21, 2006 (Inquiry event).
- 36 For a full description of this issue, see vol. 1: *Investigation and Findings* of this report.
- 36 Ovide Mercredi testimony, April 1, 2005, Transcript p. 97.
- 37 Ontario Secretariat for Aboriginal Affairs, "Six Nations (Caledonia) Costs to Date," <http://www.aboriginalaffairs.osaa.gov.on.ca/english/news/news_061102.html> (accessed December 2006). Costs include the purchase price of the Douglas Creek Estates Property, policing costs, acquisition of the interests of other builders in the Douglas Creek lands, and other costs. It is important to note that these figures only represent the costs to the provincial government.
- 38 York and Pindera, p. 405. Note that these are 1990/91 figures.
- 39 Municipality of Lambton Shores Part 2 submission, p. 26.
- 40 *Platinex v. Kitchenuhmaykoosib Inninuwig First Nation, et al.* Released July 25, 2006 (not yet reported), at paras. 96-7.
- 41 This is a legal defence to a criminal charge of trespass, in which the person charged reasonably believed that he or she had title to or an interest in the land, which entitled him or her to do the act complained of.
- 42 *Henco Industries*, at paras. 140-2.

