

THE IPPERWASH INQUIRY

PART I

FINAL SUBMISSIONS OF DEB HUTTON

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SUBMISSIONS OF COUNSEL ON BEHALF OF DEB HUTTON

PART I – INTRODUCTION

1. “Comment is free but facts are sacred”¹ is a famous statement of values for a free press; however, it is also relevant where the subject matter of a public inquiry has been widely commented on before the conclusion of the evidence at the inquiry and before the commissioner of the inquiry has made any findings of fact.
2. By Order in Council, this Commission was mandated to: (a) inquire into and report on events surrounding the death of Dudley George; and (b) make recommendations directed to the avoidance of violence in similar circumstances. In this first phase of the Inquiry, the Commission is focused on the circumstances and events surrounding the death of Anthony O’Brien (Dudley) George.²
3. One of the important functions of a public inquiry is to dispel myths and rumours that may exist regarding the matters in issue. This will provide the general public with accurate information about the subject of the inquiry and give policy makers accurate information to use in considering what can be learned from the past and improved upon in the future. Dispelling myths and rumours also affords an opportunity to remedy any injustice done to those persons whose reputations or interests have been unfairly or inappropriately harmed.³
4. Over the years, the events in question have given rise to a number of myths and rumours with a common theme of political interference; namely, that the Progressive Conservative Government gave directions to the Ontario Provincial Police (the

¹ C. P. Scott, “A Hundred Years”, *The Manchester Guardian*, (5 May 1921), reprinted (29 November 2002), on *The Guardian* website: <www.guardian.co.uk/print/0,4557720-110548,00.html>

² *Rules of Procedure and Practice*, Ipperwash Inquiry, Rule 1, O.C. 1662/2003

³ *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada)*, [1997] 3 S.C.R. 440 at para. 29-31; *Philips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at para. 62.

“OPP”) to go into Ipperwash Provincial Park on September 6, 1995 to forcibly remove the occupiers, which resulted in the death of Mr. George. Allegations were made in the provincial legislature and the media that the Premier or other members of the government had directed or approved a build-up of 250 members of a police tactical unit.⁴ There have been other allegations that officials from the Premier on down decided to “order action that was bound to bring about bloodshed”⁵ or even more sensationally that the Premier said “shoot to kill.”⁶ Myths and rumours have swirled that Deb Hutton, the Premier’s Executive Assistant – Issues Management, said “Get the f**ing Indians out of the park, even if you have to draw guns” or words to that effect.⁷

5. Since the Inquiry commenced its hearings, there have been media reports of some people’s recollections of their impressions and characterizations and further comments alleging that “the Harris inner circle virtually took over tactical command of a police operation” or simply assuming that there was political direction of police operations at Ipperwash as if it were a fact.⁸ There was even a movie on the subject which was filmed and broadcast nationwide before many witnesses had testified, including all of the police witnesses present when Dudley George died.⁹
6. As the foregoing submissions will establish, these myths and rumours of political interference are factually incorrect. Instead, the evidence heard at the Inquiry has demonstrated the following:

⁴ Ontario, Legislative Assembly, *Official Report of Debates (Hansards)*, (30 May 1996) (Frances Larkin), P-973

⁵ R. Mackie, “Notes Reveal Harris’s Stand on Ipperwash” *Globe and Mail* (31 July 1997)

⁶ Ontario, Legislative Assembly, *Official Report of Debates (Hansards)* (30 April 1997) (Len Wood), P-1084, tab 2

⁷ One example in the media suggesting that Hutton made the comment is in P. Edwards and H. Levy, “Secret Talks Held on Ipperwash” *The Toronto Star* (29 May 1996); See also Testimony of McCabe on September 28, 2005 at pp. 221-222

⁸ R. Howard, “Ipperwash Fallout” *The Hamilton Spectator* (14 July 2005); P. Edwards, “Pressure to Clear Park Came from Harris: OPP-Senior Officer Says Ex-Premier Valued Guns over Negotiation” *The Hamilton Spectator*, (13 July 2005); “Inquiry Told Harris Wanted Aggressiveness At Ipperwash” *The London Free Press* (1 September 2005); “Intent of Ipperwash Court Order ‘Radical,’ George’s lawyer Tells Inquest” *Canadian Press Newswire*, (13 September 2005); P. Edwards, “Harris Was Hawkish; He Backed Gun Use, Aide Allegedly Said” *The Toronto Star*, (18 October 2005); J. Coyle, “Ipperwash Becoming Very Clear; Inquiry Reveals Ugly Side of Harris Government” *The Toronto Star* (20 October 2005); “Harris Aide takes Stand at Ipperwash” *Canadian Press* (20 November 2005); G. Bonnell, “Key Witness to Ipperwash Probe Dies” *The Hamilton Spectator* (27 February 2006); Ontario, Legislative Assembly, *Official Report of Debates (Hansards)* 85A (6 June 2006)

⁹ J. Doyle, “Harris is Gone but George is Still Dead” *The Globe and Mail* (4 January 4 2006)

- a. Deb Hutton never made the comment attributed to her or any similar comment (as confirmed, when asked, by all the witnesses who attended the government meetings regarding Ipperwash Provincial Park on September 5 and 6, 1995);
 - b. None of the ministers, including the Premier, or their political staff directed OPP operational officers to forcibly remove the occupiers from the park (the evidence of the witnesses at the Inquiry who attended the government meetings was clear on this issue);
 - c. None of the ministers, including the Premier, or their political staff gave any direction to OPP operational officers to remove the occupiers from the park (the evidence of the witnesses who attended the government meetings was clear on this issue);
 - d. The OPP never went into Ipperwash Provincial Park on September 6, 1995 (both OPP and aboriginal witnesses who were present at the time confirmed this); and
 - e. The OPP did not seek to forcibly remove the occupiers from the park on September 6, 1995 but was seeking to contain them within the park (the evidence of the OPP witnesses before the Inquiry who were present at the time was clear that containment was their objective).¹⁰
7. The evidence in this Inquiry has been exhaustive. Over the course of 233 days of hearing, the Commission has heard from 140 witnesses canvassing events from the 1800's to the present day. Much of the evidence concerns the specific interactions between the OPP or the military and the individuals who occupied Ipperwash Army Camp beginning in 1993 and those who later occupied Ipperwash Provincial Park in September 1995. These submissions do not address all of these issues in any detailed fashion.
 8. These submissions do address the varying allegations levied against the Premier's Office and Deb Hutton ("Hutton"). Prior to and during the course of this Inquiry, there has been an intense focus by some on the conduct of the Premier and, by virtue of her position as a representative of the Premier's Office, that of Hutton. That focus

¹⁰ See Parts IV, V and VI below.

can have, and has had, the effect of exaggerating and distorting the role of the Premier's Office and Hutton in the events in question. Parts II through VI of these submissions review and analyze the evidence obtained through this Inquiry to review the broader context of how the occupation and takeover of Ipperwash Provincial Park came about and to explain the legitimate roles and responsibilities of the provincial government in regard to that occupation.

9. Part II of these submissions sets out some background including some principles regarding democracy, ministerial responsibility, federalism, police independence and the rule of law. These principles, while basic, cannot be forgotten as they are the necessary background for understanding the evidence.
10. While the takeover and occupation of Ipperwash Provincial Park took place on September 4, 1995, the situation did not begin then. The events prior to 1995, including the position of the previous provincial government, provide important context which informs any examination of the events of September 1995. Part III of these submissions seeks to provide that context by setting out the factual evidence relating to the events in 1993 and analyzing its significance.
11. Part III will review and analyze the evidence relevant to the following:
 - a. the history of the Camp Ipperwash lands, including the expropriation of the land by the federal government in 1942 from the Kettle and Stony Point First Nation,
 - b. the delay in the return of the Camp Ipperwash lands to the band as promised and the resulting frustration and occupation of the rifle ranges by a group of First Nation occupiers;
 - c. the divisions between the Kettle and Stony Point First Nation and the occupiers of the rifle ranges due, in part, to the band's disapproval of the occupation of the camp;
 - d. the province's acquisition of the lands that became Ipperwash Provincial Park from third parties in 1936, years after the Kettle and Stony Point First Nation had surrendered and sold that land;

- e. the OPP's plans for handling the actual occupation of the camp and for dealing with a threatened occupation of the park: contain the situation, try to speak to the occupiers to get them to stop any activities contrary to the public peace, and have the landowner seek an injunction from the courts;
 - f. the refusal of the federal government as landowner to seek an injunction or to take any action to address the occupation of the rifle ranges; and
 - g. the response of the then New Democratic Party ("NDP") provincial government to the threatened occupation of Ipperwash Provincial Park by the occupiers of Camp Ipperwash; namely, confirming that the province's title was good and having the Ministry of Natural Resources ("MNR"), as the landowner, so advise the group of occupiers and prepare contingency plans for the park.
12. Part IV summarizes the events in the summer of 1995 leading up to the occupation, including the continuing negotiations with the federal government regarding the return of Camp Ipperwash and the internal divisions within the Kettle and Stony Point First Nation.
13. Part IV will review and analyze the evidence relevant to the following:
- a. the circumstances of the takeover of the barracks in July 1995 by the occupiers of the rifle ranges: that there was some violence by some of the occupiers which caused the military to withdraw from Camp Ipperwash to avoid confrontation with the occupiers;
 - b. the fact that, though the federal government had physically withdrawn from Camp Ipperwash, its negotiations with the Kettle and Stony Point First Nation regarding the transfer of legal title and liability remained outstanding;
 - c. the concerns and fears of some of the local residents arising from the military's withdrawal;
 - d. the threats by some of the occupiers of Camp Ipperwash to take Ipperwash Provincial Park;

- e. the continued position of the MNR in 1995 that they had clear title to the park and their position prior to the occupation that an occupation would constitute trespassing and be illegal;
 - f. the similarity between the OPP's operational plans in 1993 and 1995, which considered several possible contingencies and had the same elements of containment and negotiation (in the sense of trying to speak to the occupiers to get them to stop activities that were contrary to the public peace), pending receipt of an injunction from the courts; and
 - g. the preparations for the threatened occupation and the OPP's request that, in the event of an occupation, MNR proceed quickly to obtain an injunction.
14. Part V reviews the occupation of Ipperwash Provincial Park from September 4, 1995 to the early evening of September 6, 1995 and analyzes the evidence relating to the actions of the occupiers, the OPP and the provincial government. This part explains how the threat of occupation in 1995 was primarily an issue for MNR as landowner holding the provincial park in trust for the people of Ontario just as it had been in 1993.
15. Part V will review and analyze the evidence relevant to the following:
- a. the circumstances of the initial occupation of Ipperwash Provincial Park: that there had been no plans to sell, build on or otherwise physically alter the park and that there was some violence by some of the occupiers that caused MNR to close the park and the OPP to withdraw;
 - b. the immediate steps taken by MNR and the OPP on the ground to advise the occupiers that they were trespassing;
 - c. the implementation of OPP operational plans on the ground to seek to contain the park and to make contact with the occupiers pending an injunction;
 - d. the lack of demands or other communication by the occupiers including the refusal to accept service of the notice of trespass from MNR on September 4 and 5, 1995 or to otherwise speak with the OPP;

- e. the awareness of the OPP and the provincial government that the Kettle and Stony Point First Nation had confirmed that the band had no claims to the park, was unaware of any burial grounds and agreed with the OPP's plans;
 - f. the concerns and fears of some of the local residents to the occupation and the media coverage at the time;
 - g. when and how senior levels of the civil service, the ministers and their political staff, including the Premier and Hutton, became aware of the takeover; and
 - h. the government response to have the Minister of Natural Resources speak publicly on the issue and to have the MNR seek an injunction.
16. Part VI then explains how on the evening of September 6, while lawyers for the provincial government were preparing to attend the next day in court to seek an injunction, the situation on the ground changed. This section briefly describes how the OPP at the scene perceived that the situation on the ground was escalating and sought to contain it. It further describes how the police, in accordance with their operational plan, tried to get the occupiers to return to the park, an effort which ended in a violent altercation outside of the park during which Dudley George was shot and killed.
17. After summarizing and analyzing the factual evidence, we make various submissions in Parts III through VI, a few of which are outlined below as an aid in understanding the essence of our position.
18. We submit that the government had roles and responsibilities which were separate and distinct from the role of the OPP which was responsible for policing the situation on the ground. We further submit that the Premier's Office and Hutton had a legitimate role in considering the interests and perspectives of the various ministries and advising as to the policy position of the provincial government as a whole in regard to the occupation and takeover of the park and its public communications in that regard.

19. We submit that the government received legal advice that confirmed that the province lawfully owned the park. We submit that as landowner for the people of Ontario and as the elected representatives of the people of Ontario, the provincial government had the authority and the responsibility to respond to the occupation and take the policy position not to condone the forceful takeover of a provincial park. We further submit that the previous government had also indicated in 1993 that it did not condone the comparatively minor action taken with respect to the park at that time by some of those occupying the camp.
20. We submit that the totality of the evidence indicates that the position and plans of the OPP or the MNR as landowner were created prior to September 4, 1995 and that, despite the myths and rumours of Hutton's alleged involvement in this matter, she had no involvement of any kind in developing those plans and positions. We submit that as of September 4, 1995 the occupation was regarded as a trespass on provincial property and an illegal occupation, was treated as such by OPP and MNR, and was presented as such to Hutton when she first became involved on September 5, 1995.
21. We submit that the provincial government made clear its policy position in public communications as it had the authority and the responsibility to do. We submit that the provincial government had the authority to take the position that it would not enter into substantive negotiations while any occupation was ongoing. We further submit that previous governments had taken the same position because of the concern that the government should avoid encouraging people to engage in illegal actions to try to force the government to do something. We submit that the provincial government had the authority to take the position that it wanted to see occupations and blockades end as soon as possible and that previous governments had done the same.
22. We submit that Hutton, on behalf of the Premier's Office, had the authority and responsibility for obtaining a briefing of the situation and advice from civil servants regarding the government's legal options in order to consider the interests and

- perspectives of the various ministries and brief her minister, the Premier. We further submit that this was what she did. We further submit that her sole focus was the policy position of the provincial government on this issue and its communications and not the response of the OPP as made evident by her indication, as a representative of the Premier's Office, that the Minister of Natural Resources should publicly communicate the government's position and her recommendation, along with that of various civil servants and other political staff, that the government seek an injunction as soon as possible.
23. We submit that Hutton was fully aware of the principle that government should not interfere with police operations and that the evidence is clear that she had no communications of any kind with OPP officers who had any operational responsibilities. We submit that, in accordance with practices put in place by previous governments, an OPP officer, Ron Fox, was fully seconded to the Ministry of the Solicitor General to provide advice to the Deputy Minister on First Nations issues, and as such was a civil servant who was expected to, and did attend, government meetings which included political staff. We further submit that such contact does not raise even the perception of political interference given the fact that Fox was not an operational officer and was fully seconded as a civil servant.
24. We submit that the provincial government, like the Kettle and Stony Point First Nation and the OPP, wanted the occupation to end and the occupiers to leave the park. We submit that there was no direction to the OPP to remove the occupiers by force or otherwise. We submit that at the government meetings on September 5 and 6, 1995 the government received an overview of the situation for the purpose of fulfilling its roles which were distinct from the role of the OPP; however, there was no discussion at those meetings about the numbers of police officers, the types of units or equipment involved or the operational plans of the police.
25. We submit that the evidence is clear that no one asked Fox to communicate to operational OPP officers on the ground comments regarding the provincial government's policy discussions. We further submit that the existing protocols and

- practices were that internal government meetings were confidential and that once the government had made a decision, which needed to be communicated to the OPP, such as the decision to seek an injunction, the decision would be communicated through the Deputy Minister.
26. The evidence is that Fox knew the OPP Incident Commander personally and decided to make comments to him of his perceptions and characterizations of the provincial government's discussions regarding its policy position and communications. We submit that Fox's comments reflected subjective perceptions, and that these comments were inaccurate and completely inappropriate. We further submit that since the making of any comments regarding such discussions at government meetings to operational OPP officers was inconsistent with existing protocols and practices, no one in government could have reasonably expected that any commentary regarding those discussions would be communicated to operational officers on the ground.
27. We submit that the evidence is clear that, while Fox chose to make some inaccurate and inappropriate comments to the Incident Commander, no direction was given to the OPP as to how to conduct their operations and there was no attempt by ministers, including the Premier, or their political staff to influence the operations of the OPP on the ground. The OPP knew that the government intended to proceed to seek an injunction as soon as possible which was the exact government decision preferred by the OPP. We submit that the OPP proceeded in accordance with its operational plans to contain the park pending a court order for an injunction.
28. We then make some final conclusions in Part VII based on the totality of the evidence. We are conscious of the fact that the Commissioner has indicated that he has no mandate to consider the validity of any land claim to the park. We have therefore made no submissions in that regard and have simply referred to the legal advice provided between 1993 and 1995.

PART II – BACKGROUND

A. RESPONSIBLE GOVERNMENT

29. Canada is a federal state with a democratic system of government. All citizens have the right to vote pursuant to section 3 of the Canadian *Charter of Rights and Freedoms*.¹¹ Through periodic and legally mandated elections, citizens use their right to vote in electing members of Parliament and of the provincial legislatures. Political parties who receive the most number of seats in the House of Commons or provincial legislatures form federal and provincial governments, respectively, and their party's leader becomes the Prime Minister or provincial Premier, respectively. Elections provide governments with the legitimate authority to execute powers and enact legislation in their jurisdiction under the principle of majority rule. In other words, governments are granted the privilege of governing because it is the will of the people that they do so. As McLachlin J. (as she then was) pointed out in describing the meaning of voting in a democratic society:

Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one's grievances and concerns to the attention of one's government representative.¹²

30. As the elected members of parliament ("MP"s) and provincial parliaments ("MPP"s) are responsible to the will of the people through periodic elections, the government is responsible to the will of Parliament and legislatures through confidence votes on government initiated legislation. From amongst MPs or MPPs of the governing party, the Prime Minister or Premier will choose his or her cabinet. Individual cabinet ministers are given the executive responsibility of overseeing government departments and agencies. Under the principle of ministerial responsibility, cabinet ministers are directly accountable to Parliament or the provincial legislature for the

¹¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11, s. 3

¹² *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 S.C.R. 158 at p. 183

conduct of civil servants and the execution of government policy in their department. The media and the public also hold cabinet responsible for the actions of government. Civil servants are not responsible to Parliament or the provincial legislature for their conduct, but to their ministers and must carry out their duties in a politically neutral manner. Under the principle of collective responsibility, all cabinet ministers, including the Premier, collectively accept responsibility for decisions of the government.¹³

31. In Ontario, ministers sit on top of two separate reporting lines, being civil servants and political staff. In a department's civil service, there is a discreet reporting line through which the layers of civil servants report up. The reporting line passes through the Directors, the Assistant Deputy Ministers, the Deputy Minister and then to the Minister. The political staff are separate from civil servants. They provide advice to the Minister on the same issues as civil servants but integrate political considerations into their advice. Political staff form part of a minister's office and, while the Premier's Office is larger than that of other ministers, there are very few political staff in comparison with the size of the civil service. The civil service equivalent to the Premier's Office is Cabinet Office which consists of a large number of civil servants led by the Secretary of Cabinet. The structure of any minister's office varies as ministers choose their political staff and determine individually how to organize their office processes and the responsibilities of their political staff.¹⁴

B. DIVISION OF POWERS

32. As a federal state, the ability to pass laws in Canada is shared between the national Parliament in Ottawa and the provincial legislatures in the ten provinces. Sections 91 and 92 of the *Constitution Act, 1867* lay out the sovereign jurisdiction of Parliament and provincial legislatures. Under section 91, Parliament has legislative jurisdiction,

¹³ P. W. Hogg, *Constitutional Law of Canada*, 2d ed. (Toronto: Carswell, 1985) at pp. 197-198 ["Hogg"]; Testimony of Hutchison on August 29, 2005 at pp. 28-30

¹⁴ Testimony of Hutchison on August 25, 2005 at pp. 257-258; Testimony of Vrancart on October 27, 2005 at pp. 104-106; Testimony of Hutton on November 21, 2005 at pp. 95-99

amongst several other categories, over criminal law, First Nations and lands reserved for First Nations. The provinces, under section 92, have legislative jurisdiction over, amongst other categories, property and civil rights. In each of their jurisdictions, the federal and provincial governments are sovereign.¹⁵

33. While elected governments draft legislation and legislatures enact legislation, it is the responsibility of the superior and inferior courts, whose judges are appointed by the federal and provincial Crowns pursuant to sections 96 and 92(4) of the *Constitution Act, 1867* respectively, to interpret and apply the law. Legal interpretation and application is performed by courts regarding legislatively enacted statutes and the common law in the context of civil and criminal litigation. In interpreting the law, great deference is paid by courts as to how other courts dealt with similar legal issues in past cases. As such, the common law, or court-made law is constantly evolving though certain areas of the law may be experiencing greater change than other more settled areas of the law at any point in time.¹⁶

C. FIRST NATIONS

34. When the British and French arrived in Canada in the 17th century, First Nations people were present. The Imperial Crown entered into Treaties with specific First Nations in which the First Nations surrendered to the Crown their interests in traditional lands in exchange for, amongst other things, goods, money, and reserve lands. These treaties are immune from provincial interference.¹⁷
35. First Nations maintain collective rights (which are based on traditional occupation and use of land prior to the conquest) with respect to land which has not been surrendered to the Crown. As long as lands remain unsurrendered, aboriginal rights

¹⁵ *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, ss. 91-92

¹⁶ *Constitution Act, 1867* ss. 96, 94; For an examination of the “living tree” doctrine of the evolution in constitutional law, see *Edwards v. Canada* (Attorney General), [1930] A.C. 124 (P.C.)

