

TABLE OF CONTENTS

1. INTRODUCTION	1
1.1 Issues Considered in Part 2	3
1.1.1 Respect for Treaty and Aboriginal Rights	3
1.1.2 The Policing of Aboriginal Occupations and Protests and the Relationship between Aboriginal Peoples and the Police	4
1.1.3 The Relationship between Police and Government	4
1.2 Process	4
1.2.1 Part 2 Research, Consultations, and Forums	5
1.2.2 Part 2 Standing and Funding	6
1.2.3 Projects of the Parties	8
1.2.4 Public Participation	9
1.3 Research Advisory Committee	9
1.4 Part 2 Team	11
1.5 The Research Legacy of the Inquiry	12
1.6 Organization of This Volume	12
References	13
Endnotes	14
2. PRIMER ON ABORIGINAL OCCUPATIONS	15
2.1 Why Do Aboriginal Peoples Occupy Land and Blockade Roads?	15
2.2 Aboriginal Occupations and Protests in Context	18
2.2.1 How Many Are There?	19
2.2.2 Types of Occupations and Protests	19
2.2.2.1 Intra-Band Occupations and Protests	20
2.2.2.2 Major Occupations and Protests	20
2.2.3 Are Aboriginal Occupations and Protests Violent?	23
2.2.4 How Are They Different from Other Protests?	24
2.2.5 Are They Effective?	25
2.2.6 The Broader Social and Economic Context	25
2.3 Caledonia	27
2.4 Occupations and Protests in the Future: What Have We Heard?	30
2.5 The Wider Costs of Aboriginal Occupations and Protests	32
2.5.1 Effect on Communities	32
2.5.2 Effect on First Nations and Aboriginal Peoples	33
2.5.3 Effect on Police	34
2.5.4 Effect on Police/Community Relations	35
2.5.5 Effect on Public Institutions	36
2.5.6 Economic Loss and Uncertainty	36
2.5.7 Effect on the Rule of Law	38
2.5.8 Effect on Harmonious Relations	39

Endnotes	40
3. TREATY RELATIONS IN ONTARIO	43
3.1 Learning from Ipperwash	45
3.1.1 The Importance of the <i>Royal Proclamation</i> and the Treaty of Niagara	45
3.1.2 The Huron Tract Treaty	46
3.1.3 Control and Reduction of the Kettle Point and Stoney Point Reserves	47
3.1.4 Failure to Protect Burial Grounds	49
3.1.5 The Appropriation of the Stoney Point Reserve and the Failure to Give It Back	50
3.2 Treaty Relations in Ontario: A Story of Broken Promises	52
3.2.1 Ontario: Home of Canada's Largest Aboriginal Population	52
3.2.2 Treaties in Ontario and the Failure to Honour Them	54
3.2.3 <i>St. Catherine's Milling</i> and Its Legacy	58
3.2.4 The Exclusion of Aboriginal Peoples from Economic Development in Ontario	59
3.2.5 The Legacy of Failing to Honour Treaties	61
3.3 Renewing Treaty Relations and Recognizing Aboriginal Rights	61
3.3.1 1969 — A Turning Point	62
3.3.2 First Steps along a New Path	62
3.3.3 Recognizing Aboriginal and Treaty Rights in the Constitution	64
3.3.4 Failure to Make Progress through Negotiated Political Agreements	65
3.3.5 Judicial Decisions on Aboriginal and Treaty Rights	68
3.3.5.1 Fiduciary Obligations	68
3.3.5.2 Interpreting Treaties	69
3.3.5.3 Aboriginal Rights	70
3.3.5.4 Métis Rights	71
3.3.5.5 The Honour of the Crown and the Duty to Consult and Accommodate	71
Endnotes	73
4. SETTLING LAND CLAIMS	77
4.1 What Are Land Claims About?	79
4.2 Successful Land Claims Settlements	80
4.3 The Current Process	81
4.4 Improving Land Claims Processes in Ontario	84
4.4.1 Objectives	85
4.4.2 The Treaty Commission of Ontario	86
4.4.2.1 Permanence, Independence, and Governance	88
4.4.2.2 Mandate and Powers	89
4.4.2.3 Resources	90