¹⁷ P-642, p. 14

protect practices integral to organized First Nations society such as hunting and fishing activities. These rights are immune from provincial jurisdiction.¹⁸

36. In 1982, section 35 was added to the constitution.¹⁹ This constitutional provision created no new rights but enshrined existing treaty rights and aboriginal rights unsundered to the Crown. This constitutional provision does not address the validity of surrender of any piece of land.²⁰
37. Pursuant to section 91(24) of the *Constitution Act*, 1867 and the *Indian Act*, the Federal Department of Indian and Northern Affairs (“INAC”) has responsibility for providing services to and negotiating comprehensive and specific land claims with First Nations claimants.²¹
38. As a provincial government, Ontario nevertheless maintains responsibility over certain First Nations issues because, amongst other reasons, Ontario has obligations to First Nations people as citizens of the province. As the provincial civil service explained in a 1995 briefing, First Nations people are generally subject to the same laws as all Ontarians, which includes access to government benefits that do not conflict with federal jurisdiction. Further, under section 88 of the *Indian Act*, laws passed by the provincial legislature that do not conflict with aboriginal rights apply to First Nations people in Ontario.²²

D. LAND CLAIMS IN ONTARIO

39. There are two types of land owned by Ontario. The first is Crown land held since 1867 subject to unextinguished Aboriginal rights in the land. The second is land

¹⁸ P-642, p. 13

¹⁹ *Constitution Act, 1982*, being schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 35

²⁰ P-642, p. 18

²¹ *Constitution Act, 1867*, s. 91(24); Testimony of French on June 28, 2006 at pp. 16-20

²² P-642, pp. 9, 11; Testimony of Jai on September 13, 2005 at pp. 25-26; *Indian Act*, R.S.C. 1985, c. I-5, s. 88

where the provincial Crown, as any other legal person, acquired land previously surrendered to the federal government.²³

40. Land claims arise when a First Nation claims that its Aboriginal title was never properly surrendered or extinguished. Other situations include claims that surrender treaties did not include their particular First Nation, claims of fraud and incapacity, and claims that the Crown failed to uphold its fiduciary duties to the First Nation in respect to the First Nation's rights in the land. As the provincial civil service explained in a briefing, in 1995 under the common law only the federal Crown had been found to have fiduciary obligations and the nature and extent of those obligations depended on the specific circumstances. This was an evolving area of the law at the time.²⁴
41. In 1995, Ontario used an established four-step process for addressing land claims with First Nations. Ontario policy was to allow any aboriginal group or community to initiate the land claim process. This process allowed the First Nations communities, not the government, to determine which claims they wanted addressed by the province.²⁵
42. In the first step of the process, First Nations people would initiate the land claims process by serving a statement of claim and some reasons or evidence to support the claim. Ontario would consult with INAC to determine the federal government's view of the claim. Second, Ontario would gather any additional evidence including that which might support the First Nation's claim against the province and then would review the validity of the land claim. Ontario policy was to consider both the legal merits of the claim and the fairness of Ontario's past actions. A lot of work went into doing the research thoroughly and carefully because, without proper historical

²³ See Hogg, pp. 571-572

²⁴ P-642, p. 15-16; Testimony of Jai on September 13, 2005 at pp. 26-28

²⁵ P-641; Testimony of Jai on September 12, 2005 at pp. 215-217, 224-230

research and legal review, the province would not know if others might have a claim to the same land or who had a right to it.²⁶

43. Once the analysis was complete, Ontario would decide whether or not the claim was an appropriate claim for negotiation or whether it raised issues that required litigation. If accepted for negotiations, Ontario would begin negotiations which included the federal government. Fourth, Ontario and the First Nation would settle the claim and implement the settlement, which could take the form of money or land. Prior to the transfer of any land, arrangements would be made for environmental assessments, clean-ups, etc.²⁷
44. With respect to settlement negotiations, Ontario policy was to have the federal government involved in recognition of its Constitutional powers and the fact that the federal government was the signatory to treaties that had been made with First Nations. Federal government policy at the time was that it would only conduct negotiations with the authorized representatives of a First Nation band recognized by the federal government.²⁸
45. Ontario provided funding to the First Nation parties to defray the costs of participating in the negotiations with the federal and provincial governments; between 1993 and 1995, the provincial government's funding to aboriginal communities for negotiation with both governments was in the range of \$3.5 million. This did not include the provincial government's costs of its involvement in negotiations or other costs involved in the prior historical research and legal review.²⁹
46. Over the years, a number of First Nations people, including the Kettle and Stony Point First Nation had initiated many land claims against the provincial government

²⁶ P-641; P-642, pp. 27, 37; Testimony of Jai on August 30, 2005 at pp. 53-59, September 12, 2005 at pp. 217-222

²⁷ P-641; P-642, pp. 27, 37; Testimony of Jai on August 30, 2005 at pp. 53-59, September 12, 2005 at pp. 217, 222-224

²⁸ P. 641; Testimony of Jai on September 12, 2005 at pp. 217, 222-224; Testimony of French on June 28, 2006 at pp. 17-18

²⁹ P-705; Testimony of Jai on September 12, 2005 at pp. 224, 228-229

regarding various Crown lands and had not engaged in occupations. As of September 1995 no land claim had been initiated by anyone regarding Ipperwash Provincial Park.³⁰

E. JUSTICE AND LAW ENFORCEMENT

47. Under section 91(27) of the *Constitution Act, 1867*, Parliament and the federal government have exclusive jurisdiction over the enactment of criminal offences and procedure. Most criminal laws and procedures are contained in the federally enacted *Criminal Code*. The provinces have a role in criminal justice under section 92(14) over the administration and maintenance of justice, including provincial courts. The Ontario Crown also prosecutes most federally enacted criminal offences.³¹
48. The provinces also have jurisdiction under section 92(12) to impose fines, penalties and prison sentences for the purposes of enforcement of provincial laws made pursuant to section 92, including offences found in the *Trespass to Property Act*, the *Provincial Parks Act* and their associated regulations.³²
49. The role of the police in Canadian society was and is, amongst other things, to enforce the law, preserve the peace, prevent crimes, apprehend criminals, and lay charges. The powers of the police are derived from statutes and the common law.³³
50. Included in the provincial jurisdiction over the administration of justice in section 92(14) of the *Constitution Act, 1867* is the power to establish a police force to uphold criminal laws and provincial offences. Two provinces, Ontario and Quebec, maintain

³⁰ P-641; Testimony of Jai on August 30, 2005 at pp. 198-199, September 12, 2005 at pp. 230-232

³¹ *Constitution Act, 1867*, ss. 91, 92

³² *Trespass to Property Act*, R.S.O. 1990, c. T-21; *Provincial Parks Act*, R.S.O. 1990, c. p. 34; *Constitution Act 1867*, ss. 91, 92

³³ *Police Services Act*, R.S.O. 1990, c. P.15, s. 42

their own police forces. The rest of the provinces contract out their policing to the Royal Canadian Mounted Police.³⁴

51. The OPP, which performs general policing outside large municipalities who maintain their own police forces, exists pursuant to the *Police Services Act*. Under the *Police Services Act*, the government appoints the Commissioner of the OPP and “subject to the Solicitor General’s direction, the Commissioner has the general control and administration of the Ontario Provincial Police and the employees connected with it.”³⁵
52. As officers answerable to the law, police lay charges on suspected accused pursuant to sections 494 and 495 of the *Criminal Code*. These sections allow police officers to arrest, amongst others, persons observed committing an indictable offence or persons over whom the officer has reasonable grounds to believe has committed or is about to commit an indictable offence, as defined under the *Criminal Code*.³⁶
53. Police officers have some discretion in executing their policing duties though they cannot act without restraint and are under the obligation to enforce the law in all circumstances.³⁷ In 1993, a Ministry of the Attorney General lawyer reviewed the law and provided the following advice regarding police discretion: “police officers have a narrow discretion to determine how they will enforce the law, but not whether they will enforce it.”³⁸

F. POLICE INDEPENDENCE

54. The common law principle of police independence posits that the Solicitor General, the government or other ministers should not intervene in operational decisions made

³⁴ *Constitution Act, 1867*, s. 92(14); Hogg, pp. 425-426

³⁵ *Police Services Act*, s. 17(2)

³⁶ *Criminal Code*, R.S.C. 1985, c. C-46, ss. 494-495

³⁷ *Commissioner of Police for the State of Tasmania, ex parte North Broken Hill Ltd.* (1992), A. Crim. R. 390 (Tas. S.C.)

³⁸ P-714, p. 5 (emphasis in original)

by the OPP officers when exercising their powers as police officers. The rationale for this is that police should be guided by statute and case law in enforcing the law.³⁹

55. The principle of police independence from the elected government was laid out in the English decision of *Ex Parte Blackburn*. In this case, Lord Denning, M.R. stated as follows:

I have no hesitation, however, in holding that, like every constable in the land, [the Commissioner] should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the Police Act 1964 the Secretary of State can call him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is every chief constable, to enforce the law of the land. He must take steps to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.⁴⁰

56. In Ontario, the Police Commissioner does report information about police matters to the Solicitor General and can take policy direction from the Solicitor General. It is the Solicitor General who is accountable for the actions of the OPP and its officers to the Legislature under the principle of ministerial accountability.⁴¹
57. The Commission of Inquiry into Certain Activities of the RCMP chaired by Justice MacDonald in the late 1970s suggested a role for government in oversight of police based on the principle of democratic oversight. However, the Commissioner emphasized that in certain operational matters, police must be free from ministerial direction under the *Ex Parte Blackburn* decision:

³⁹ P-578, pp. 12, 17-18

⁴⁰ *R. v. Metropolitan Police Commission, ex parte Blackburn*, [1968] All E. R. 763 at 769 [*“Blackburn”*] (C.A.)

⁴¹ P-578, pp. 12, 17-18

[The] Minister should have no right of direction with respect to the exercise by the RCMP of the powers of investigation, arrest and prosecution. To that extent, and to that extent only, should the doctrine expounded in *Ex Parte Blackburn* be made applicable to the RCMP.⁴²

58. Allegations of political interference with police independence regarding the laying of charges on an accused reporter were raised in the 1980s in *R. v. Appleby*. In that case, a reporter had obtained copies of the federal government's budget documents prior to their being made public and the government complained to the RCMP. The charge against the accused was ultimately dismissed because the judge found that police were overzealous and unfair in charging him. However, the judge explicitly ruled that the repeated calls by the government representatives to the RCMP Commissioner and other police officers regarding the case did not constitute political interference. The judge further found that those circumstances did not even raise a justifiable perception of political interference.⁴³
59. The foregoing was the state of the legal consideration given to the concept of police independence as of 1995. Subsequent decisions continue to apply the decision in *Ex Parte Blackburn*.⁴⁴

⁴² Commission of Inquiry Concerning Certain Activities of the RCMP, *Freedom and Security under the Law, Second Report*, vol. 2, (1981) at 1013

⁴³ *R. v. Appleby* (1990), 78 C.R. (3d) 282

⁴⁴ Commission for Public Complaints Against the RCMP, *Commission Interim Report Following a Public Hearing into Complaints regarding the events that took place in connection with demonstrations during the Asia Pacific Economic Cooperation Conference in Vancouver, B.C. in November 1997 at the UBC Campus and at the UBC and Richmond detachments of the RCMP*, (2001) at p. 101 ["APEC Report"]; *R. v. Campbell*, [1999] 1 S.C.R. 565 at p. 33

PART III - 1993 AND PRIOR EVENTS

A. SUMMARY OF FACTUAL EVIDENCE

i) Expropriation and Creation of the Canadian Forces Base Ipperwash

60. The histories of Camp Ipperwash and Ipperwash Provincial Park are separate and distinct. The lands that formed Canadian Forces Base Ipperwash (“Camp Ipperwash”) were taken from the Kettle and Stony Point Band without their consent in an appropriation by the federal government. By the time of the expropriation, the park already existed, those lands having been surrendered voluntarily for sale by the band.
61. In 1942, during World War II, the federal government asked the Kettle and Stony Point First Nation to consider a surrender and sale of 2,240 acres of the Stony Point reserve for an Advance Infantry Training Centre. On April 1, 1942, the Kettle and Stony Point Band met and a wide majority of the 83 eligible voters rejected the proposed surrender and sale.⁴⁵
62. The federal government decided to obtain the lands despite the negative vote. On April 14, 1942, the federal government obtained an Order in Council and appropriated the 2,240 acres under the authority of the *War Measures Act*.⁴⁶
63. The federal government provided limited compensation to those who had to vacate the Stony Point reserve and promised that, following the end of the war and if the lands were not required by the Department of National Defence (“DND”), the federal government would enter into negotiations to transfer the land back at a reasonable price to be agreed upon.⁴⁷

⁴⁵ Ipperwash Historical Background prepared by Joan Holmes dated June 2004, (“Historical Background”), P-7, pp. 48-50

⁴⁶ Historical Background, P-7, pp. 50-51; *War Measures Act*, R.S.C 1927, c. 206

⁴⁷ Historical Background, P-7, p. 51

64. In 1944, the federal government became concerned that it did not have sufficient land for the military camp and also acquired some waterfront lots which had previously been surrendered and sold by the Kettle and Stony Point Band and which were owned by private individuals. These lands, along with the lands appropriated in 1942, became Camp Ipperwash.⁴⁸

ii) Divisions within the Band and Attempts to Obtain the Return of the Land

65. The First Nations people who resided at the Kettle Point and Stony Point reserves were Chippewas and had a long, intertwined and somewhat contentious history. They had been administered by the federal government as one band since the mid 1800's when they were part of one regional band along with Chippewas on other reserves. The federal government's treatment of these Chippewas as one large band caused much dispute and contention and led to the subdivision of first the Walpole Island Band and later the Sarnia Band, leaving the residents of the Kettle and Stony Point reserves as one band in 1919.⁴⁹
66. As a result of the expropriation in 1942, approximately sixteen families who had been resident at Stony Point relocated to much smaller lots on the Kettle Point reserve. This created friction and further divisions within the Kettle and Stony Point Band. However, over time, some of the former residents of Stony Point and their descendants married Kettle Point residents and the two communities became more closely interconnected.⁵⁰
67. Members of the Kettle and Stony Point Band objected to the expropriation from the time it was proposed and, immediately following the war, the former residents tried to obtain the return of the land by writing letters and later through demonstrations. Negotiations between the Federal Department of Indian Affairs and the DND for

⁴⁸ Historical Background, P-7, pp. 38-41, 54

⁴⁹ Historical Background, P-7, p. 23

⁵⁰ Historical Background, P-7, pp. 52-53; Testimony of Carl George on February 22, 2005 at p. 166

selected portions of appropriated lands began as early as 1946 and continued on and off for decades.⁵¹

68. In 1981, the federal government and the Kettle and Stony Point Band reached an agreement regarding Camp Ipperwash which, by this time, included the additional beachfront lots surrendered and sold to private individuals before being acquired by the federal government. The agreement provided in part that the federal government would return parts or all of Camp Ipperwash to the Kettle and Stony Point First Nation at no cost when no longer required by the DND. The federal government also paid \$2,426,535.95 to the Kettle and Stony Point Band in additional compensation, interest and expenses.⁵²
69. Some former Stony Point reserve residents and their descendants had become increasingly disenchanted with the settlement proposals proposed by the Kettle and Stony Point Band Council and began arguing that they were a separate band in the 1970's. They were very critical of the distribution of compensation received in 1981 and began to organise themselves and sought to educate the public and the Kettle Point community of their view that they were a separate community. They also began to lobby the federal government to have the former residents of Stony Point and their descendants recognised as the legal heirs and negotiating body in any return of Camp Ipperwash.⁵³
70. Ron George, the son of a former Stony Point resident and a lawyer, testified before the Commission that he attended meetings in the 1980's of Elders who held location tickets which had entitled them to plots of land at Stony Point. Many of them had lived at Stony Point and been forced to leave in 1942 as a result of the federal government's appropriation of the land to create the military camp. The group wanted to return to the lands and re-establish their community there. Their primary

⁵¹ Historical Background, P-7, pp. 50-51, 59-61; Testimony of Rose Manning on April 6, 2005 at pp. 215-219

⁵² Historical Background, P-7, pp. 59-61; Testimony of Rose Manning on April 6, 2005 at pp. 215-219

⁵³ Historical Background, P-7, pp. 59-61

concerns were separation from the Kettle and Stony Point Band, the rightful return of the land and compensation.⁵⁴

71. The former residents and their descendants continued to protest the 1942 appropriation of the lands and the continued failure to return them by writing letters to the Prime Minister, the Federal Minister of Indian Affairs and others, handing out pamphlets and staging limited protests in front of, or at, the Army Camp.⁵⁵
72. On December 12, 1991, representatives of the former Stony Point residents attended before the House of Commons Standing Committee on Aboriginal Affairs and made submissions in support of a return of Camp Ipperwash lands. On June 18, 1992, Chief Tom Bressette of the Kettle and Stony Point Band and others also made submissions in support of a return of the lands.⁵⁶
73. On March 13, 1992, the House of Commons Standing Committee on Aboriginal Affairs recommended that the federal government return the land to its aboriginal inhabitants and their descendants from whom it had been seized pursuant to the *War Measures Act*.⁵⁷
74. C.J. Wildman, who in 1992 was the Ontario NDP Minister Responsible for Native Affairs, supported the efforts of the Kettle and Stony Point First Nation to reclaim Camp Ipperwash and wrote to his federal counterpart, the Minister of Indian Affairs and Northern Development.⁵⁸
75. Despite the efforts of the First Nations people, the federal government maintained its position that Camp Ipperwash was still required by the DND for training purposes.⁵⁹

⁵⁴ Testimony of Ron George on February 28, 2005 at pp. 47-51, 80-81

⁵⁵ Testimony of Warren George on December 8, 2004 at pp. 78-79; Testimony of Gerald George on January 12, 2005 at pp. 195-196; Testimony of Rose Manning on April 6, 2005 at pp. 216-217; Testimony of Vince George on April 5, 2006 at pp. 22-24; Testimony of David George on October 19, 2004 at pp. 19-23

⁵⁶ P-221; P-255

⁵⁷ P-50

⁵⁸ P-233

⁵⁹ P-233

76. In early 1993, some of the former residents whose land had been expropriated and their descendants marched from Camp Ipperwash to Ottawa to raise awareness and communicate with the federal government in a walk called the “Stony Point Long Walk for Home.” When they got there, no one would speak to them.⁶⁰

iii) The Initial Occupation at Camp Ipperwash and Response

77. The internal division within the First Nations community was highlighted by the occupation of the rifle ranges in 1993. The occupation of Camp Ipperwash did not have the support of all those with an interest in the lands that were formerly part of the Stony Point reserve.
78. Carl George, a descendant of some of the former residents of the Stony Point reserve, felt that the Kettle and Stony Point Band Chief and Council were not making sufficient progress with the federal government on the return of the land. He spoke with a few residents and their descendants, a small group of less than ten individuals. They decided it would be a great idea to go onto the camp and not leave.⁶¹
79. On May 6, 1993, at approximately 9:30 a.m., Carl George attended at the Forest Detachment of the OPP and advised then Staff Sergeant John Carson that twelve members of the “Stoney Point First Nation” were commencing to occupy the military base, CFB Ipperwash. Carl George assured the OPP that all aspects of the action would be peaceful.⁶²
80. Carl George provided Staff Sergeant Carson with a written notice that indicated that “the Chippewas of Stoney Point First Nations #43” were taking over the reserve lands which had been taken away from them in 1942 in the name of those who had been uprooted and their descendants. The notice requested all outside First Nations “to

⁶⁰ Testimony of Rose Manning on April 6, 2005 at pp. 259-264; Testimony of Glenn George on January 3, 2005 at pp. 22; Testimony of Kevin Simon on December 1, 2004 at pp. 122-123

⁶¹ Testimony of Carl George on February 9, 2005 pp. 35-36, February 22, 2005 at p. 167

⁶² P-166

stay away from our legal take-over, that mis-representation, or civil disobedience may not occur.”⁶³

81. The notice was signed by Carl George and Maynard T. George. Carl George testified that he signed as “Chief” because others wanted to call him that; however, he was not actually elected chief.⁶⁴
82. The notice stated that the elected Kettle and Stony Point Band Council did not represent the “Chippewas of Stony Point First Nations #43” in any way, shape or form, though the Council and band members could join them.⁶⁵
83. Approximately 30 people including children moved onto Camp Ipperwash and occupied the rifle ranges on May 6, 1993. Carl George testified that he did not advise the military that they intended to stay indefinitely as they would not have allowed the occupation to begin.⁶⁶
84. On May 7, 1993, the Kettle and Stony Point Band Council issued a press release which stated in part as follows:

The Chief and Council of the Chippewas of Kettle and Stony Point do not sanction the occupation of Camp Ipperwash that is presently being carried out.

Chief Thomas Bressette and the elected Council of the community however, fully support the return of the lands at Camp Ipperwash. “We have a [sic] open line of communications on the entire issue in regards to the Stony Point lands, with the Department of National Defence. We are satisfied that our discussions with the federal government are progressing. It concerns me that Maynard T. George and his followers will hamper these discussions which could prove to be detrimental to the entire band membership of Kettle and Stony Point.”⁶⁷

⁶³ P-36; P-195

⁶⁴ P-36; P-195; Testimony of Carl George on February 9, 2005 at pp. 50-52

⁶⁵ P-36; P-195

⁶⁶ Testimony of Carl George on February 9, 2005 at pp. 53-55

⁶⁷ P-234

Tom Bressette was the chief of the Kettle and Stony Point Band who had been elected by a majority of Band members in 1990 and was re-elected every two years until 1997 when he was elected Ontario Regional Chief and Vice-Chief for the Assembly of First Nations.⁶⁸

85. Other occupiers came to Camp Ipperwash at which point the military refused to let anyone come in with their trailers. At that time, the occupiers advised the military that they would not be leaving. On May 15, 1993, Captain Dodd advised in writing that the DND was the legal titleholder of the lands and that the occupiers had been given verbal warning that they were trespassing.⁶⁹
86. Glenn George testified that occupiers discussed the warnings from the Department of National Defence that they were trespassing. However, they continued with the move on to the camp. On May 18, 1993, at 10:35, Maynard T. George contacted Acting Staff Sergeant Beacock of the OPP and advised that a notice would be served on Camp Ipperwash personnel by a bailiff and then structures would be moved on to the camp.⁷⁰
87. When served, the notice was signed by six individuals and referred to the federal government's 1942 appropriation of Stony Point Reserve #43. It indicated that they were repossessing their homelands and required that those currently on the lands not resist or willingly obstruct the repossession. If they opposed or failed to comply with the notice, it threatened charges under "Criminal Code Law."⁷¹
88. At 11:45, Carl George and Maynard T. George led approximately 50 people to the site on Highway 21. Beacock advised them that the OPP were present to maintain the peace and enforce the Criminal Code. Carl George then proceeded to cut a lock from

⁶⁸ Testimony of Tom Bressette on March 1, 1995 at pp. 181-182, 224

⁶⁹ Testimony of Carl George on February 9, 2005 at pp. 53-54; Inquiry Document # 7000283, Letter from Captain R. G. Dodson to Whom it May Concern dated May 15, 1993

⁷⁰ Testimony of Glenn George on February 2, 2005 at pp. 61-63; P-170

⁷¹ P-35

a chain that secured a gate into Camp Ipperwash and numerous vehicles and small structures moved onto a portion of the Canadian Forces Base.⁷²

89. The OPP saw the initial occupation of the ranges as a police matter. Carson, now a commissioned OPP Inspector, was appointed as Incident Commander in relation to the occupation at Camp Ipperwash because of his knowledge of issues, the geography and the people involved from his previous four years as commander of the OPP detachment in Forest.⁷³
90. Carson had requested some research in regard to the ownership of Camp Ipperwash and received copies of original documentation regarding the 1942 appropriation pursuant to the *War Measures Act*. Having reviewed the documentation, Carson felt that there was good reason to understand how the Stony Point people would have a strong expectation that the property be returned to them when no longer needed by the military, pursuant to the terms of the 1942 appropriation.⁷⁴
91. Carson was aware of some discussions between the OPP and the military regarding different approaches to the situation. Carson testified that it would have been the preference of the military that the OPP “simply go in and enforce trespass.” He testified that “the military would have liked to turn over the – the policing responsibility to the OPP and simply go in and take whatever necessary action that they felt we should.” However, Carson also became aware at some point that the military had authority pursuant to the *Defence Controlled Access Area Regulations* if they felt it appropriate to remove any trespasser from a military base.⁷⁵
92. From the OPP’s perspective, its policy was to require an injunction before it would take any overt action to remove anyone from the occupied territory. The landowner of the occupied land would be responsible for seeking an injunction from the courts and the OPP would then do as directed by the court. Consequently, in the case of

⁷² P-170

⁷³ Testimony of Carson on May 10, 2005 at pp. 205-207

⁷⁴ Testimony of Carson on May 10, 2005 at pp. 226-228

⁷⁵ Testimony of Carson on May 10, 2005 at pp. 226-227

Camp Ipperwash the position of the OPP was that their preferred approach was that the military seek and obtain an injunction before the OPP would remove anyone from the lands.⁷⁶

iv) Threatened Occupation of Ipperwash Provincial Park

93. On May 18, 1993, the same day that the Camp Ipperwash rifle ranges were occupied, Maynard T. George advised the OPP that the occupiers would also serve notice on a member of the provincial Ministry of Natural Resources and move buildings onto Ipperwash Provincial Park.⁷⁷
94. Ipperwash Provincial Park was Ontario's fourth oldest provincial park, founded in 1938. One of the province's most popular parks, each year it provided day use and camping for thousands of visitors. Annually there were over 16,000 day visitors and nearly 58,000 people camping in the park. Park Superintendent Les Kobayashi described it as a "very high, high use [p]ark" which had been very popular from the 1960's through to 1995. Kobayashi estimated that 20 to 30 percent of the campers were long term, repeat users of the park.⁷⁸
95. The park was used for more than camping during the summer months. Day visitors continued to use the park after it was closed to camping following the Labour Day weekend. Kobayashi testified that between Labour Day and November, approximately 5,000 people would use the park.⁷⁹
96. The history of the park was separate and distinct from that of Camp Ipperwash. In 1928, a private individual applied to the Federal Department of Indian Affairs to purchase the beachfront of the Stony Point Reserve, Lot 8 in Ranges A, B, C and D. The Kettle and Stony Point Band Council held a general meeting and a majority of the Band members present voted in favour of the surrender and sale. The surrender

⁷⁶ Testimony of Carson on May 10, 2005 at pp. 209-210, 229-230

⁷⁷ P-170; P-835

⁷⁸ P-796; P-839; Testimony of Kobayashi on October 25, 2005 at pp. 148-155

⁷⁹ P-551; Testimony of Kobayashi on October 25, 2005 at pp. 157-158

described the four lots as containing 377 acres and included “foreshore rights in connection with the said lots.” The private individual paid for the land and was issued a patent in June 1929.⁸⁰

97. Seven years later, the province purchased one of the parcels of Lot 8, Concession A from a private individual in December 1936 for \$10,000 and created Ipperwash Provincial Park. The other lots remained in private hands and were subsequently appropriated by the federal government and became part of Camp Ipperwash as described earlier at paragraph 64; however, Ipperwash Provincial Park was never part of Camp Ipperwash.⁸¹
98. Though park personnel were served with a notice about a potential occupation in 1993, no actual occupation took place.⁸²
99. The notice regarding the park was the same as that provided regarding Camp Ipperwash. MNR also received i) a letter from Maynard T. George regarding a notice to vacate Ipperwash Provincial Park within 30 days, ii) additional notices for the recovery of possession of lands and to vacate within 30 days, and iii) some sort of authorisation by one of the former residents of the Stony Point reserve. The various notices and the power of attorney made repeated reference to the 1942 appropriation by the federal government.⁸³
100. Carl George and Maynard T. George and four other individuals wrote to MNR on May 19, 1993 proposing a “Co-Management Agreement” for Ipperwash Provincial Park consisting of the following principles:
 1. A structure of approximately 6 meters sq. or 20 ft. for an information booth on Native Title and History.
 2. Equitable division of the 266 camp ground sites for 50/50 entitlement utilizing regular Ipperwash documentation for the 1993 season.

⁸⁰ P-7 Historical Background pp. 42-43; Testimony of Chief Tom Bressette on March 1, 2005 at pp. 228-229

⁸¹ P-7 Historical Background pp. 42-43 Testimony of Chief Tom Bressette on March 1, 2005 at pp. 228-229

⁸² P-170; Testimony of Kobayashi on October 24, 2005 at pp. 27-30; P-835

⁸³ P-834; Testimony of Kobayashi on October 24, 2005 at pp. 16-17

3. Use of defined areas for historical plaques, commemorating the Up-rooted families and veterans who died, while awaiting to return home.
4. A ceremony on Remembrance-Day, in right of the living veterans and land-owners at Stoney Pint, with MNR Officials and other veterans.⁸⁴

101. The letter referred to the signatories as the “declared owners” of the lands with legal documents of the identified lands at the Ipperwash Provincial Park and stated that they were “anxious to occupy and use our lands”; however, they recognised the necessity of educating their youth in good management skills. The letter indicated that in consideration for agreeing to the four principles in the co-management proposal which they referred to as a “short term agreement”, they would “withhold members from our First Nation’s structure, from immediate take-over and occupation.”⁸⁵

102. While Carl George and Maynard T. George gave assurances that their actions in regard to Camp Ipperwash and Ipperwash Provincial Park would be peaceful, at various times, they also suggested that others might adopt different methods:

- a. In the May 19, 1993 letter to MNR suggesting the co-management proposal referred to above at paragraph 100, the occupiers warned that if MNR didn’t co-operate, “we may face circumstances beyond our present control”;
- b. On May 26, 1993, Maynard T. George called Kobayashi asking if MNR had completed its review and informed him that “it was difficult keeping his people in passive rather than an aggressive state”;
- c. On June 9, 1993, Carson advised his Superintendent of radio reports that Maynard had advised that the military had 30 days to vacate Ipperwash Camp or the occupiers’ next step would be “to move in with bulldozers” (though Carl George later told Carson that the comment was in jest);
- d. On the same day, Chief Tom Bressette wrote to Ontario Premier Bob Rae and advised that the occupiers were now sanctioning “confrontation” methods and indicated that the occupiers’

⁸⁴ P-171

⁸⁵ P-171

“threats of violence heard over local radio stations this morning, are not being taken lightly in our community.”⁸⁶

103. During this same time frame, some of the Stoney Point Group made allegations that they had land claims beyond Ipperwash Camp and Ipperwash Provincial Park.
104. In an article in the Sarnia Observer on May 19, 1993, Maynard T. George was reported to have indicated that the military base and the provincial park were just part of a large section of Bosanquet Township that the group had claimed.⁸⁷
105. On June 14, 1993, Maynard T. George and Carl George attended Bosanquet Township offices with large maps and indicated land claims from Ravenswood Road east to Parkhill and north to Goderich (with the exception of the village of Grand Bend Beacock).⁸⁸

v) Reaction from the Kettle and Stony Point Band

106. MNR spoke on several occasions with Chief Tom Bressette, the Chief of the Kettle Stony Point Band and Elizabeth Thunder, Administrator of the Kettle and Stony Point Band. The elected representatives immediately denounced a potential occupation of the park and referred to it as an “illegal occupation.”
107. On May 18, 1993, when the notice was initially served on park personnel, Chief Tom Bressette told Terry Humberstone, who was an MNR Native Liaison specialist, that they did not condone the actions of Maynard T. George and his group and suggested that MNR should take up the legality of their actions regarding the park with the Government of Canada. Chief Tom Bressette further advised that he felt that MNR should have them removed or else they would be inviting anyone else in who had a claim to make.⁸⁹

⁸⁶ P-171; P-177; P-181; P-238; P-397, p. 45; Testimony of Carson on May 11, 2005 at pp. 20-21, 29-30

⁸⁷ P-173

⁸⁸ P-182

⁸⁹ P-235; Testimony of Chief Tom Bressette on March 1, 2005 at pp. 233-236

108. Chief Tom Bressette spoke again with Humberstone on May 20, 1993 and passed on his concerns and those raised by members of the community to the Kettle and Stony Point Band Council. Humberstone reported the conversation to others in MNR in a contemporaneous email. He advised that Chief Tom Bressette had complained that MNR would be “setting a double standard” if Maynard George were permitted to occupy the park unchallenged because previously, when other band members had claimed some other land by setting up tents and camps, the OPP had “moved in and arrested them, evicted them, and charged them with trespass.” Chief Tom Bressette indicated that he would complain to the provincial government regarding this “discriminatory treatment.”⁹⁰
109. Chief Tom Bressette warned that the Stoney Point Group would probably move more people in at a later date and then the province would have “real trouble ever getting them out.” Chief Tom Bressette indicated that he and his council and people questioned why “MNR, would allow an ‘illegal occupation’ of public parklands [to] take place.” His suggestion was to “evict them now.” Humberstone’s email further advised that Chief Tom Bressette also warned that “warriors” were moving into the area.⁹¹
110. Humberstone spoke again with Chief Tom Bressette and Elizabeth Thunder on May 27, 1993 and described the meeting in a contemporaneous email. They discussed the claim asserted by Maynard T. George in regard to Ipperwash Provincial Park and both Chief Tom Bressette and Elizabeth Thunder again agreed that the claim should be addressed through the federal government. Humberstone reaffirmed the Ministry’s position that they recognise the elected Chief and Council as the body with whom they would deal with day to day but had to communicate with Maynard T. George regarding the terms of the occupation. Humberstone advised Chief Tom Bressette that the ministry’s legal services were reviewing the validity of the bailiff’s

⁹⁰ P-236; P-841; Testimony of Chief Tom Bressette on March 1, 2005 at pp. 237-241

⁹¹ P-236; P-841; Testimony of Chief Tom Bressette on March 1, 2005 at pp. 237-241

order and would respond shortly by letter to Maynard T. George and would advise Chief Tom Bressette.⁹²

111. Humberstone concluded by asking Chief Tom Bressette and Elizabeth Thunder for their suggestions in managing this issue. He summarised their response as follows:

They both felt that Maynard should be told that his activity is illegal and that if he doesn't vacate the park, trespass charges will be laid. If that fails, "get the O.P.P. and remove them".

I followed this by asking if we ordered Maynard to vacate, would it be possible that violence would result. Tom responded by saying that he didn't think so but that anything is possible. He did state following a further question by me that "peacekeepers" were in the area from Moraviantown and Oneida and "other places". Their presence [sic] however was in relation to Camp Ipperwash and not Ipperwash P.P. was my interpretation.

Tom did think though that the longer Maynard was in the Park, the higher the likelihood was that the numbers of native participants would increase. This could lead to tents, trailers, etc. in addition to the chipwagon now there.⁹³

112. Chief Tom Bressette testified before the Commission and confirmed that he had thought that the trespass charges should be laid; however, twelve years later, he thought that he didn't think that he would have told Humberstone that he should get the OPP and remove them but would have told him to "get the OPP to charge him."⁹⁴

vi) Initial Response of MNR

113. When MNR officials on the ground were first presented with a potential occupation of the park, they advised the occupiers that they would not condone any such action. On May 20, 1993, Carl George and Maynard T. George presented Kobayashi as Superintendent of both the Ipperwash and Pinery Provincial Parks with the co-management agreement and the notice of eviction. Kobayashi did not acknowledge or accept them, but advised that he would forward the co-management proposal to the

⁹² P-237

⁹³ P-237

⁹⁴ Testimony of Chief Tom Bressette on March 1, 2005 at pp. 250-251

appropriate ministry officials for further review. Kobayashi advised verbally and subsequently in writing that “the Ministry does not condone the process being followed by you.”⁹⁵

114. Kobayashi agreed to allow Carl George and Maynard T. George to disseminate information in the park from a specific location on the understanding that Carl George and Maynard T. George would do the following:
 - a. They would provide a list of persons who would disseminate the information;
 - b. They and their supporters would respect the safety of visitors;
 - c. They and their supporters would not otherwise interfere with any park activities; and
 - d. They would ensure that no alcohol would be present or consumed in the park.⁹⁶
115. Kobayashi testified that Maynard T. George indicated to him in 1993 that burial grounds were underneath the maintenance building. Kobayashi spoke with staff about the construction of the maintenance building, including Don Matheson, the assistant superintendent whose father had previously been superintendent and who had grown up at the park. No one recalled seeing anything at the time of the construction of the building to suggest that there were burial grounds. Furthermore, the maintenance building was built on a limestone shale.⁹⁷
116. Kobayashi was aware that MNR had recently gone through a management planning process with respect to the park and none of the documentation and research they had collected suggested that there were any burial grounds there. Despite having the opportunity to review, revise and provide input into the preliminary park plan, the Kettle and Stony Point Band did not raise any issues about any burial ground during

⁹⁵ P-837; P-838; P-840; Testimony of Carl George on February 9, 2005 at pp. 101-102

⁹⁶ P-177; P-838

⁹⁷ Testimony of Kobayashi on October 24, 2005 at pp. 43-44

the consultations. The Kettle and Stony Point Band advised MNR that the plan addressed their concerns.⁹⁸

117. Kobayashi testified before the Commission that, while he reported Maynard T. George's comments to his superior at MNR, he was confident that there was no burial site or cemetery or anything of that nature.⁹⁹
118. On May 25, 1993, Kobayashi met with Garnett Mathews of the OPP to discuss the exchange of contingency plans to deal with the situation at Ipperwash Provincial Park. Mathews requested that Kobayashi provide him with the documentation and background that the First Nations group was using to substantiate the claim. Kobayashi provided him with a copy of their existing contingency plan which was standard for all parks and the two agreed on the need for the two agencies to co-operate to "see this to a successful end."¹⁰⁰

vii) Interministerial Committee Meeting

119. In 1993, the Government of Ontario had processes in place so that aboriginal emergencies, including blockades and other forms of direct action could be prevented, or if not prevented, resolved as quickly as possible. The Ontario Native Affairs Secretariat ("ONAS") was responsible for co-ordinating any corporate communications primarily through the Interministerial Committee on Aboriginal Emergencies ("IMC"), a committee that ONAS would convene as required and chair.¹⁰¹
120. The main roles of the committee were to act as a clearing house for information and to develop recommendations. The committee was composed of a number of ministries including the following: the Ministry of the Attorney General ("MAG"), ONAS, MNR, Ministry of the Solicitor General ("MSG") including the OPP, Cabinet

⁹⁸ Testimony of Sturdy on October 18, 1996 at pp. 169-176, 184-186; Testimony of Kobayashi on October 20, 2005 at pp. 240-242, 244-249, 266-267; Testimony of Kobayashi on October 24, 2005 at pp. 45-46

⁹⁹ Testimony of Kobayashi on October 24, 2005 at pp. 45-46

¹⁰⁰ P-844; Testimony of Kobayashi on October 25, 2005 at p. 202

¹⁰¹ P-303; While this briefing note is dated July 10, 1995, the role, composition and guidelines for the committee had not changed since 1993 – Testimony of Jai on August 30, 2005 at pp. 114-117

Office and the Premier's Office. Both civil servants and political staff could be members of the committee.¹⁰²

121. On May 21, 1993, the Committee met to review a number of situations including the situation at Camp Ipperwash and Ipperwash Provincial Park. A representative of the Premier's Office attended that meeting as did representatives of ONAS, MNR, MSG and the civil and criminal offices of the MAG as well as other ministries. One of the representatives of the MSG was an OPP officer who had been seconded from the OPP to the office of the Deputy Minister of MSG, as special adviser for First Nation issues.¹⁰³

122. ONAS provided an overview of the situation at the meeting which was summarised as follows in the minutes:

In general, the Stony Point community's claims relate to two segments of land which were originally both the First Nation's territory: (1) Camp Ipperwash where the community was forcibly removed by the federal government under the 1942 *War Measures Act* (confirmed by O-I-C) to Kettle Point lands; the lands were to be returned to the First Nation, upon negotiation, when the lands were no longer required for military purposes; and (2) Ipperwash Provincial Park – acquired by Ontario through a private third party after the First Nation surrendered a portion of its reserve lands for sale in 1928.¹⁰⁴

123. ONAS also provided information notes to the IMC attendees which set out further background information in regard to Ipperwash Provincial Park and Camp Ipperwash. Those information notes distinguished between the occupiers who called themselves the Stony Point people, spelling their name with an extra "e" not included in the name of the recognized band.¹⁰⁵

124. Ron Baldwin, the District Manager at MNR, provided an update regarding the park and indicated that the Stony Point Group wanted to place an information booth or

¹⁰² P-498; Testimony of Spiegel on September 2, 2005 at pp. 77-78

¹⁰³ P-712

¹⁰⁴ P-712

¹⁰⁵ P-712; P-720; Testimony of Hipfner on September 19, 2005 at pp. 11-14

structure in the park that week. He advised the Committee that the group sought a co-management agreement addressing the four points: (1) the placement of an information booth/structure; (2) the equitable division of the campground sites; (3) the use of certain defined areas to erect commemorative plaques; and (4) a Remembrance Day commemorative service.¹⁰⁶

125. Baldwin advised the Committee that the “elected chief of the federally recognised First Nation” was frustrated with the province’s failure to deal with the Stoney Point Group. Baldwin noted that the group was peaceful and seemingly co-operative but concerns were then raised which the minutes summarised in the following words:

However, there is a possibility that a structure may be erected contrary to the *Provincial Parks Act*. There have also been reports that Warriors from other areas may join the First Nation presence.