4.5 Other Provincial Initiatives to Support the Land Claims Process	91
4.5.1 Eligibility to Enter the Ontario Land Claims Process	91
4.5.2 Consideration for Non-Aboriginal Interests	92
4.5.3 Provincial Support, Capacity, and Coordination	94
4.5.4 Funding and Planning	94
4.6 Federal-Provincial Cooperation	95
4.6.1 Registration	97
4.6.2 Dispute Resolution	98
4.6.3 Legal Liabilities	98
4.6.4 Benchmarks and Policies	99
Recommendations	99
Endnotes	102
5. NATURAL RESOURCES	105
5.1 Moving from Exclusion to Accommodation and Sharing	106
5.2 Negotiated Solutions and Provincial Leadership	108
5.3 Fulfilling the Duty to Consult and Accommodate	109
5.3.1 Haida Nation, Taku River, and Mikisew	109
5.3.2 Kitchenuhmaykoosib Inninuwug First Nation and Platinex	110
5.3.3 A New Provincial Policy on the Duty to Consult and Accommodate	112
5.4 Sharing and Managing Natural Resources	113
5.4.1 Anishinabek/Ontario Resource Management Council	117
5.4.2 Saugeen Ojibway Nations and Ontario Commercial Fishery Agreement	117
5.5 Regulations Regarding Wildlife and Fish	120
5.5.1 The Interim Enforcement Policy	120
5.5.2 The Four Point Harvesting Agreement	121
5.5.3 Prosecutions and Policy-Making	122
5.6 Transparency and Accountability	122
Recommendations	123
Endnotes	125
6. ABORIGINAL BURIAL AND HERITAGE SITES	129
6.1 The History of Aboriginal Burial and Heritage Sites	130
6.2 Why Aboriginal Burial and Heritage Sites Become Flashpoints	132
6.3 Location and Nature of Aboriginal Burial Sites	134
6.4 Destruction and Protection of Aboriginal Burial and Heritage Sites	136
6.5 Provincial Legislation	138
6.5.1 The <i>Cemeteries Act</i> and the <i>Funeral, Burial and Cremation Services Act, 2002</i>	139
6.5.2 Provincial Legislation and Aboriginal Heritage Sites	141
6.5.3 Aboriginal Heritage and Public Lands in Ontario	141

6.5.3.1	The <i>Public Lands Act</i>	141
6.5.3.2	The <i>Environmental Assessment Act</i>	142
6.5.4	Aboriginal Heritage and Private Lands in Ontario	143
6.5.4.1	The <i>Ontario Heritage Act</i>	143
6.5.4.2	The <i>Planning Act</i>	144
6.6	Archaeological Master Plans	145
6.7	Public Education	146
6.8	Aboriginal Burial and Heritage Site Advisory Committee	146
	Recommendations	146
	Endnotes	148
7.	EDUCATION ABOUT ABORIGINAL PEOPLES	153
7.1	Education for the Public	155
7.2	The Education Mandate of the Treaty Commission of Ontario	157
7.3	Elementary School and High School Education	158
7.3.1	Curricula	158
7.3.2	Teaching Resources	161
7.3.3	Teacher Training	162
	Recommendations	152
	Endnotes	163
8.	PROVINCIAL LEADERSHIP AND CAPACITY	167
8.1	A Provincial Ministry of Aboriginal Affairs	167
8.1.1	Leadership, Structure, and Coordination	169
8.1.2	Mandate and Programs	170
8.1.2.1	Land Claims	171
8.1.2.2	Treaty Commission of Ontario	171
8.1.2.3	Education	172
8.1.2.4	Consultation and Accommodation	172
8.1.2.5	Improving Aboriginal/Non-Aboriginal Relations	173
8.1.2.6	Ontario Aboriginal Reconciliation Fund	174
8.1.2.7	Implementing the Recommendations	174
8.1.3	Resources	174
8.1.4	Ministerial Advisory Committees or Roundtables	175
8.2	An Ontario Aboriginal Reconciliation Fund	175
	Recommendations	176
	Endnotes	178
9.	POLICING ABORIGINAL OCCUPATIONS	179
9.1	Learning from Ipperwash	182
9.2	Developments in Public Order Policing	183
9.2.1	The Evolution of Public Order Policing	183
9.2.2	“Measured Response” and Contemporary Policing Strategies to Reduce Violence	184
9.3	The Uniqueness of Aboriginal Occupations and Protests	186
9.4	Best Practices to Reduce Violence	188

9.4.1 Policing to Reduce Violence	188
9.4.2 Police Strategy and Discretion	189
9.4.3 Institutional Policies, Resources, and Capacity	192
9.4.4 Peacekeeping and the Limits of Policing	193
9.5 The Ontario Provincial Police	195
9.5.1 Description of the OPP	195
9.5.2 “Aboriginal Initiatives: Building Respectful Relationships”	195
9.5.3 The OPP Framework for Aboriginal Critical Incidents	197
9.5.4 Implementation of the Framework	200
9.6 Assessing the Framework	201
9.6.1 Sustainability	202
9.6.2 Effectiveness	204
9.6.2.1 Evaluations	205
9.6.2.2 Accountability and Transparency	206
9.6.3 Consultation and Public Education	208
9.6.3.1 Aboriginal Communities	208
9.6.3.2 Non-Aboriginal Communities	209
9.6.4 Restoring Relationships	211
9.7 Provincial Government Policy Leadership	213
9.7.1 Provincial Leadership and Policy-Setting Role	213
9.7.2 Provincial Funding	216
9.7.3 Injunctions	217
9.7.3.1 The Caledonia Injunction Proceedings	217
9.7.3.2 The OPP Policy on Injunctions	218
9.7.3.3 A Government Policy on Injunctions?	218
9.7.3.4 Representation	220
9.8 The Provincial Government Response to an Occupation	221
9.8.1 Crisis Management	221
9.8.2 Provincial Readiness, Coordination, and Briefings	221
9.8.3 Negotiations	222
9.8.4 Public Education	223
9.9 The Federal Government Response to an Occupation	226
9.10 Building Networks	226
9.10.1 RCMP/First Nations Protocols	226
9.10.2 OPP/First Nations Protocols	227
9.10.3 OPP/First Nations Police Services Protocols	228
9.10.4 Municipal Police Services	229
9.10.5 The Ministry of Natural Resources	230
9.11 Dispute Resolution within First Nations	231
9.12 News Media	232
9.13 Emergency Medical Preparedness	234
9.13.1 Tactical Emergency Medical Support (TEMS)	235
9.13.2 Pre-Event Coordination and Planning	236
9.13.3 Communications about Injured Persons	237
9.13.4 Post-Incident Counselling	237