A bailiff’s order, served by the First Nation on Thursday asserts First Nation ownership of the park lands. There is concern that if Ontario does nothing, the First Nation’s position will be reinforced. The Order is based upon an 1850 statute which has been repealed.¹⁰⁷

126. The Committee discussed the matter and agreed that while Ontario supported the return of Camp Ipperwash lands, the Ipperwash Provincial Park was a different matter. The Committee agreed to set up a Working Group to examine issues such as the basis of the claim to the park and the bailiff’s order.¹⁰⁸
127. Several witnesses before the Commission testified that the position of the Government of Ontario at the time in 1993 was that Camp Ipperwash lands had been appropriated and there was a promise to return that land. The aboriginal people had a legitimate grievance about Camp Ipperwash. However, the park had been purchased on the open property market in the 1930’s some years after it had been surrendered

¹⁰⁶ P-712

¹⁰⁷ P-712

¹⁰⁸ P-712

for sale by the First Nation. Ontario was in legal possession of the park lands which had been obtained in a “fair and equitable manner.”¹⁰⁹

128. Following further meetings, civil servants drafted letters setting out the position of the Government of Ontario to Maynard T. George, Carl George and Chief Tom Bressette which were reviewed by Yan Lazor, Director of Legal Affairs at ONAS and Chair of the Committee.¹¹⁰
129. In the drafts and the three final versions of the letters which were sent out, the Government of Ontario set out the same position: i) Ipperwash Provincial Park was distinct from Camp Ipperwash; ii) the Province of Ontario was in lawful possession through a purchase of the land from third parties; and iii) the bailiff’s order was invalid.¹¹¹
130. The letters also made clear that the province would deal with the Chief and Council of the Kettle and Stony Point Band, not the occupiers. This was consistent with federal and provincial government policy of recognizing and dealing with the elected representatives of an official band pursuant to federal legislation.¹¹²
131. The letter to Maynard T. George from Ron Baldwin on behalf of Minister Howard Hampton dated June 14, 1993 stated in its entirety as follows:

The Minister of Natural Resources, Howard Hampton, has asked me to respond to your letter of March 9, 1993 concerning Ipperwash Provincial Park.

You should be aware that the lands which comprise Ipperwash Provincial Park have no relationship to those lands which were the

¹⁰⁹ P-803; Testimony of McCabe on September 28, 2005 at pp. 35-37; Testimony of Sturdy on October 19, 2005 at pp. 155-157

¹¹⁰ P-180

¹¹¹ P-180; P-215; P-241; Maynard T. George did not testify at the Inquiry but Kobayashi sent an email on June 18, 1993 to Baldwin stating that Maynard George had confirmed receipt of the letter - P-849. Chief Tom Bressette confirmed receipt of the government position – Testimony of Chief Tom Bressette on March 1, 2005 at pp. 270-272; Carl George testified that he probably got a final version of the letter – Testimony of Carl George on February 9, 2005 at pp. 126-128.

¹¹² P-215; P-241; P- 641; Testimony of Jai on September 12, 2005 at pp. 217, 222-224; Testimony of French on June 28, 2006 at pp. 17-18

subject of the federal action in 1942 under the War Measures Act, wherein lands that were formerly Indian reserve lands were appropriated for the military base at Camp Ipperwash.

In 1928, the Chippewas of Kettle and Stoney Point surrendered for sale approximately 377 acres to the federal government. These lands were subsequently patented by the federal government to a private individual in 1929. In 1938, the Ontario government, for purposes of establishing a provincial park, purchased 109 acres of this land from four private individuals.

From our review it would appear that the 1850 legislation known as “An Act for the protection of the Indians in Upper Canada from Imposition, and the property occupied or enjoyed by them from trespass and injury” has been repealed by the Statutes of Dominion of Canada, 1869 and 1876.

Accordingly, through third party purchase the Ontario Crown is in lawful possession of those lands comprising Ipperwash Provincial Park. The Bailiff’s process and documentation served on park staff cannot therefore be considered valid.

I want also to confirm that the Ministry of Natural Resources will address matters of information sharing and economic opportunity pertinent to aboriginal peoples’ interests respecting Ipperwash Provincial Park with the Chief-in-Council for the Kettle and Stoney Point First Nation.¹¹³

132. The letter to Chief Tom Bressette was to a similar effect.¹¹⁴
133. In an email confirming that MNR was delivering the June 14, 1993 letter to Maynard T. George, Baldwin stated that while he did not feel that there was an “imminent risk”, “the longer we [defer] our position the more Maynard claims.” Baldwin wasn’t called as a witness before the Commission but one of the recipients of the email, Peter Sturdy, understood the reference to “we” to mean the province.¹¹⁵
134. MNR also developed a verbal response manual for use by MNR communication officers in responding to potential questions from the media regarding the situation. The manual made clear that Ontario had bought the lands which became the park from private individuals and that Ontario “followed all necessary legal requirements

¹¹³ P-215

¹¹⁴ P-241

¹¹⁵ P-809; Testimony of Sturdy on October 19, 2005 at pp. 201-202

to obtain title to these properties”. The manual also indicated that the ministry’s legal section had reviewed the legality of the bailiff’s order served on park staff and that the order had no force since the province’s legal ownership of the park was “clear.” When answering questions regarding the government’s response, communications officers were to indicate that “the ministry in no way condones the actions of the Stoney Point people in establishing a presence in Ipperwash Provincial Park.”¹¹⁶

viii) OPP Authority and Obligations regarding Camp Ipperwash

135. An allegation of ownership had been made with respect to Ipperwash Provincial Park and the Government of Ontario had responded communicating its position that it legally owned the park. However, no occupation actually occurred. The information booth which was placed in the park was removed by some of the Stoney Point Group shortly thereafter on the night of June 3, 1993.¹¹⁷
136. In contrast, there was an ongoing occupation of the rifle ranges of Camp Ipperwash. At the IMC meeting on May 21, 1993 where the threatened occupation of the Ipperwash Provincial Park was discussed, the participants also discussed the situation at the camp.¹¹⁸
137. Doug Scott, an OPP officer who was seconded to the MSG as Special Adviser on First Nations policing, advised the IMC participants that the military intended to rely upon the OPP to make any decision as to whether or not an attempt should be made to remove the First Nations’ presence from the site. There was a question about who would have the rights and responsibilities regarding the evictions given that the land being occupied was an army base. The IMC recognised that because the land was under federal jurisdiction, clarification was required regarding the legal basis for any actions that might be taken.¹¹⁹

¹¹⁶ P-899; Testimony of Sturdy on October 19, 2005 at pp. 203-205

¹¹⁷ P-846

¹¹⁸ P-712

¹¹⁹ P-712

138. Scott subsequently communicated with E. Hipfner, who was counsel for the MSG at this time, and advised her that the military might want this situation to be ended and might be seeking the assistance of the OPP to bring it to an end. He requested her legal advice “about whether the OPP has the authority to intervene in some manner and, secondly, whether it is obliged to intervene.”¹²⁰

139. Hipfner provided Scott with a memorandum dated June 2, 1993 indicating that there were three likely approaches for removing the trespassers from Camp Ipperwash:

- a. an injunction;
- b. provisions of the Criminal Code dealing with preventing and arresting for breach of the peace (ss. 30 and 31) and forcible entry and detainer (ss. 72 and 73) which could be relied upon to eject the trespassers and to lay charges against them;
- c. the Trespass to Property Act, provincial legislation which could be employed to arrest the trespassers without a warrant and remove them from the property and perhaps to lay charges.¹²¹

140. Hipfner reviewed the Criminal Code provisions, the *Police Services Act* and statutes and advised:

In light of the obligations which the province has statutorily mandated for its police officers, it is most difficult to conclude that members of the OPP could elect not to enforce the Criminal Code in the situation that exists at Ipperwash, even where the party requesting OPP assistance has the authority (and, as a practical matter, the expertise) to engage in self-help.¹²²

141. Hipfner reviewed an Australian court case on point and concluded as follows:

In summary, the court recognized that police officers have a narrow discretion to determine how they will enforce the law, but not whether they will enforce it. It would seem that the same considerations apply here: the refusal to enforce the law in these circumstances could subject police officers to charges of neglect of duty, and the OPP to judicial censure and, perhaps, to legal liability.”¹²³

¹²⁰ P-713

¹²¹ P-713

¹²² P-713

¹²³ P-713 [emphasis in original]

142. Hipfner further advised that the *Trespass to Property Act* (“TPA”) had been found to apply to other federally regulated lands and there were reasonable grounds to argue that it was enforceable at Camp Ipperwash. Hipfner testified before the Commission that she subsequently found some obscure federal regulations entitled the *Defence Control Access Area Regulations* (“DCAARS”). These regulations provide authority for the removal of trespassers from a military base. As a matter of constitutional law, since there was applicable federal legislation, the provincial legislation did not apply. Consequently, she revised her memorandum on June 11, 1993 to include the DCAARS instead of the TPA.¹²⁴

143. Nevertheless, Hipfner’s conclusion was the same:

In light of the political dimension of this situation, it would certainly be desirable for the OPP and the Canadian Forces to co-operate and develop an approach that is sensitive to the positions of all parties. In the final analysis, however, it may be very difficult for the OPP to insist that military police be employed, alone or jointly with the OPP, to enforce the law in relation to civilians trespassing on military property, despite the military people’s legal authority and practical experience in this area; in this regard, the OPP must continually be cognisant of its duties, both under statute and at common law.¹²⁵

144. Both memoranda were copied to Detective Superintendent Wall (“Wall”). At the time, Wall was Carson’s immediate superior. These memoranda were found following Carson’s attendance at the Inquiry and so could not be raised with him. However, given that Carson had numerous conversations with Wall with respect to Camp Ipperwash in this time frame and there are references in Carson’s contemporaneous notes, it is reasonable to infer that Carson was made aware of these legal opinions. A draft copy of the memorandum was included with the OPP’s operational plans for Camp Ipperwash.¹²⁶

¹²⁴ P-713; P-714; Testimony of Hipfner on September 19, 1993 at pp. 41-44

¹²⁵ P-713; P-714

¹²⁶ P-397 (entries for June 7, 1993 and June 25, 1993) at pp. 42,74; P-1466

ix) OPP Response to Occupation of Ranges at Camp Ipperwash

145. While the OPP were obtaining legal advice about their rights and obligations, representatives of the OPP had met with the military in May and explained that they required the landowner to seek and obtain an injunction before taking action. The military indicated that they did not want to obtain an injunction.¹²⁷
146. Incident Commander Carson himself met with Major Bob Howell of the Canadian military on June 23, 1995 and explained that the OPP wanted a Court order; however, following the meeting, Carson advised his superior, Superintendent Coles (“Coles”), that he believed that the military would not seek an injunction.¹²⁸
147. On June 24, 1993, Major Howell called Carson and advised him that the military had communicated their position regarding ownership to the occupiers and were not keen on obtaining an injunction, despite the OPP urging them to do so. The military were considering using the DCAARS¹²⁹ and s. 41 of the *Criminal Code*.¹³⁰
148. While the DCAARS provide authority for the removal of trespassers from a military base, section 41 of the *Criminal Code* provides such authority for dwelling houses and real property generally:

41(1) Every one who is in peaceable possession of a dwelling-house or real property, and every one lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary.¹³¹

149. On June 25, 1993, Carson discussed s. 41 and the DCAARS with Coles. They were concerned about the use of these other options and wanted the military to seek an injunction. Carson met again with several military personnel later that day. Carson

¹²⁷ Testimony of Carson on May 10, 2005 at pp. 226-230, 237-238; Testimony of Carson on May 11, 2005 at pp. 60-62

¹²⁸ P-397, pp. 67-68; Testimony of Carson on May 11, 2005 at pp. 50-55

¹²⁹ P-714, pp. 10-13

¹³⁰ P-397, pp. 71; Testimony of Carson on May 11, 2005 at pp. 60-62, 69

¹³¹ P-714, DCAARS, s. 10; Testimony of Carson on May 10, 2005 at pp. 226-227; The *Criminal Code* R.S.C. 1985, c. C-46, s. 41

testified before the Commission that at the time he perceived that “the military felt that we were shirking our responsibility in not taking action, particularly in regards to what they saw as trespassing on the base.”¹³²

150. The OPP’s position remained that they required that an injunction be obtained which would then direct any action they took. On the other hand, the military didn’t want to get an injunction; they wanted something done without an injunction.¹³³
151. On June 28, 1993, with the approval of Coles, Carson travelled to Toronto and met a number of representatives of the DND in Toronto where they again discussed the options of an injunction, the Criminal Code and the DCAARS to the same effect. Carson understood that the military was considering unilateral action pursuant to the DCAARS though they had not finalised a decision. Later that day, the DND advised Carson that the military would be sending a written request pursuant to the Criminal Code or the DCAARS to the OPP Commissioner.¹³⁴
152. On June 29, 1993, Major-General Commander Vernon sent a letter to Commissioner O’Grady of the OPP in which he indicated that the military’s aim was to arrive at a long term peaceful solution to the difficulties presented by the illegal occupation of the camp but went on to state:

Removal of the SPG from the defence establishment at Camp Ipperwash is provided for under the Defence Controlled Access Area Regulations (a copy is attached for your information; please note paragraphs 9 and 10) and Section 41 of the Criminal Code of Canada.

It is our hope that the situation may be resolved without resort to the use of physical force as provided for by the aforementioned regulations. Our most recent information however, indicates that the SPG is firmly wedded to the object of a permanent occupation of DND property. Should the circumstances warrant, an order will be issued under paragraph 9 of the attached. We trust that we may rely upon you as peace officers to respond to our call. We believe that the appearance presented by the Ontario Provincial Police

¹³² P-397, p. 72, 78; Testimony of Carson on May 11, 2005 at pp. 69-70, 74

¹³³ Testimony of Carson on May 11, 2005 at pp. 74-75

¹³⁴ Testimony of Carson on May 11, 2005 at pp. 90-92, 98-99

would be less confrontational than unilateral action on the part of the federal authorities.¹³⁵

153. Coles testified before the Commission that he did not have a problem with the military speaking with Carson or communicating their views to him. He further testified that he that while he didn't have a specification recollection of the letter, he did not have a problem with the request.¹³⁶
154. The OPP did not change their position in regard to requiring the DND to seek and obtain an injunction.¹³⁷
155. Carson and other OPP officers began preparing an operational plan in late May 1993 and continued revising it in June (the "1993 Plan"). The 1993 Plan considered three different scenarios and set out the OPP's response to those contingencies. It described one possible scenario and the response as follows:

If the injunction orders the Ontario Provincial Police to remove the occupiers, we will attempt to negotiate a peaceful resolution prior to the expiration of the time limit subject to the directions contained in the injunction.

The occupiers will be instructed to remove themselves and their property (tents, trailers & other structures). On failure to do so the occupiers will be arrested and charged with violation of the injunction. Crown Attorney D. Vale for the County of Lambton was contacted. He said that the powers of arrest and which charges will be laid depend upon, the wording of the injunction and under what act the injunction is obtained. If possible they will be released by a Justice of the Peace on condition that they not return to the site. Any occupiers returning to the site and taking an active part, will be arrested for breach of Recognizance and will be remanded in custody for a show cause hearing.

Any other criminal acts such as wilful damage to property or assaults will be fully investigated and dealt with according to law.

Prisoners will be processed and released at Forest Detachment. Any prisoners that will be held in custody will be remanded to the County Jail at Sarnia.¹³⁸

¹³⁵ P-402; Testimony of O'Grady on August 22, 2005 at pp 34-37

¹³⁶ Testimony of Coles on August 17, 2005, at pp. 26-31

¹³⁷ Testimony of Carson on May 11, 2005 at pp. 112-115, 118; Testimony of O'Grady on August 22, 2005 at pp. 35-38; Testimony of Coles on August 17, 2005 at p. 31

156. Carson testified that, if an injunction was obtained, there would be a grace period of 48 to 72 hours and the area would be secured within 24 hours.¹³⁹
157. The 1993 Plan considered what resources would be required to address the situation. It provided that 71 basic staff would be required to isolate the area to prevent any additional vehicular traffic. Of that number, 44 officers would staff checkpoints or roadblocks or supervise or supplement such staff. The basic staff complement of 71 included a negotiation team and various other resources as well as the overall incident command staff. All members would be required to work 12 hour shifts to cover the 24 hour period each day.¹⁴⁰
158. In addition to the basic resources required to isolate the area, the 1993 Plan considered what additional resources would be required to enforce a court order to remove the occupiers from the Camp Ipperwash rifle ranges. The 1993 Plan provided that the basic rule would be “one member per occupier if the subjects [were] passive.” It also required that there be some additional resources including a Tactics and Rescue Team (“TRU team”) on standby. The Plan further specified the number of officers required as follows:
- 50 occupiers = 50 additional uniformed members including female constables
 - 50 – 100 occupiers = 50 – 100 additional E. R. T. Team members including female constables.
 - 100 + passive occupiers = 100 + additional uniformed members including female constables.
 - 100 + non-passive occupiers = second T. R. U. Team to assist in the containment while the request for Military aid to the civil powers is being processed.¹⁴¹
159. The 1993 Plan contemplated another scenario and the OPP’s response as follows:
- The Base is cleared but the occupiers refuse to return to their homes and simply move to lands adjacent to Canadian Forces Base, Ipperwash occupying #21 Highway or Ipperwash Provincial Park

¹³⁸ P-400; P-555; P-1466

¹³⁹ P-397, pp. 105-106; Testimony of Carson on May 11, 2005 at p. 121

¹⁴⁰ P-555; P-1466

¹⁴¹ P-555; P-1466

If the occupiers move to Ministry of Transportation or Ministry of Natural Resources property it will be that Ministry's responsibility to obtain the necessary injunction prior to Ontario Provincial Police intervention.¹⁴²

160. The 1993 Plan provided that, if occupiers moved to Highway #21 or Ipperwash Provincial Park, the OPP would require 71 basic staff "to isolate the area to prevent any additional vehicular traffic into the Park or onto the highways in the area." The basic staff required to contain the area would be the same as in the first scenario.¹⁴³
161. With respect to the possible scenario whereby the Stoney Point Group occupied the that Ipperwash Provincial Park or Highway #21, the 1993 Plan provided that the same number of additional staff would be required "to remove the occupiers, if we are ordered to do so" as in the first scenario. As with scenario one, the 1993 Plan contemplated that they would require one officer for every occupier with a TRU team on standby. The 1993 Plan also contemplated an additional TRU team if there were more than 100 occupiers who were not passive "to provide containment while the request for Military aid to the civil powers is being processed."¹⁴⁴
162. The 1993 Plan also contemplated another scenario whereby the military proceeded to remove the occupiers from Camp Ipperwash themselves with or without first obtaining an injunction. In such a scenario, the OPP would become involved if the occupiers then moved to Ipperwash Provincial Park or Highway #21. The 1993 Plan provided that the OPP would then proceed as set out above in paragraphs 155-159.¹⁴⁵
163. As part of the development of an operational plan, the OPP investigated communication, logistical and other issues relevant to the operational plan. Sergeant Lacroix was tasked with issues relating to logistics and he developed plans to accommodate the basic staff and the additional staff that might be required.¹⁴⁶

¹⁴² P-555; P-1466

¹⁴³ P-555; P-1466

¹⁴⁴ P-555; P-1466

¹⁴⁵ P-555; P-1466

¹⁴⁶ P-1466; Testimony of Lacroix on May 8, 2006 at pp. 47-49

x) Further Threats to Park and Response

164. After the provincial government was made aware that the occupation of a portion of the camp might spill over to the park, the MNR developed a response on behalf of the provincial government.
165. On June 18, 1993, Maynard George advised Kobayashi that he had received the letter from the provincial government indicating that MNR had lawful ownership of Ipperwash Provincial Park. Maynard George said that although he disagreed with it, he hoped to resolve the dispute through negotiation. However, that same day, Kobayashi was advised by Janet Cloud, an Elder of the Stoney Point Group, that if there was an injunction to remove the occupiers from Camp Ipperwash, the occupiers would move to the park in retaliation.¹⁴⁷
166. The Incident Commander was also aware of the threats of retaliation against Ipperwash and Pinery Provincial Parks. On June 23, 1993, Carson met Baldwin and Hodsdon, the MNR compliance specialist. They felt that unilateral action to remove the occupiers would lead to the two parks being targeted and felt that the military should obtain an injunction to remove the occupiers from Camp Ipperwash.¹⁴⁸
167. On June 25, 1993, the IMC received a further update concerning DND's threats of action with respect to Camp Ipperwash and of a threat by the occupiers to invade the park in retaliation:

The Department of National Defence (DND) will not seek a court injunction as a strategy to resolve this conflict. DND have said that there can be no negotiation with non-elected individuals, a stance which has been taken previously in relation to other matters of the same nature. DND believes that the OPP should use Section 41 of the Criminal Code (having to do with the eviction of trespassers by force, if necessary) on their behalf. The OPP expect that this course of action will be requested by DND in the near future. The OPP has received confirmation that DND will forewarn them of any

¹⁴⁷ P849; Testimony of Kobayashi on October 24, 2005 at pp. 59-61

¹⁴⁸ P-397, pp. 60, 64; Testimony of Carson on May 11, 2005 at pp. 40, 48-50

action they intend to take. The OPP would then attempt to negotiate with the Natives.

In response to this threatened action by DND, Maynard George has verbally admitted that he would invade the park in retaliation.¹⁴⁹

168. The Deputy Solicitor General contacted the federal Deputy Minister of Justice “suggesting that Canada bring injunction proceedings if Canada wishes the OPP to assist in terminating the occupation by Mr. George’s group.” Incident Commander Carson testified before the Commission that he spoke with Bill Crate of the MSG and Baldwin regarding the IMC and was made aware that the injunction would be urged upon the Deputy Minister of Justice.¹⁵⁰
169. The provincial Attorney General and the Deputy Attorney General were advised of the situation, of the contact with the Deputy Minister of Justice and that the Federal Cabinet was to consider the matter on June 29, 1993. They were also informed that the OPP had been provided with the legal advice referred to previously at paragraphs 139-143. They were told that, while it would be desirable for the OPP and the DND to develop an approach that was sensitive to all parties, it might be very difficult for the OPP to insist that the military police be employed with respect to civilians trespassing on military property and that the OPP had to be cognizant of its duties under statute and under common law.¹⁵¹
170. The Attorney General and his deputy were advised of the following in regard to Ipperwash Provincial Park:

Mr. George has apparently said that if forced from the Camp his group will occupy the Park.

MNR and OPP have contingency plans for evacuation of the public from the Park (an action that would affect 2000 campers) if necessary.

There is some concern that if the occupation continues shooting could occur in the Camp, and if the matter escalates, other

¹⁴⁹ P-721

¹⁵⁰ P-722; Testimony of Carson on May 11, 2005 at pp. 75-77

¹⁵¹ P-722

aboriginal “warriors” might join the occupiers’ cause and that the Park and also the nearby Pinery Provincial Park could be occupied. About 5000 campers use Pinery and the contingency plans for evacuation also extend to Pinery.¹⁵²

171. As a result of the threats to the park, representatives of MNR developed contingency plans for the park “to meet an actual or perceived threat to the park users and park staff by civil disobedience of First Nations pressure groups and/or actual occupation of Ipperwash and Pinery Provincial Parks”. Those plans envisaged that, if the OPP recommended evacuation, the main gate would be closed, traffic controls would be set up and then persons inside the park would be asked to leave. Staff would erect barriers to the entrances to prevent re-entry and conduct foot patrols to maintain park security at the boundaries and interior of the park. The park superintendent would then declare the park closed pursuant to the *Provincial Parks Act* and regulations and the park would be monitored for trespassers.¹⁵³
172. MNR set out procedures for its park staff in the event that they were faced with First Nations claims of access/occupation of Ipperwash Provincial Park. If park staff had the opportunity, they were to advise the claimants that First Nations representatives had been officially advised of Ontario’s position that the province had lawful ownership of the park and actions of occupation are not condoned or encouraged by MNR. Park staff were to ask the persons at the gate to wait while they called the designated duty officer in charge for instructions. If the First Nations people proceeded, the park staff were not to try and stop them from entering but immediately contact the officer in charge, the district office person on call and the OPP.¹⁵⁴
173. Ultimately, the federal government chose neither to seek an injunction nor to take any action with respect to the occupation of the rifle ranges at Camp Ipperwash and that occupation continued. The occupiers took no steps of any kind with regard to the park.¹⁵⁵

¹⁵² P-722

¹⁵³ P-898; Testimony of Kobayashi on October 25, 2005 at pp. 201-203

¹⁵⁴ P-811

¹⁵⁵ Testimony of Coles on August 17, 2005, p. 31; Testimony of Kobayashi on October 24, 2005 at p. 65

B. ANALYSIS AND SUBMISSIONS

i) Actions of the Stoney Point Group

174. There does not appear to be any doubt that the rifle ranges were occupied in 1993 because many members of the Kettle and Stony Point First Nation were exceedingly frustrated with the federal government's delay in returning the Camp Ipperwash lands expropriated against the wishes of the band members approximately fifty years earlier.¹⁵⁶
175. The evidence also makes clear that there was disagreement among Band members regarding occupation of the rifle ranges as a means to bring about the return of the lands. It appears that some of the elderly former residents of the Stony Point reserve supported the actions of the Stoney Point Group and one could infer that this group felt a stronger sense of urgency in obtaining the return of the lands than other members of the Band. However, the evidence is clear that the elected Chief and Council of the Kettle and Stony Point Band publicly denounced the occupation.¹⁵⁷
176. Carl George acknowledged that there had been some people who had location tickets to use the lands which became Camp Ipperwash but who had not been living on the land at the time of the 1942 expropriation by the federal government. Therefore, the descendants of those who had been removed in 1942 did not reflect all the people who had lost entitlement to the land. Furthermore, the evidence before the Commission was that there are between 1,700 and 1,900 members of the Kettle and Stony Point Nation living on the Kettle Point reserve. Carl George testified that approximately 3/4 of the Kettle and Stony Point population have a connection to the Stony Point reserve as a result of intermarriage or direct descendency and, therefore, have an interest in the lands.¹⁵⁸

¹⁵⁶ Part III, para. 67-78

¹⁵⁷ Testimony of Clifford George on September 10, 2004 at pp. 82-87; Part II para 79-87

¹⁵⁸ Testimony of Carl George on February 21, 2005 at pp. 134-138, February 22, 2005 at pp. 166; Testimony of Gerald George on January 17, 2005 at pp. 174-175; Testimony of Chief Tom Bressette on March 3, 2005 at pp. 224-225

177. While the Commission heard from many occupiers and their families who supported the occupation, a number of descendants of residents of the Stony Point reserve which was appropriated in 1942 testified that they did not support the occupation of the camp.¹⁵⁹ Carl George acknowledged that he never had a mandate to occupy Camp Ipperwash from the majority of the people who had an interest in the lands.¹⁶⁰
178. We submit that the evidence overall does not support the view that the majority of the former residents and their descendants supported the actions of the Stoney Point Group in occupying the rifle ranges. It does appear however that the feelings of the Stoney Point Group that the Chief and Council did not represent their interests may have contributed to the decision to occupy the rifle ranges.
179. While some members of the Kettle and Stony Point Band made public their view in the 1990's that the federal government should recognise a separate Stony Point First Nation community, others clearly did not want to separate from the Kettle and Stony Point Band. It is unclear what proportion of the former residents of the Stony Point reserve and their descendants wanted to separate in the 1990's or want to do so today. No referendum has ever been held to decide the issue of separation and there is no agreement among members of the Kettle and Stony Point Band as to the criteria for membership of a Stony Point First Nation.¹⁶¹
180. While there was a difference in opinion among Band members with respect to the methods to be used to bring about the return of the Camp Ipperwash lands, there does appear to have been a consensus among the Band members that the federal government should return those lands. However, with respect to Ipperwash Provincial Park, we submit that the evidence does not support the view that there was ever a

¹⁵⁹ Testimony of Carl George on February 22, 2005 at p. 166; Testimony of Chief Tom Bressette on March 3, 1995 at pp. 224-225; Testimony of Gerald George on February 21, 2005 at pp. 134-138; Testimony of Gerald George on January 17, 2005 at pp. 174-175

¹⁶⁰ Testimony of Carl George on February 22, 2005 at pp 167-170; Testimony of Ron George on February 28, 2005 at pp. 85-87; Testimony of Chief Tom Bressette on March 1, 2005 at pp. 220-223; Part III, para. 84

¹⁶¹ P-52; P-108; Testimony of Chief Tom Bressette on March 3, 2005 at p. 229, March 2, 2005 at pp. 213-215; Testimony of Gerald George on January 13, 2005 at pp. 20-22, 32-33, January 17, 2005 at pp. 180-182; Part III para 69

consensus among Band members in 1993 that there was any legitimate claim to Ipperwash Provincial Park.¹⁶²

181. The evidence indicates that, in 1993, the Stoney Point Group alleged that they owned Ipperwash Provincial Park and made certain limited demands of the provincial government in the form of a “Co-Management Agreement” and indicated that they would take over the park if the demands were not met. The evidence indicates that the burial ground was neither the focus of the Stoney Point Group nor the rationale for claiming ownership or for taking the actions in regard to the park. The letter to MNR simply mentioned that some of the lands within the park were sacred burial grounds and that those unspecified burial grounds had to be “recorded and documented” by the First Nations people.¹⁶³ The letter did not request any assistance from the government in this regard nor did it indicate any urgency in this recording and documenting.
182. In 1993, the Stoney Point Group made repeated reference to the 1942 expropriation by the federal government in their 1993 notice concerning Ipperwash Provincial Park; however, the historical evidence is clear that the park was never part of Camp Ipperwash, was in no way connected to the 1942 expropriation and never formed part of the 1981 agreement with the federal government.
183. Many of those who occupied the park in 1995 testified before the Commission as to their different understandings today of what constitutes their land and why. Some of them indicated a belief that Ipperwash Provincial Park had been moved and had once been part of Camp Ipperwash, a view reflected in a document from the Stoney Point Group in September 1995. Another testified that their lands had been leased to the Canada Company prior to 1942. Others simply regarded the park as part of their

¹⁶² Testimony of Ron George on February 28, 2005 at p. 81; Part III, para. 67-72, 76, 84, 107-112

¹⁶³ P-171; Part III para 99-101

original lands though views differed as to how far those lands extended or what lands should now be theirs.¹⁶⁴

184. Most of these witnesses testified that their respective understandings came from conversations with their relatives; however, few acknowledged the different history of Camp Ipperwash and Ipperwash Park or the sale in the 1930's by Band members of the land which became the park. Ron George testified that when he attended meetings of the locatees in the 1980's, the Elders would have passionate discussions about their previous existence at Stony Point but "there was not a focus on legal technicalities".¹⁶⁵
185. The evidence is that, while the Band had made a claim with respect to Camp Ipperwash, the Band had filed no claim to the park. There was also no history of prior protests specifically regarding Ipperwash Provincial Park as there had been in regard to Camp Ipperwash. It appears that the issue of Ipperwash Provincial Park was not a topic of discussion in meetings of the Band Council. Furthermore, Ron George testified before the Commission that when he attended meetings of the locatees in the late 1980's, there were never discussions about the return of the park land.¹⁶⁶
186. The evidence indicates that Maynard T. George, a principle figure in the Stoney Point Group and the moving force behind allegations with respect to ownership rights to the park, made a number of allegations regarding lands at the time. Rose Manning, one of the elders who signed the notice regarding the park, testified that she looked to Maynard T. George as the leader. We submit that it is not clear if the elderly former residents of the Stony Point reserve who signed the notice regarding the park had specific grievances with respect to the park or if they relied on Maynard T. George's

¹⁶⁴ P-148, Part V para. 466-468; Testimony of Tina George on January 19, 2005 at p. 68; Testimony of David George on November 1, 2004, at pp. 212-222; Testimony of Carolyn George on February 3, 2005 at pp. 97-98; Testimony of Rose Manning on April 17, 2005, at pp. 80, 129-130

¹⁶⁵ Testimony of Ron George on February 28, 2005 at pp. 48-50, 80-81

¹⁶⁶ P-219, tabs 17, 23; Testimony of Ron George on February 28, 2005 at pp. 80-81; Testimony of Tina George on January 19, 2005 at pp. 71-72; Part III 67-76

views in making the claim. In any event, there is evidence that some members of the Kettle and Stony Point Band were sceptical of the reliability of claims asserted by Maynard T. George. Even Carl George, another leader of the Stoney Point Group who testified that he thought that there was a valid claim to the park, acknowledged that Maynard T. George made a number of unrealistic land claims.¹⁶⁷

187. We submit that the evidence overall suggests that, in 1993, the majority of the Kettle and Stony Point Band had not turned their mind to the issue of Ipperwash Provincial Park let alone come to any view that they had a legitimate claim to the park.
188. In any event, the evidence makes clear that Chief Tom Bressette, the elected chief of the Band, repeatedly denounced the limited occupation of the Stoney Point Group in regard to the park, referred to that action as illegal, and indicated that the occupiers should be charged with trespass.¹⁶⁸

ii) Role, Procedures and Position of the OPP

189. The evidence shows that, in 1993, the OPP was addressing the issue of how to keep the peace at Ipperwash. The OPP clearly regarded the initial occupation of the rifle ranges of Camp Ipperwash as a police matter. Within days of the initial occupation, Carson was appointed as Incident Commander for the situation and proceeded to develop plans for a police response to various contingencies.¹⁶⁹
190. The evidence is clear that in 1993 the Stoney Point Group provided notice of their intentions with respect to Camp Ipperwash and Ipperwash Provincial Park to the OPP as well as the respective landowners, the federal and provincial governments. We submit that the Stoney Point Group understood that their actions would be a matter for the OPP. We further submit that the group understood that the OPP would be

¹⁶⁷ Testimony of Carl George on February 21, 2005 at pp. 166-169; Part III, para. 96-105

¹⁶⁸ Part III, para. 106-112

¹⁶⁹ Part III, para. 89-92

concerned about potential violence and that they communicated with the OPP in advance in 1993 to try to alleviate such concerns.¹⁷⁰

191. The evidence is that the decision-making structure within OPP concentrated responsibility for addressing the situation in the hands of the Incident Commander on the ground. A number of the OPP witnesses testified about the role of an incident commander and how that person makes the main decisions and has overall responsibility for an incident.¹⁷¹
192. We submit that the OPP's 1993 operational plans make clear that, in 1993, the OPP and in particular Carson and Lacroix, who were heavily involved in creating the plans, regarded an occupation of Ipperwash Provincial Park as a police matter.¹⁷²
193. We submit that the OPP's plans in 1993 with respect to Camp Ipperwash and the threatened occupation of the park were the same: contain the situation, try and negotiate and have the relevant landowner seek an injunction from the court.¹⁷³
194. The evidence is clear that the OPP does not engage in negotiations of the substantive matters which underlie an occupation and that the OPP plans to engage in "negotiations" simply refer to attempts to communicate with occupiers to persuade them to end any activities inconsistent with maintaining public peace and order.¹⁷⁴
195. We submit that the OPP intended that the efforts to contain, negotiate and seek an injunction would be conducted concurrently. We submit that the plans clearly articulated that the OPP would attempt to use a court order for an injunction as a negotiation tool to persuade the occupiers to leave. We further submit that the 1993 plans anticipated that, in the event that the OPP could not persuade the occupiers to

¹⁷⁰ Part III para 79-82, 85-87, 93, 98-101

¹⁷¹ Testimony of Carson on May 10, 2005, pp. 151-152, 232-234; Testimony of Coles on August 16, 2005 at pp. 13-15

¹⁷² Part III, para. 155-162

¹⁷³ Part III, para. 155-162

¹⁷⁴ Testimony of Carson on May 31, 2005 at pp. 182-183; Testimony of Seltzer on June 13, 2006 at p. 183

- leave, the OPP planned that they would arrest and charge the occupiers with violating the court order and removed them for processing at the OPP detachment in Forest.¹⁷⁵
196. The Commission heard evidence that the federal government, the DND, has the authority to enforce law and order within military bases such as Camp Ipperwash through its military police. The Commission also heard evidence that MNR also has some responsibility and power for maintaining law and order within its provincial parks. MNR employs personnel who have responsibility for doing so, including compliance officers who bear firearms. We submit that consequently, it would be prudent for the OPP to understand the position and contingency plans of MNR in relation to the park, DND in relation to the camp, and vice-versa.¹⁷⁶
197. Given that the OPP 1993 plans involved having the affected landowners seek and obtain an injunction, we submit that that also required that the OPP also needed to find out the position of the landowners. Camp Ipperwash consisted of lands expropriated by the federal government and still held by it. Ipperwash Provincial Park consisted of lands which the provincial government had bought from private parties. Consequently, the OPP needed to speak with both the federal and provincial governments as the relevant landowners. In any event, the evidence is clear that the OPP did speak with both affected landowners in 1993 in order to know what were their positions with respect to the lands and to understand their contingency plans.¹⁷⁷
198. The Commission did not hear any evidence regarding the federal government's internal meetings and its position with respect to the occupation of the rifle ranges. However, it is clear that Carson, as Incident Commander, and others within the OPP advised representatives of the DND that the OPP wanted the DND to seek an injunction, but they refused. Furthermore, it is also clear that the DND advised the OPP that they preferred to remove the occupiers pursuant to their rights as landowner

¹⁷⁵ Part III, para. 92, 155-162

¹⁷⁶ Testimony of Carson on May 10, 2005 at pp. 267-268; Testimony of Kobayashi on October 20, 2005 at pp. 286-287; Part III, para. 137-144

¹⁷⁷ Part III, para. 60-64, 92-92, 118, 145-156, 159, 166

pursuant to s. 41 of the Criminal Code or the DCAARS and wanted the OPP to assist them if they did so.¹⁷⁸