9.13.5 Effectiveness	237
Recommendations	237
Endnotes	242
10. FIRST NATION POLICING	247
10.1 Why First Nations Want to Police Themselves	249
10.2 First Nation Police Services in Ontario	251
10.2.1 First Nation Policing In Ontario	251
10.2.2 Quality of First Nation Police Services	253
10.2.3 First Nation Police Services and the OPP	254
10.3 Policing Occupations and Protests	256
10.4 Challenges	258
10.4.1 Community Expectations	259
10.4.2 Legislative Status	261
10.4.3 Funding	264
10.4.4 Governance and Accountability	267
Recommendations	267
Endnotes	269
11. BIAS-FREE POLICING	271
11.1 Learning from Ipperwash	272
11.2 The Evolution of Police/Aboriginal Relations	273
11.2.1 Previous Inquiries	274
11.2.2 Aboriginal Peoples and Policing	275
11.3 The Ontario Provincial Police	278
11.3.1 OPP Initiatives	278
11.3.2 The OPP Promise, Mission Critical Issues, Police Orders, and Business Planning	278
11.3.3 Recruitment and Retention of Aboriginal Officers	279
11.3.3.1 Training	279
11.4 Assessing the Police/Aboriginal Relations Programs of the OPP	280
11.4.1 Sustainability	281
11.4.2 Effectiveness	282
11.4.2.1 Evaluations	282
11.4.2.2 Data Collection and Statistics	283
11.4.2.3 First Nations Participation in OPP Programs	285
11.4.3 Accountability and Transparency	286
11.5 The Provincial Government	286
11.5.1 Provincial Leadership in Police/Aboriginal Relations	286
11.5.2 Provincial Policy Supporting the OPP	287
11.5.3 Developing Provincial Strategy, Data, and Resources	288
11.5.4 A Provincial Guideline	289
11.5.5 The Ministry of Natural Resources	289
11.5.6 Police Discipline and Public Complaints	290

Recommendations	294
Endnotes	297
12. POLICE/GOVERNMENT RELATIONS	301
12.1 The Importance of Police/Government Relations	303
12.1.1 The Delicate Balance	303
12.1.2 The Special Case of Public Order Policing and Policing Aboriginal Occupations and Protests	304
12.1.3 Why We Must Act	306
12.2 Learning from Ipperwash	307
12.3 What is “Police Independence”?	310
12.3.1 The <i>Blackburn</i> Doctrine	310
12.3.2 <i>Campbell and Shirose</i>	311
12.3.3 The Ontario <i>Police Services Act</i>	313
12.3.4 Previous Commissions and Inquiries	314
12.3.4.1 The McDonald Commission	314
12.3.4.2 The Marshall Commission	316
12.3.4.3 The APEC Inquiry	316
12.3.4.4 The Arar Commission	317
12.3.5 Where Are We Today?	318
12.4 Democratic Accountability	319
12.4.1 Ministerial Accountability	320
12.4.2 Police Accountability	322
12.4.3 Transparency	324
12.5 The Boundaries of Police Independence	324
12.5.1 Policy and Operations	325
12.5.1.1 Law	325
12.5.1.2 Definitions	325
12.5.1.3 Drawing the Line	326
12.5.2 Policy of Operations	329
12.5.3 Exchanging Information	332
12.5.4 Guidance and Directions	333
12.6 Modernizing Police/Government Relations	335
12.6.1 Rethinking “Independence”	335
12.6.1.2 Police Operational Responsibility	336
12.6.1.3 Ministerial Policy Responsibility	336
12.6.2 Four Models of Police/Government Relations	337
12.6.3 Principles in Practice: Democratic Policing	340
12.7 Promoting Democratic Policing	340
12.7.1 Clarifying Police and Ministerial Responsibilities	342
12.7.2 Promoting Ministerial Accountability	342
12.7.3 Revitalizing Ministerial Directives	343
12.7.4 Institutional Structures and Processes within the OPP	348
12.7.5 Briefings, Policies, and Training	349
12.7.6 Police/Government Relations during a Crisis	350

12.7.7 Does the OPP Need a Police Services Board? 351

12.8 Role of the Deputy Minister of Community Safety and
Correctional Services 355

12.9 Other Law Enforcement Agencies 356

Recommendations 357

Endnotes 360

APPENDICES 365

A. List of Recommendations 365

B. List of Research Papers Commissioned by the Inquiry 380

C. List of Inquiry Events in Part 2 362

D. List of Projects by the Parties 384