199. There is no evidence that the OPP voiced any concern that the DND or the federal government had expressed such views to the Incident Commander. Although the DND had requested assistance in removing the occupiers, by force if necessary, to Carson and then went over his head to the Commissioner directly, there is no evidence of any complaint. On the contrary, Coles testified that he had no problems in that regard. We submit that while reasonable people may agree or disagree with the hard position as expressed by the DND to the OPP in regard to Camp Ipperwash, the federal government was within its rights to consider its options as landowner and to request assistance from the OPP in that regard.¹⁷⁹
200. The evidence is that the OPP advised representatives of the DND of its requirement for an injunction at the outset and that the DND representatives spoke and met repeatedly with Incident Commander Carson to reiterate the DND's preferences. The Commission did not hear from any witnesses on behalf of the DND or the federal government generally regarding their intentions in the spring of 1993 or what occurred at the meetings with the OPP. Nevertheless, the evidence that the Commission does have suggests that the DND may have been trying to pressure the OPP Incident Commander to take action without an injunction against the occupiers at Camp Ipperwash. We submit that there is an important distinction between: (1) any government expressing its views as landowner and asking the police for assistance, as any person is entitled to do; and (2) any government, having been told of the policies and position of the police, continuing to demand, or to try and intentionally influence, operational police officers to act contrary to those policies and position in their dealing with a particular operation. We submit that the latter would not be appropriate, if that is what occurred.¹⁸⁰

¹⁷⁸ Part III, para. 137-144

¹⁷⁹ Part III, para. 145-153

¹⁸⁰ Part III, para. 145-154

201. Carson testified before the Commission that he perceived that the DND felt that the OPP was shirking their responsibilities. However, the evidence is that the OPP received legal advice which confirmed their legal obligations with respect to the occupation of Camp Ipperwash and their discretion as to when and how to meet those obligations. The evidence is clear that despite Carson's perceptions of DND's views, the OPP maintained their position and took no action.¹⁸¹
202. Because the DND refused to obtain an injunction, the 1993 operational plans with respect to Camp Ipperwash were never put into effect. In addition, while there was an occupation of Camp Ipperwash, other than the brief placement of an information booth at Ipperwash Provincial Park, there was no real occupation of the park. Nevertheless, we submit that the 1993 operational plans are objective evidence of the OPP's position and intentions in regard to an occupation of the camp or of the park in 1993. Furthermore, as we submit in Part IV, they are relevant to the OPP's position and intentions in regard to the occupation of the park in 1995.¹⁸²

iii) Roles, Procedure and Position of the Provincial Government

203. The provincial government had an interest in the situation at Camp Ipperwash and Ipperwash Provincial Park as it involved matters within its jurisdiction and responsibility. The situation occurred in the province of Ontario and affected First Nations people in Ontario and other residents of the province. The situation also involved a provincial park, the enforcement of provincial laws and the maintenance of the public peace in that regard. With respect to the park, while MNR is often referred to as the landowner, MNR is not a legal entity. It is the provincial Crown that held, and still holds, legal title on behalf of all Ontarians. We submit that therefore the province had fiduciary obligations to the people of Ontario with respect to the park.¹⁸³

¹⁸¹ Part III, para. 137-154

¹⁸² Part III, para. 98, 173

¹⁸³ Part III, para. 119-121

204. We submit that the Ipperwash matter affected a number of different ministries within the provincial government including ONAS, MNR and MSG. The provincial government had previously established the IMC to address blockades, occupations, and other direct actions by First Nations people because such actions typically affect a number of ministries. We further submit that the IMC held meetings regarding the situation at Camp Ipperwash and that at Ipperwash Provincial Park in recognition of the fact that the situation involved multiple ministries.
205. The composition of the IMC included both civil servants and political staff. While political staff typically communicate with the civil service through the Deputy Minister, the reporting up and down is cumbersome and may be impractical in many circumstances. The inclusion of both political staff and civil servants in the composition of the IMC was a shortcut to the cumbersome reporting up and down and allowed all the advisers to have the same information so that the government could respond more quickly.¹⁸⁴
206. The principles for the IMC provided that there would be no substantive negotiation while an occupation or blockade was on-going though there would be a review of the aboriginal grievances and the establishment of processes to address them. The Commission heard evidence that the reason for not entering into substantive negotiations was to avoid encouraging illegal actions by allowing people who engage in such actions to jump ahead and have their issues addressed by government before others who pursued only legal methods, a practice referred to as “queue-jumping.” Shelley Spiegel, who had been senior policy adviser and part of the political staff of a former Liberal Government between 1985 and 1990 and later became a civil servant, testified that this rationale was the same under the former Liberal Government as it was in 1995.¹⁸⁵

¹⁸⁴ Testimony of Taman on November 14, 2005 at pp. 76-77; Testimony of Hutchison on August 25, 2005 at pp. 257-263, August 29, 2005 at pp. 30-32; Testimony of Todres on November 29, 2005 at pp. 324-325; Testimony of Vrancart on October 27, 2005 at p. 107; Part III, para. 120-121

¹⁸⁵ P-504; P-703; P-708; Testimony of Fox on July 12, 2005 at pp. 220-222; Testimony of Moran on November 1, 2005 at pp. 83-86; Testimony of Spiegel on September 21, 2005 at pp. 144-148

207. We submit that, where processes exist to address the grievance at issue in a blockade or occupation, there would be no point in offering to create new processes unless they offered some advantage to the existing processes. We further submit that if the new processes offer advantages over existing processes, offering new processes would encourage illegal actions and raise concerns with respect to queue-jumping. Consequently, we submit that the reference to establishing processes to address grievances was intended to refer only to situations where processes did not already exist to address the grievance.
208. The creation of the IMC and its goals, composition and guidelines was a policy decision of a prior Liberal government which was formalized by the NDP. We submit that these were policy decisions of those governments and that subsequent governments were not bound by these prior policy decisions and had the right to change those goals, composition and guidelines or to abolish the committee in its entirety and create a different structure and approach.¹⁸⁶
209. The evidence is clear that the actions of the Stoney Point Group in regard to the park in 1993 were quite limited: i) the occupation consisted of an information booth which was removed; ii) there was no impediment to the public or MNR officials accessing the park; iii) there was no violence; and iv) the Stoney Point Group advised MNR of their intentions in advance, explained the basis for their view that they owned the park, and assured MNR that they would be peaceful. Nevertheless, the government of the day took a definite and uncompromising position with the occupiers. MNR officials advised the occupiers that they did not condone their conduct. The IMC then met and, after reviewing the province's ownership of the park, MNR officials advised the occupiers that the province had good title, the statute they had referred to had been repealed and that the bailiff's order was invalid. The provincial government did not enter into substantive negotiations with the occupiers regarding ownership of the park.¹⁸⁷

¹⁸⁶ Testimony of Spiegel on September 21, 2005 at pp. 77-81

¹⁸⁷ Testimony of Kobayashi on October 24, 2005 at pp. 27-30; Part III para 98-101, 113,126-134

210. While the IMC was involved, the provincial government responded to the occupiers through the MNR. There is no evidence that ONAS took any action in regard to the situation; however, MNR created contingency plans in the event of an occupation of the park in 1993, provided direction to their front line staff on how to respond and drafted communication materials for responding to enquiries from the media. We submit that, while various ministries including ONAS were affected, the provincial government of the day treated the occupiers' actions as an issue for MNR.¹⁸⁸
211. We submit that there was a recognition that one of the provincial government's roles and responsibilities was to be prepared to communicate its position to the public and that MNR's creation of the communications materials for the media reflect the recognition of that responsibility.
212. We submit that MNR's 1993 operational plans clearly regarded any potential occupation of Ipperwash Provincial Park by the Stoney Point Group as trespassing and provided that MNR would seek the assistance and involvement of the OPP.¹⁸⁹
213. We submit that the evidence is that MNR, the provincial government, and the OPP in 1993 recognized that they each had their own roles and responsibilities in the event of an occupation of Ipperwash Provincial Park. We further submit that while their roles and responsibilities were separate, their positions and plans impacted on each other. The evidence is clear that the OPP and MNR recognized that they needed to understand each other's position and plans and that they shared information. We submit that this was prudent and necessary for each to properly fulfill their separate responsibilities.¹⁹⁰

¹⁸⁸ Part III, para. 113-115, 131-134, 164-165, 171-172

¹⁸⁹ Part III, para. 171-172

¹⁹⁰ P-555, p. 8; P-844; P-1466, p. 8; Testimony of Kobayashi on October 24, 2005 at pp. 47-48;

PART IV – LEAD-UP TO THE PARK OCCUPATION

A. SUMMARY OF FACTUAL EVIDENCE

i) West Ipperwash Beach

214. At one time, the Kettle and Stony Point First Nation owned West Ipperwash Beach between the Kettle Point reserve and Centre Ipperwash Road, which runs from Ravenswood down to the shore of Lake Huron. West Ipperwash Beach had been surrendered by the Kettle and Stony Point First Nation in the 1920's (in a different surrender than the one of the lands which later became Ipperwash Provincial Park) and sold to a private individual. It was then subdivided into many parcels for individual residences.¹⁹¹
215. There were documented incidents going back to 1977 involving conflict between the residents whose property fronts along West Ipperwash Beach and some of the local First Nations people. The First Nations people were unhappy that the residents were erecting posts or other obstructions on the beach to prevent vehicles from travelling down the beach, as had been the custom in the past.¹⁹²
216. The OPP had to deal with the incidents that arose and complaints that were made. When he became the detachment commander in Forest, Carson was made aware of the history and at some point in his tenure, received a document reviewing the history of the situation. In the early 1990s, Carson received complaints from the cottagers who were "losing faith" in the ability of the OPP to police. They seemed to think that the OPP should be laying more charges, but in many cases, there was not sufficient evidence to do so.¹⁹³

¹⁹¹ Testimony of Holmes on August 18, 2004 at pp. 41-42; P-9 at p. 15; *Chippewas of Kettle and Stony Point v. Canada (Attorney General)* (1995), 24 O.R. (3d) 654 (Gen. Div.); See maps at Inquiry Document # 1002409, pp. 2, 3

¹⁹² P-398; Testimony of Carson on May 10, 2005 at pp. 182-184; Testimony of Wright on February 21, 2006 at pp. 73-76

¹⁹³ P-398; Testimony of Carson on May 10, 2005 at pp. 184-185, 189-190

217. In 1981, a First Nations person was convicted of trespass to property for tearing down posts on the beach in one of these incidents. Having received documentation from the residents to support their claims, the Crown Attorney advised in writing that the cottage owners could erect fences on their property and charges should be laid with reference to any offences in relation to the property.¹⁹⁴
218. On August 1, 1990, members of the Kettle and Stony Point First Nation removed posts on the instruction of their band council. They were charged with mischief in May 1991, but there was delay in bringing the charges before the court. There was no pre-trial until February 1992.¹⁹⁵
219. In the interim, the Kettle and Stony Point Band commenced litigation against the federal government and the local residents whose properties formed West Ipperwash Beach to challenge the surrender of those lands, arguing that the surrender was conditional or voidable due to unconscionability, economic duress or improprieties to do with voting.¹⁹⁶
220. In November 1992, the charges were withdrawn after the defendants undertook not to remove posts from the disputed property. The charges were withdrawn because of the delay in trying the case and the fact that the accused now had colour of right.¹⁹⁷
221. In 1994, Lacroix was appointed the Level 1 incident commander for West Ipperwash Beach, with Carson filling the role of Level 2 incident commander. Although the Kettle and Stony Point Band had initiated litigation against the West Ipperwash Beach property owners so the matter was before the courts, there was continuing friction between the groups and incidents where the police were called.¹⁹⁸

¹⁹⁴ P-398

¹⁹⁵ P-398

¹⁹⁶ *Chippewas of Kettle and Stony Point v. Attorney General of Canada et al* (1995), 24 O.R. (3d) 654 (Gen. Div.); Testimony of Carson on May 10, 2005 at p. 182

¹⁹⁷ P-398

¹⁹⁸ Testimony of Lacroix on May 8, 2006 at pp. 56-58, 85-87

222. The police had sought a legal opinion and were advised that the existence of colour of right complicated the situation. Wright and Seltzer prepared a training program for Lambton County officers to guide them in policing the area in the circumstances. At the training sessions held in the spring of 1994 and the spring of 1995, the officers were told that they should not lay trespass charges as the First Nations now had colour of right and there was no likely prospect of conviction. However, they were informed that they could continue to lay Criminal Code charges such as causing a disturbance, mischief or unlawful assembly, provided that there were reasonable and probable grounds to believe that an offence had been committed.¹⁹⁹
223. The training was attended by all officers in Lambton County, including Lacroix, Mark Dew, Stan Korosec, Sam Poole, Mike Dougan, George Speck, Larry Parks, Mark Zacher and Rob Graham.²⁰⁰
224. In a memorandum prepared for the training, Wright stressed that the OPP was neutral and “would take enforcement action against ANYONE who breaks the law, regardless of race.” Various OPP officers testified before the Commission that they were aware of the principle that while they had a discretion about when to lay charges, it was their job to enforce the law, regardless of race.²⁰¹

ii) Early Incidents at Camp Ipperwash and Existence of Weapons

225. After the provincial government sent a letter to the Stoney Point Group regarding the park, the Stoney Point Group took no further steps in that regard though they continued to occupy the rifle ranges at Camp Ipperwash. On July 12, 1993, a few of those who had been occupying part of Camp Ipperwash moved a booth to a location on the beach immediately east of the park and Matheson Drive, a township road which surrounds the park. The following day, some members of the Stoney Point

¹⁹⁹ Testimony of Wright on February 21, 2006 at pp. 80-83, 90-91, March 21, 2006 at pp. 227, 235-237; P-1093

²⁰⁰ P-1093; Testimony of Lacroix on May 8, 2006 at pp. 87-88

²⁰¹ P-1093 [emphasis in original]; Testimony of Speck on March 27, 2006 at pp. 42-43; Testimony of Korosec on April 18, 2006 at pp. 26-27; Testimony of Bell on June 7, 2006 at pp. 260-261; Testimony of Richardson on June 8, 2006 at p. 281

- Group started charging money from people for using the beach in front of the army camp which inflamed some of those people.²⁰²
226. Members of the Stoney Point Group continued to charge people money for using the military beach. After complaints, the OPP took action. On July 17, 1993, OPP Detective Sergeant Mark Wright, who was the area Crime Supervisor, attended at the scene and asked the individuals repeatedly to stop. When they did not, he charged the three individuals involved with mischief in relation to the roadway. They were later released on certain conditions.²⁰³
227. On August 23, 1993 at approximately 23:00, a military helicopter was shot at while flying over Ipperwash Camp and received a bullet in the tail. Carl George testified that on the night of the shooting, Robert George told him that Abraham George had shot at the helicopter, as did others, likely including members of Abraham George's family. Carl George further testified that Abraham George himself admitted it in his presence.²⁰⁴
228. Wright, Korosec and other members of the OPP conducted an investigation, searching the camp and speaking with a number of the occupiers. While Carl George did not tell the OPP at the time about what Abraham George had said, the OPP obtained information in 1993 that two rounds had been fired from the ground but the firearm used, along with other firearms, were hidden before the OPP could carry out their search warrant of the camp.²⁰⁵
229. Some of the members of the Stoney Point Group who occupied the rifle ranges acknowledged that they had weapons with them. Marlin Simon testified that he had eight to ten guns including .22 rifles, shot guns, semi-automatic rifles and high powered rifles which he used for hunting and target practice. He stored the guns in

²⁰² P-853; Testimony of Kobayashi on October 24, 1993 at pp. 77-81; See maps at Inquiry Document # 1002409, pp. 2, 3

²⁰³ P-855; Testimony of Wright on February 21, 2005 at pp. 35-41

²⁰⁴ Testimony of Carl George on February 9, 2005 at pp. 145-147, February 22, 2005 at pp. 206-208; Testimony of Carson on May 11, 2005 at pp. 185-187

²⁰⁵ P-1092; Testimony of Korosec on April 5, 2006 at pp. 264-265

Dudley George's trailer at Camp Ipperwash when he stayed with him. Marlin Simon testified that other occupiers had guns and went hunting. Kevin Simon, another Stoney Point Group member who occupied the rifle ranges, also acknowledged that some occupiers had guns.²⁰⁶

230. David George testified before the Commission that he stored his firearms, namely two .22 rifles and a sawed-off shotgun, in the trailer belonging to his grandfather, Abraham George, at Camp Ipperwash. The sawed-off shotgun was later stolen and ended up in the custody of the OPP. David George was familiar with firearms and knew that the sawed-off shot gun was a prohibited weapon.²⁰⁷
231. David George acknowledged that he wrote "BASTARD BLASTER" on the sawed-off shot gun, with the "ER" part on tape which appears was subsequently removed. He testified that he wrote that in reference to a comic book then later suggested that the name "BASTARD BLASTER" was after a big fish, a bass, that he shot at but had got away. The sawed-off shot gun also has the words "KILL THEM" and "DESTROY". David George initially denied that he wrote the words "KILL THEM" and "DESTROY" and then said that he couldn't recall. However, he acknowledged that the same means, whiteout, were used to write all the words in capital letters "BASTARD BLASTER", "KILL THEM" and "DESTROY". He acknowledged that though one might use the word "kill" in reference to hunting, one would not use the word "destroy."²⁰⁸

iii) Attempts to Resolve Camp Ipperwash Situation and Internal Divisions

232. Throughout 1993, the federal government maintained that it continued to need the camp for military purposes. The federal government indicated that it was interested in

²⁰⁶ Testimony of Marlin Simon on September 28, 2004 at pp. 141-146, 148-149, 194-200, October 12, 2004 at pp. 54-63; Testimony of Kevin Simon on December 1, 2004 at pp. 126-130

²⁰⁷ Testimony of David George on October 19, 2004 at pp. 113-129

²⁰⁸ P-42 B; P-42 C; Testimony of David George on October 19, 2004 at pp. 113-129, November 1, 2004 at pp. 45-49, 53-57, 60-61

finding a solution but it made clear that it would not negotiate “until the current trespass at Camp Ipperwash ends.”²⁰⁹

233. At the same time, there were many efforts over a period of months to resolve issues between the Stoney Point Group and the Kettle and Stony Point Band. Chief Tom Bressette and Carl George had discussions and tried to draft a working agreement. E.E. Hobbes and Associates were retained to review historical information and provide opinions regarding rights and interests to help the two groups find a way to work on the issues regarding the land claim. Ron George, a descendant of former Stony Point residents and a lawyer, also had communications back and forth along with others in both groups about creating a joint negotiating team. Gord Peters, a member of the Delaware of the Thames First Nation who was the elected Regional Chief of Ontario at the time, also attempted to resolve the issues.²¹⁰
234. On September 13, 1993, at a Kettle and Stony Point Band Council meeting, Council advised that there would be a band meeting to display the historical research documents and “family trees”, explaining the ancestry of members of the band. Council was of the view that the “splinter group” was “looking to create their own band.” Council decided to rescind the working agreement previously acknowledged by both groups and to proceed with negotiations for the return of Stony Point with no further delays.²¹¹
235. In February 1994, the Federal Minister of Finance finally announced that the military base at Camp Ipperwash would be closed and the federal government would negotiate the return of the lands. Despite the announcement, the return of the land expropriated more than fifty years earlier did not occur and the occupation of the rifle ranges dragged on.²¹²

²⁰⁹ P-190; P-715

²¹⁰ P-198; P-210; P-227; P-228; P-242; P-243; P-244; Testimony of Carl George on February 21, 2004 at pp. 104-114; Testimony of Chief Tom Bressette on March 2, 2005 at pp. 16-42

²¹¹ P-219, tab 9

²¹² P-230; P-245

236. The return of Camp Ipperwash lands still had to be negotiated and that appears to have highlighted the internal divisions among the First Nation people. Carl George testified that his private objective in occupying part of the camp was to take direct action to get the federal government to begin discussions and then to have the elected Chief and Council of the Kettle and Stony Point Band handle the negotiations; however, he never told anyone about his intentions. Carl George acknowledged that many other occupiers did not want the Kettle and Stony Point Band Chief and Council to negotiate on their behalf and that, in part, created a rift within the band.²¹³
237. The divisions within the band were deep and public. In February of 1994, Gerald George, a councillor of the Kettle and Stony Point Band, wrote a letter to the editor of the *Forest Standard* indicating that he was a descendant of former residents of Stony Point and complaining that the Stony Point Group leaders were making unreasonable demands of his council and did not speak for him. Gerald George testified before the Commission that he felt that the occupation was turning into a separatist movement.²¹⁴
238. Elizabeth Thunder, another descendant of the former Stony Point residents and the Administrator of the Kettle and Stony Point Band, made a passionate request of one of the lawyers retained by the Stony Point Group to stop trying to separate the Band:

However, from a Stony Point prespective [sic], and I, as a person who proclaims loud and proud of my heritage, must inform you, that you have no idea what your [sic] dealing with. Your [sic] working for separation for our band, never in a million years.

You have no idea of the internal dynamics of this community, what our common history, family ties, social and religious affiliations are. That is what made this community. We will forever be bonded together. Many people know this. And many, many people love this community.

For every argument you might think you have, there are 10 times more against it. No one will ever accomplish what you are promoting, the community would not allow it. Until you

²¹³ P-36; P-195; Testimony of Carl George on February 9, 2005 at pp. 51-53, February 22, 2005 at p. 60

²¹⁴ P-119; Testimony of Gerald George on January 13, 2005, at pp. 20-22

understand that and as an outsider you never will, your time is for nothing.²¹⁵

239. In May 1994, there was a general meeting of the Kettle and Stony Point Band to address in part the question of a referendum regarding separation. Chief Tom Bressette indicated that they had been contacted by DND and that the federal government's position was that they were prepared to enter into negotiations with the Band to return Camp Ipperwash but nothing else: the federal government's position was that they were not obligated to pay any damages. He indicated that one of the problems they were facing was that there was no collective united effort. Chief Tom Bressette did not think that DND would be prepared to perform an onsite environmental assessment and start cleaning the land while the occupation continued.²¹⁶
240. Chief Tom Bressette then raised the question of whether or not there were in fact two bands. He indicated that the research that had been done showed that there was no proof of two bands, but some people were insisting that there was. The meeting participants discussed the problems of how to define who was who. Some people suggested that one should simply go back to 1942. Others thought that 1942 was somewhat arbitrary. There was some difference of opinion with respect to the history of how the Kettle and Stony Point people had governed themselves previously and to what extent they were separate. Ultimately, the question of a referendum was deferred and the consensus was to establish a committee to work on developing a band election policy.²¹⁷
241. At about this time, some members of the Stoney Point Group began contacting the federal government directly requesting recognition as a separate band and the return of Camp Ipperwash; however, the federal government repeatedly advised members of the Stoney Point Group, including Dudley George, that the Kettle and Stony Point

²¹⁵ P-263

²¹⁶ P-219, tab 18, pp. 1-2

²¹⁷ P-219, tab 18, pp. 3-8, 10-11, 15-18, 20-21, 40; Testimony of Chief Tom Bressette on March 2, 2005 at pp. 48-55, 214-215

Band was the elected and only officially recognized band and that was with whom the federal government would negotiate.²¹⁸

242. Ron George testified before the Commission that it was difficult to move forward with the occupiers. He had previously attended before the Standing Committee in 1992 seeking the return of the Camp Ipperwash lands, but his personal goals and objectives did not mesh with the new tactics of the group that occupied the camp. He saw anger and frustration in the new group. On August 4, 1994, he wrote to Carl George advising him that he was withdrawing as counsel to the occupiers and so advised Chief Tom Bressette.²¹⁹
243. Ron George's perceptions appear to have been accurate. On August 3, 1994, Carl George wrote to Ron Irwin, then Federal Minister of Indian Affairs and Northern Development complaining about the federal government's conduct in regard to the Camp Ipperwash lands issue since the 1942 expropriation. Carl George wrote of the anger and frustration with respect to the lands which had been "expropriated against our wishes and vote". He noted that the \$2.4 million paid in 1980-1981 was a compensation payment, not a sale, and complained about payment being made to the "wrong people", the members of the Kettle and Stony Point Band. He accused the federal government of manoeuvring to give the land back to people who had no "hereditary or traditional rights to this land". He concluded by saying that "we will oppose this with whatever actions are necessary to protect Stony Point reserve #43 and our rights."²²⁰
244. The federal Minister of National Defence responded in September 1994 repeating that the federal government only recognized the Kettle and Stony Point Band and that the Stony Point Group was not a recognized entity. The federal minister took the position that the camp lands would only be returned when it was no longer needed,

²¹⁸ P-57; P-212; P-230

²¹⁹ P-225A; P-225B; Testimony of Ron George on February 28, 2005 at pp. 94-96

²²⁰ P-202

following an environmental assessment and negotiations with the Kettle and Stony Point Band.²²¹

245. A further complication arose when the Kettle and Stony Point Band Council became concerned with the environmental consultant that the federal government had unilaterally chosen. The consultant, who had worked for the federal government before, was regarded as too friendly to the federal government. There was a concern that the consultant would or had assessed the costs of the environmental clean-up too low.²²²
246. By the spring of 1995, the various parties had commenced litigation. The Kettle and Stony Point Band sought an injunction against the federal government's consultant regarding the environmental assessment of the camp. The Kettle and Stony Point Band also initiated legal action against the federal government for \$725 million for failing to fairly represent them at the time of the expropriation in 1942 and the negotiations in the 1980's. Finally, though Carl George did not know, some of the Stoney Point locatees initiated injunction proceedings against the Kettle and Stony Point Band to stop the Council from negotiating on their behalf.²²³
247. Carl George testified before the Commission that there was difficulty keeping the Stoney Point Group cohesive over time. In the spring of 1995, it seemed like the occupiers were losing patience with his approach. Carl's perception was that they thought he was taking too long. Because he found himself to be a source of conflict in the community, Carl decided he could not continue to lead the group. There was increasing resistance to him and Carl felt that people were not taking him seriously and he could not exercise authority or control over the occupiers. He began to feel that he was not wanted there. He had a bad feeling that something was going to happen.²²⁴

²²¹ P-203; Testimony of Carl George on February 21, 2005 at pp. 53-56

²²² Testimony of Gerald George on January 17, 2005 at pp. 118-119

²²³ Inquiry Document # 1002089, P-258; Testimony of Carl George on February 22, 2005 at p. 114

²²⁴ Testimony of Carl George on February 9, 2005 at pp. 212-213, 216-217

iv) Increasing Confrontations at Camp Ipperwash

248. Following the departure of Carl George in May 1995, there was an increase in the frequency and intensity of confrontations between the occupiers of Camp Ipperwash and the military, and of the confrontations between the occupiers and civilians on the beach. DND incident reports in May and June noted the “increasingly violent” harassment incidents and “aggressive behaviour” towards DND personnel and civilians on the beach. Operation Maple Law Enforcement Guidelines dated July 4, 1995 ordered the military police to enforce the law at the camp discreetly and without provocation to avoid the escalation of tension in a time of “increased militancy and intensity of criminal acts.”²²⁵
249. As Incident Commander, John Carson received reports from George Speck, who was the OPP liaison with Camp Ipperwash, which showed an increase in tension in June 1995. Speck was called in on approximately 12 incidents from May 30 to July 4, including reports of a sexual assault, an incident where a red pick-up truck fired shots over the head of one of the occupiers, and an incident where Glenn George drove a tractor into a military vehicle.²²⁶
250. There were reports of some of these incidents involving campers at Ipperwash Provincial Park, particularly where campers at the park used the military beach. On July 11, 1995, Park Superintendent Kobayashi was advised by his assistant, Don Matheson, that one of the park campers had his foot run over by a vehicle operated by an occupier. The vehicle chased the campers from the military beach into the park, driving through wooden barriers dividing the park and the camp, and nearly struck a child. A parent of the child grabbed the driver through the window and in the ensuing confrontation, the vehicle ran over his foot. The OPP were contacted and investigated the incident.²²⁷

²²⁵ P-1792; P-1793; P-1801; Testimony of Captain Smith on June 26, 2006 at pp. 27-28, 32-39

²²⁶ Testimony of Carson on May 12, 1995 at p. 26; Testimony of Glenn George on February 1, 2005 at p. 120; Testimony of Speck on March 22, 2006 at pp. 112-150

²²⁷ P-775; Testimony of Kobayashi on October 24, 2005 at pp. 154-156

251. Some of the occupiers at Camp Ipperwash testified before the Commission regarding their perspective on these types of incidents and disputed some aspects of the reports and the Commissioner may make findings as to what precisely occurred. However, the reports regarding the incidents were part of the knowledge of the OPP.²²⁸
252. From the OPP's perspective, they were receiving complaints from the military and from the occupiers that they were not laying charges or taking action with respect to what was regarded as criminal acts. On June 28, Carson reaffirmed to Charlie Bouwman, who policed the camp, that the OPP would take action anytime that there were reasonable and probable grounds to believe that there was an offence. He also asked Wright to create a log to keep track of the events.²²⁹
253. MNR staff, OPP officers and DND personnel shared information about the presence of outsiders at the Camp Ipperwash occupation and shared common concerns about the detrimental effect that the outsiders were having or might have on the nature of the occupation. Speck received information that a possible gun runner named Isaac "Buck" Doxtator was staying at the camp. In Carson's opinion, outsiders brought with them the potential for violence or the use of firearms, behaviour which was not typical of the local occupiers.²³⁰
254. When Sergeant Charlie Bouwman told Kobayashi about the presence of warriors and the volatility of the situation due to the presence of natives from other reserves, he became more concerned about the ongoing occupation.²³¹
255. Chief Tom Bressette testified before the Commission that concerns relating to the presence of outsiders were present among those at Kettle Point with family ties to Stony Point, and existed prior to August 1, 1995 when there was a community meeting where those concerns were discussed at some length.²³²

²²⁸ Testimony of Glenn George on February 1, 2005 at pp. 109-111, 115-124; Testimony of Stewart George on November 2, 2004 at pp. 26-30; Testimony of Glenn George on February 1, 2005 at pp. 135-136

²²⁹ P-411; Testimony of Carson on May 12, 2005 at pp. 35-41

²³⁰ Testimony of Speck on March 22, 2006 at pp. 120-122; Testimony of Howse on June 27, 2006 at pp. 83-84; Testimony of Carson on May 16, 2005 at pp. 25-27

²³¹ Testimony of Kobayashi on October 24, 2005 at pp. 148-151

²³² Testimony of Chief Tom Bressette on March 2, 2005 at pp. 69-77

v) Further Unsuccessful Attempts to Resolve Camp Ipperwash

256. Efforts continued by some to resolve the divisions within the Kettle and Stony Point Band so they could negotiate with the federal government. While he was no longer a leader, Carl George continued to work on a draft Statement of Principles for joint participation in the negotiation of the Camp Ipperwash claim.²³³
257. There was an attempt to resolve the issues related to Camp Ipperwash. DND approached Bob Antone and Bruce Elijah, two members of the Oneida First Nation, who had experience in negotiation and conflict resolution. They were first involved in some cross-cultural sensitivity training for the military in mid-July. At the time of the sensitivity seminar, Antone and Elijah offered to assist in alleviating tension between the Stony Point Group and the military with a view to allowing the environmental assessment, subsequent remedial action and eventual handover to proceed. They understood that the impediment was the schism between the Stony Point Group and the Kettle and Stony Point Band and the behaviour of the Stony Point Group.²³⁴
258. Antone and Elijah proposed that there be a native circle meeting on August 26, 1995 which was to include representatives of Stony Point, both traditional and more radical elements, male and female Elders from the Kettle and Stony Point Band and the Band's First Nations police force, the OPP, the federal government's environmental consultants and DND.²³⁵
259. Witnesses before the Commission testified that the native circle meeting did not proceed but could not recall specifics. However, a memorandum from Captain Smith of DND dated July 26, 1995, suggested that, while Glenn George was still interested in attending the native circle, Chief Tom Bressette was not. The memorandum

²³³ P-219 tab 9, p. 1 and tab 11, p. 9; Testimony of Carl George on February 22, 2005 at pp. 45-51

²³⁴ P-273; Testimony of Elijah on March 9, 2005 at pp. 260-265

²³⁵ P-273; Testimony of Elijah on March 9, 2005 at pp. 192-195

indicated “all parties are concerned about the probable SPG [Stoney Point Group] reaction when they are officially info that the mtg 26 Aug 95 is cancelled”.²³⁶

vi) Escalation of the Occupation: Takeover of the Barracks

260. On July 29, 1995, members of the Stoney Point Group occupied the built-up area of Camp Ipperwash. Several witnesses from the Stoney Point Group testified that the occupation was planned in advance though witnesses differed in their recollection of how many meetings occurred, when, who attended and what was decided.²³⁷
261. While some witnesses before the Commission suggested that the takeover was peaceful, that does not appear to have been the case. At 13:30, a school bus with approximately 12 young males crashed and broke through the North Gate and went to the parade square. Harley George, who drove the bus, confirmed before the Commission that he drove through the gate breaking the gate lock. Harley George testified that he did not stop for the military police in order to avoid being charged or arrested. Harley George also confirmed that he drove the bus to the parade square with military vehicles following him and began using the bus to push in the door of the drill hall or recreation center. He did so to bully and intimidate the military in retaliation for what he had heard and read about the military’s treatment of his people.²³⁸
262. A military report indicates that three military police (“MP”) personnel arrived on scene and tried to restrict entry to the drill hall. Harley George testified before the Commission that a jeep or military vehicle stopped behind the school bus at a 90 degree angle. He then hit the jeep with such force that it pushed the jeep 45 feet or more and caused the door of the bus to swing open. Harley George saw that one

²³⁶ P-272; Testimony of Smith on June 26, 2006 at pp. 107-108; Testimony of Anton on March 10, 2005 at p. 142; Testimony of Bruce Elijah on March 9, 2005 at pp. 69-70

²³⁷ Testimony of Rose Manning on April 17, 2005 at pp. 36-40; Testimony of Tina George on January 9, 2005 at pp. 96-97; Testimony of Wesley George on December 1, 2004 at pp. 20-21; Testimony of Harley George on January 20, 2005 at pp. 139-140

²³⁸ P-275; Testimony of Harley George on January 20, 2005 at pp. 151-155, 209-212, 235, 247-248

member of the MP was still in the vehicle. A military report indicates that the MP suffered whiplash.²³⁹

263. Harley George testified before the Commission that before he could move the bus, the other MP, who had gotten out of the way when he hit the jeep, tried to get on the bus. Mr. George then used a lever to try to close the bus door, pinning the MP who then pepper sprayed him. The MP asked him to exit the vehicle. Harley George testified that he got off the bus, kicked at the MP and then fought with the MP.²⁴⁰
264. At the same time as the school bus was entering the North Gate, approximately 80 others came through the Front Gate and entered with a column of approximately 15 vehicles and then dispersed throughout the built-up area. A large number revved their vehicles in front of drill hall. Some of the First Nation witnesses dispute the number of people who entered but there is no dispute that a number came in with their vehicles. Others came in through the east side.²⁴¹
265. Immediately after Harley George backed into the jeep, Lincoln Jackson, another young native who had obtained a military fork lift, used it to force open the door of the drill hall from the inside. He then drove around trying to scare the military away from the young people.²⁴²
266. Captain W.D. Smith arrived and was concerned that the situation would become a “serious violent incident.” He sought to de-escalate the situation and ordered the MP’s to go to the guardhouse. He then spoke with the Stoney Point Group leaders and reached an agreement as to which buildings they might occupy and which they had to stay out of; however, within minutes, the First Nations people broke the agreement and continued to break into other buildings. According to Captain Smith,

²³⁹ P-272; P-275; Testimony of Harley George on January 20, 2005 at pp. 214-219

²⁴⁰ Testimony of Harley George on January 20, 2005 at pp. 219-224

²⁴¹ P-275; Testimony of Marlin Simon on October 12, 2004 at pp. 143-144; Testimony of Harley George on January 20, 2006 at pp 200-202

²⁴² Testimony of Tina George on January 19, 2005 at pp. 107-110; Testimony of Harley George on January 20, 2005 at pp. 168, 171; Testimony of Nicholas Cottrelle on January 18, 2005 at pp 227-228; Testimony of Rose Manning on April 17, 2005 at pp. 55-56

- the Stoney Point leaders admitted that they had little if any control over the younger males of the group.²⁴³
267. Some First Nation witnesses confirm that they broke into buildings at the barracks. Harley George testified that he went into any barrack he felt like. Some of them were locked so he kicked in the door. He testified that he went in because it was something to do.²⁴⁴
268. Harley George did not recall any of the older people in the occupying group talking to him about his conduct in the days and weeks following the takeover.²⁴⁵
269. According to Captain Smith, he contacted an Elder from the Kettle and Stony Point Band for assistance but the Stoney Point Group refused to allow him onto the camp. He then contacted Bob Anton and Bruce Elijah who advised him that the Stoney Point Group had no intention of leaving and that the Kettle and Stony Point Band had no control at all over the group. There is conflicting evidence as to whether Bob Anton and Bruce Elijah told Captain Smith that the Stoney Point Group was armed though this was the understanding of Captain Smith. Anton testified before the Commission that the mood at the Camp was tense and indicated that he and Elijah conveyed to the military that, if the military stayed there, a physical confrontation would begin.²⁴⁶
270. The military had called the OPP for assistance within minutes of the beginning of the occurrence. Carson testified before the Commission that he arrived with Wright from London just before 15:00 and met Smith. They were told the occupiers were ordering the military to leave. If DND wanted the OPP to take action, Smith would have to request the occupiers to leave immediately. DND was not prepared to seek an

²⁴³ P-275; Testimony of Smith on June 26, 2006 at pp. 112-119

²⁴⁴ Testimony of Harley George on January 20, 2005 at pp. 173-174

²⁴⁵ Testimony of Harley George on January 20, 2005 at p. 249

²⁴⁶ P-275; Testimony of Bruce Elijah on March 9, 2005 at pp 91-93; Testimony of Antone on March 10, 2005 at pp. 48-52, 170-172; Testimony of Smith on June 26, 2006 at pp. 119-120

injunction. At some point, Carson advised Maynard T. George that the occupiers were trespassing and could be charged.²⁴⁷

271. According to Captain Smith's report at the time, throughout the evening, the male occupiers became increasingly aggressive and confrontational. Anton testified that the occupiers were angry and some had begun consuming alcohol. At approximately, 22:00, the military received information that more First Nations people were about to come up to the Camp from the beach area over whom "they" had no control.²⁴⁸
272. While some First Nation witnesses suggested that the DND voluntarily turned over Camp Ipperwash to them, the military indicated that they withdrew because of the increasingly aggressive demeanour of the occupiers, the lack of control by their own leaders and because a number were beginning to drink alcohol beverages. The military felt that to stay would result in "a violent incident" and either natives or military personnel "being injured". They evacuated at approximately 23:30 leaving the occupiers in occupation of the entire Camp Ipperwash lands.²⁴⁹

vii) OPP and MNR Concerns of Further Expansion of Native Occupation

273. Carson testified that the incident caused him some concern. He understood that as a result of the aggression and violent incident with the bus, the military chose to withdraw. He was advised of a report from Police Constable Parks, who attended at the Camp and saw the military withdraw, that some of the occupiers made comments at that time that the park was next. Carson testified that he was concerned about policing. He also believed that the military vacating the Camp would cause anxiety in the broader community and the Kettle Point community regarding the return of the Camp. Carson discussed these challenges with Coles on July 30, 1995.²⁵⁰

²⁴⁷ P- 275; Testimony of Carson on May 12, 2005 at pp. 62-69

²⁴⁸ P-275; Testimony of Antone on March 10, 2004 at pp. 171-172

²⁴⁹ P-275; Testimony of Smith on June 26, 2006 at pp. 222-224

²⁵⁰ P-410, p.11; P- 411, p. 26; P- 877, p.2; Testimony of Carson on May 12, 2005 at pp. 67-68, 71-73, 79; Testimony of Parks on March 28, 2006 at pp. 201-203

274. Kobayashi was on vacation at the time, but was informed of the takeover of Camp Ipperwash early on July 30, 1995, Sunday morning. Matheson, the assistant superintendent, attended a morning meeting with the OPP on July 30, 1995 to discuss MNR's concerns regarding the safety of MNR personnel and the public. There was also a concern that the occupiers might cut off clean water to the park which came from a reservoir at Camp Ipperwash.²⁵¹
275. Matheson met with the OPP and military police again at 15:30 and learned from the military that an occupier had indicated that the park would be the next "target". Kobayashi called Matheson later that evening for a briefing and they discussed blocking the gates to the maintenance yard and the park store. At approximately 20:45 that night, Kobayashi met with Matheson and other MNR staff at the park gates and they discussed the situation. Matheson was very concerned and expressed his concerns for MNR staff and users.²⁵²
276. Matheson also advised Sturdy, Kobayashi's superior, on July 30, 1995. Sturdy advised others within MNR and indicated that the OPP was putting a contingency plan into effect to maintain security for both park staff and the public, both campers and day users. Sturdy advised that a special OPP team had been called into the vicinity and would be housed at the Pinery Provincial Park in the event they were needed. Sturdy reported that security would be stepped up immediately and that there would be a visible OPP presence. He further advised that intelligence gathering capabilities at the park by the OPP would be put into place within the next 24 hours. Sturdy went on to state:

Staff and public safety are obviously our highest priority and staff and the OPP are building/implementing plans to ensure these concerns are handled appropriately. Plans for the park's evacuation have been in place for some period of time and will be acted on immediately if the situation warrents [sic].²⁵³

²⁵¹ Testimony of Sturdy on October 18, 2005 pp. 221-223; Testimony of Kobasyahi on October 24, 2005 at pp. 158-161

²⁵² P- 887, pp. 2-3; Testimony of Kobayashi on October 24, 2005 at pp. 158-164; Testimony of Sturdy on October 19, 2005 at pp. 221-223

²⁵³ P-776; Testimony of Sturdy on October 18, 2005 at pp. 221-223

277. Detective Sergeant Wright testified that, on July 31, 1995, he began discussing plans for a potential occupation of the park with Inspector Carson and Superintendent Parkin who had replaced Wall as Operational Superintendent. Wright understood that MNR as landlord would be asked as to their position regarding the removal of the trespassers and that, if the OPP got authority from OPP Headquarters in Orillia, they would remove the trespassers. Wright didn't specifically recall any discussion of an injunction but his recollection was that an injunction was always part and parcel of the plans.²⁵⁴
278. Carson testified that he raised with MNR on July 30, 1995 that if there was an occupation of the park, the MNR would be required to seek an injunction. Kobayashi confirmed that he understood at that time, that in the event of an occupation, the OPP would want MNR to seek an injunction.²⁵⁵
279. The issue came up again on August 1, 1995, when Sturdy met with Carson to hear his assessment of the risk for the occupation of the park. Carson indicated that the risk was not such that anything had to be closed and outlined three possible scenarios for the occupation of the park, depending on the number of people and tactics used. Sturdy summarised the discussion in a report to Barry Jones, Legal Director for MNR, as follows that day:

Barry – when I talked to Inspector Carson this afternoon and a couple of different situations that might develop he gave me a couple of examples and how he would see proceeding:

1. Small group (6-10) enter park and make claim.

OPP RESPONSE: Small enough to make arrest and remove from park.

2. Blockade of park entrance

OPP RESPONSE: Arrest and have vehicle towed to allow and maintain unrestricted access to park for emergency vehicles, etc.

²⁵⁴ P-1086, pp. 45-49; Testimony of Wright on February 21, 2006 at pp. 114-118

²⁵⁵ Testimony of Carson on May 12, 2005 pp. 91-92; Testimony of Kobayashi on October 25, 2005 pp. 206-207

3. Large group (including women and children) enter park and make claim (similar to tactics used at Camp Ipperwash)

OPP RESPONSE: Evacuate park of staff and public. Negotiate. Physically remove from park.

He mentioned that the #3 situation, involving a large group, would require the issuance of a court injunction. Do we need to do anything to have the paperwork in our back pocket in the event this is necessary (assuming you agree with an injunction)?²⁵⁶

Sturdy testified before the Commission that he understood from Carson that, if there were large numbers involved, an injunction would be required and then the occupiers would be removed.²⁵⁷

280. Sturdy testified that Carson had requested confirmation of MNR's position in the event of the occupation of the park. Sturdy sent a briefing note to the MNR Deputy Minister advising her of the situation. He advised her that the OPP had brought in an Emergency Response Team ("ERT") on Sunday who were stationed at the Pinery Provincial Park and of the other steps taken by the OPP. He then went on to explain Carson's request and his understanding of MNR's current position as follows:

The O.P.P. officer in charge, Inspector John Carson, has requested confirmation of M.N.R.'s position with respect to any attempt by the native group to gain illegal entry or occupy the park. M.N.R.'s position to this point on the question of any land claim involving Ipperwash Provincial Park has been:

1. There is no official land claim
2. The park property was aquired [sic] by the Government through the normal aquisition [sic] process for park purposes and any question would need to address the process by which the land was originally surrendered.

The question is whether any occupation would then be seen as an "illegal act" [illegible] the appropriate/necessary action taken in response to such an occupation. Inspector Carson has indicated that situations could take a number of different forms including a small group, a blockade of the park road or a large number of persons

²⁵⁶ P-777

²⁵⁷ Testimony of Sturdy on October 18, 2005 at pp. 230-235, 82-84

(including children) claiming ownership. Contingency plans have been drawn up to deal with these types of situations, but he is seeking confirmation that M.N.R. would view this as an illegal act.²⁵⁸

281. Sturdy concluded the briefing note with the following recommendation:

Recommended Response

M.N.R. is monitoring the situation in consultation with the O.P.P. as our primary concern is for the safety of the public and staff at the park. The ownership status of the park is not in question as there has been no claim made to the land and the property was acquired [sic] following normal processes. Therefore M.N.R. would view the occupation of the park as an illegal act and would take the appropriate actions.²⁵⁹

282. Sturdy testified that he did not receive a response; however, he expected that the issue would be discussed at an IMC meeting scheduled for the afternoon of August 2, 1995 to determine if there was corporate support. He indicated this understanding at the conclusion of the briefing note.²⁶⁰
283. MNR staff had recognized a need to develop contingency plans for a possible occupation as of July 30, 1995 and proceeded to do so. On August 2, 1995 at 13:46, Ed Vervoort, an MNR Compliance Specialist, emailed Kobayashi a copy of the emergency contingency plan and indicated that he would provide copies to Carson, Baldwin and Dan Elliott, who had replaced Humberstone as the MNR native liaison and was also Issues Manager for the district.²⁶¹
284. The plan provided a historical background which reviewed the expropriation of the lands which became Camp Ipperwash and the notices served with respect to the camp and the park in 1993. The background indicated that in 1993 the provincial government “after researching the issue advised the Stony Point First Nation that they indeed had no right or claim to this parcel of land.” The background went on to

²⁵⁸ P-410, p. 23; P-778; Testimony of Carson on May 12, 2005 at pp. 112-113; Testimony of Sturdy on October 18, 2005 at pp. 235-241

²⁵⁹ P-778

²⁶⁰ P-778; Testimony of Sturdy on October 18, 1995 at pp. 239-243

²⁶¹ P-871; Testimony of Kobayashi on October 24, 2005 at pp. 165-166

- indicate that the plan would be implemented if it was deemed that there was a threat to the safety of persons using the park or park staff.²⁶²
285. The plan itself was the same as the plan prepared in 1993 though it reflected a few changes in staff and in wording. The plan provided that Baldwin, Elliott, Vervoort and Kobayashi would make up the critical incident team to whom others reported. Sturdy testified that Baldwin, Vervoort and Elliott all had compliance or enforcement backgrounds.²⁶³
286. The plan envisaged that, if the OPP declared a state of emergency, the main gate would be closed, traffic controls would be set up and then persons inside the park would be asked to leave. Staff would erect barriers to the entrances to prevent re-entry and conduct foot patrols to maintain park security at the boundaries and interior of the park. The park superintendent would then declare the park closed pursuant to the *Provincial Parks Act* and regulations and the park would be monitored for trespassers and vandalism.²⁶⁴
287. Sturdy received a copy of MNR's contingency plan on August 31, 1995 and testified that prior to that date, the OPP would have seen this MNR plan. He understood that, according to the plan, the OPP would trigger the evacuation of park users and staff before anyone occupied the park and a secured perimeter would be established to keep the occupation from occurring. Sturdy further understood that, in accordance with the plan, if anyone was found in the park once the perimeter was established, they would be dealt with pursuant to the *Trespass to Property Act*.²⁶⁵

viii) Response of the Band

288. While MNR on the ground responded to the takeover of Camp Ipperwash and the possible occupation of the park, the Kettle and Stony Point Band Council called a general meeting on August 1, 1995 of its members. The meeting was to discuss the

²⁶² P-781; P-871

²⁶³ P-871; P- 898; Testimony of Sturdy on October 18, 2005 at p. 296

²⁶⁴ P-781; P-871; Testimony of Sturdy on October 18, 2005 at pp. 269-278

²⁶⁵ P-781; P-871; Testimony of Sturdy on October 18, 2005 at pp. 269-278, October 19, 2005 at pp. 237-239

Statement of Principles between the band and the Stony Point Group for negotiating with the federal government to resolve the Camp Ipperwash issues. Chief Tom Bressette testified before the Commission that he, along with a majority of Band Council members at the time, were related to people who were from Stony Point.²⁶⁶

289. The meeting lasted more than three hours. A number of people spoke including residents of Stony Point and their descendants and their comments were taped and transcribed into minutes. Concerns were raised during the meeting about the presence of others at the Camp who were not from the community, didn't speak the native language but who were playing a role and making decisions.²⁶⁷
290. There were complaints that these outsiders were treating the lands like a dumpster, denying former residents access to the camp and the beach, and causing trouble. One Elder said that she attended at the camp and that Bruce Elijah identified himself to her as a "shit disturber" and that she heard him "telling the people to go the Oka way to settle things."²⁶⁸
291. As a result of the general meeting of the Band, Council issued a press release dated August 2, 1995. The press release referred to the Band meeting the night before and indicated that the Band favoured a speedy return of the Stony Point lands to the Kettle and Stony Point Nation and wanted DND to cover the full costs of cleaning and restoring the lands. The press release went on to state:

People attending the meeting stated that they want to work with the Band members occupying the Stony Point land, to reunify a community torn apart by the illegal appropriation and continued use by the military of half our land base. It was the general consensus of those present, that non-Band members in occupation at Camp Ipperwash should be thanked for their support but should be asked to leave Stony Point, as it is not now, and never was, their home. We believe that without the presence of disrupting, outside influences, the Kettle & Stony Point First Nation will be able to

²⁶⁶ P-43; Testimony of Tom Bressette on March 2, 2005 at pp. 69-70

²⁶⁷ P-43; Testimony of Tom Bressette on March 2, 2005 at pp. 72-76

²⁶⁸ P-43, pp. 12, 16-17, 22-23; Testimony of Tom Bressette on March 2, 2005 at pp. 72-76

continue negotiations with the Department of National Defence for the expeditious clean-up and return of the Stony Point Lands.²⁶⁹

292. Chief Tom Bressette wrote a letter to the Kettle and Stony Point Band members and advised them of the majority's view that non-Band members who were occupying the camp should be asked to leave but that did not apply to Band members in occupation. He went on to refer to the Statement of Principles which attempted to include all interests and concerns and was distributed for comments. Chief Tom Bressette reminded them that the federal government would only deal with the Kettle and Stony Point Band Council and urged them to work with council.²⁷⁰
293. Chief Tom Bressette testified that he and a number of other councillors took several copies of the letter to the camp gatehouse and asked to speak to whoever was in charge. However, the occupiers told them that no one was in charge and that the Band officials were not welcome. They left the letters and asked that they be disseminated; however, one of the occupiers threw the copies in the back of the truck of one of the councillors as he was leaving.²⁷¹
294. There is some evidence Ovide Mercredi may have offered to mediate in early August but Chief Tom Bressette was told indirectly that Stoney Point Group was not interested.²⁷²

ix) Updates to the OPP and to the Provincial Government

295. While MNR staff on the ground at Ipperwash Provincial Park updated others within MNR of the takeover of Camp Ipperwash, OPP officers on the ground also reported to their superiors. As they had since 1993, the OPP on the ground advised their superiors regularly of developments and high-level officers would request briefing notes of the officers involved of matters they deemed significant. At this time, Carson reported to Parkin and sometimes directly to Chief Superintendent Coles. Coles in

²⁶⁹ P-246; Testimony of Tom Bressette on March 2, 2005 at pp. 73-75

²⁷⁰ P-30; Testimony of Tom Bressette on March 2, 2005 at pp. 79-80

²⁷¹ Testimony of Tom Bressette on March 2, 2005 at pp. 78-80; Testimony of Gerald George on January 13, 2005 at pp. 40-41

²⁷² P-247; Testimony of Tom Bressette on March 2, 2005 at pp. 83-84

- turn reported to the Deputy Commissioner or sometimes to Commissioner O'Grady.²⁷³
296. The OPP had procedures in place for communicating necessary information to the Ministry of the Solicitor General ("MSG"), the ministry responsible for the OPP. The Commissioner had a Critical Issues Group whose job it was to collect information to create issue notes which would then be forwarded in the normal course to whoever needed the information and, in particular, to the Deputy Minister of the MSG, Elaine Todres, to keep her, and through her, the Solicitor General informed.²⁷⁴
297. Parkin attended meetings in regard to Ipperwash shortly after his appointment in June 1995. He knew that the existing policy was that the OPP would not act to remove the occupiers from the camp without an injunction. There were discussions with respect to an injunction should there be an occupation of the park and he knew that the OPP would want the MNR to obtain one.²⁷⁵
298. At the request of Coles, Parkin attended at the Forest detachment on July 30, 1995 and was briefed about the takeover of the camp by Carson and Wright. They discussed the plans including having uniform patrols and undercover police officers in the park and having the Emergency Response Team stay close by. Parkin confirmed that Matheson of MNR was brought into the meeting.²⁷⁶
299. Carson continued to provide updates to Parkin in late July and August and Parkin updated the Commissioner's Office directly for expediency. He provided information to Nancy Mansell, a civilian who was part of the Critical Issues Group which provided Issue Notes to the Deputy Minister of MSG and also to Ron Fox.²⁷⁷

²⁷³ Testimony of Coles on August 15, 2005 at pp. 27-28, 31-32; Testimony of Parkin on February 6, 2006 at pp. 57-58; Testimony of Carson on May 12, 2005 at pp. 55-56

²⁷⁴ Testimony of O'Grady on August 18, 2005 at pp. 219-220, August 22, 2005 at pp. 64-65; Testimony of Todres on November 29, 2005 at pp. 324-325

²⁷⁵ Testimony of Parkin on February 6, 2006 at p. 129

²⁷⁶ P-500; Testimony of Parkin on February 6, 2006 at pp. 80-83, 87-89

²⁷⁷ P-416; P-499, pp. 13-17, 20, 25; P-563; Testimony of Parkin on February 6, 2006 at pp. 91-96, 98-103

300. Since the spring of 1995, Fox had been a seconded OPP officer working in the office of the Deputy Minister for the MSG, the role previously filled by Doug Scott. His title was “Special Adviser, First Nations” and he reported to the Deputy Minister of the MSG alone and had no operational responsibilities for the OPP of any kind. His primary role was to act as a negotiator representing the provincial government with respect to policing agreements. He also provided on-going advice to the Deputy Minister with respect to matters involving First Nations that had a direct effect on the office of the Solicitor General.²⁷⁸
301. Both Parkin and Carson testified that they understood that Fox was at the Solicitor General’s office in the capacity of adviser to the Minister or Deputy Minister of the MSG. Carson testified that, while he had a superficial understanding of Fox’s role, he understood that Fox was an advisor to the ministry and the bureaucracy in relation to First Nations issues and tripartite policing agreements.²⁷⁹
302. Carson also communicated with Fox directly, first in early July with respect to developments and then again at the time of the takeover. Carson testified that previously Wall had dealt with Doug Scott, Fox’s predecessor in 1993 but, in the summer of 1995, Wall had retired and Parkin was transferring in; therefore, since he had known Fox fairly well as a result of previous professional interaction, he communicated with Fox directly.²⁸⁰
303. Fox conveyed some of the information he received from the OPP to Deputy Minister Todres and others within government. Fox testified before the Commission that, while he was not aware of any written protocols, he wanted as little operational information from the OPP as necessary to perform his role and conveyed his own interpretation of information received to others.²⁸¹

²⁷⁸ P-497; Testimony of Fox on July 11, 2005 at pp. 13-15; Testimony of Todres on November 29, 2005 at pp. 278-279, November 30, 2005 at pp. 122-123

²⁷⁹ Testimony of Parkin on February 6, 2006 at pp. 108-109; Testimony of Carson on May 12, 2005 at pp. 51-54

²⁸⁰ P-410, p. 5, 12-13; Testimony of Carson on May 12, 2005 at pp. 51-56

²⁸¹ Testimony of Fox on July 11, 2005 at pp. 54-55

304. On July 31, 1995, Fox and his assistant, Scott Patrick, who was also a seconded OPP officer working for the Deputy Minister of the MSG, spoke to Julie Jai (“Jai”) and advised her of the takeover of Camp Ipperwash. At the time, Jai was the acting director of legal affairs in the Ontario Native Affairs Secretariat which was then part of the Ministry of the Attorney General. Jai testified that she had joined ONAS from another ministry less than a year before.²⁸²
305. Jai testified that the mandate of ONAS in 1995 included assisting the Government of Ontario in creating opportunities and initiatives which advance the recognition of the rights and aspirations of Aboriginal peoples and resolve issues of concern to them that are within the Province’s authority, responsibility, resources and priorities. As acting Director of ONAS, Jai would have generally tried to pursue those goals.²⁸³
306. Fox had contacted Jai frequently since his appointment with intelligence he had received from a variety of sources. Jai testified that they had a good working relationship. She found him to be sensitive to aboriginal issues and “relatively knowledgeable for someone coming from the OPP.” She then testified that she had a fairly high regard for the OPP and that Fox was “unusually well informed for someone from any background.” Fox testified that he felt that Jai was new to First Nation issues and lacked a broad understanding but he assisted her by providing her with his understanding.²⁸⁴
307. On August 1, 1995, Fox provided further information to Jai based on his personal knowledge and information he received from the OPP. Fox advised Jai of the threat of a possible takeover of the park, the water issues resulting from the takeover of Camp Ipperwash and of the existence of a sacred point at Ipperwash Provincial Park to which the First Nation people had unencumbered access. He specifically passed

²⁸² P-645; Testimony of Fox on July 11, 2005 at pp. 61-62; Testimony of Jai on August 30, 2005 at pp. 48-49, 143-145

²⁸³ Testimony of Jai on September 12, 2005 at pp. 211-212

²⁸⁴ Testimony of Jai on August 30, 2005 at pp. 139-141; Testimony of Fox on July 11, 2005 at pp. 90-91

along the report that the Stoney Point Group had indicated “pretty soon you will be paying us for the use of the park.”²⁸⁵

308. Fox advised Jai on August 1, 1995 that “[i]t is only a dissident group that is doing this not the Band.” He further advised that, while the Kettle and Stony Point Band did not plan any takeover of the park, “the fact this dissident group succeeded in getting the Base has given them confidence” to takeover the park if that was what they wanted to do. Fox briefed Jai on the geography of the park and camp and advised her that the park was adjacent to Camp Ipperwash. He advised her that the OPP was monitoring the situation closely and that the police probably had people at the camp posing as “campers.”²⁸⁶
309. Jai spoke with the Legal Director of MNR, Jones, who advised her of MNR’s concerns regarding the threatened takeover of Ipperwash Provincial Park and the safety of campers as well as the water supply issues. As a result, Jai convened a meeting of the IMC for the afternoon of August 2, 1995.²⁸⁷
310. Jai spoke to Fox about MNR’s concerns but shared his view that MNR’s concerns were “to a greater degree than is probably warranted”. Fox updated Parkin on the morning of August 2, 1995 at 7:37 in an email where he repeatedly referred to the occupiers as “militants” or “the militant faction.” He described MNR’s concerns and his assessment that they were greater than warranted. Fox acknowledged before the Commission that in hindsight he was wrong in his judgment that MNR’s concerns about an occupation were unwarranted.²⁸⁸
311. Fox advised Parkin of the IMC meeting that afternoon and that he would “attend to ‘guide’ the discussions in this area.” Fox asked if Parkin or Carson would be available by telephone “should any points arise in the discussion that “may” need further explanation/interpretation.” However, Parkin advised Fox that he didn’t want Carson or him to be on the conference call. Fox testified before the Commission that

²⁸⁵ P-500; Testimony of Fox on July 11, 2005 at pp. 63-65, July 12, 2005 at pp. 240-247

²⁸⁶ P-500; Testimony of Fox on July 11, 2005 at pp. 63-65, July 12, 2005 at pp. 240-243

²⁸⁷ Testimony of Jai on August 30, 2005 at pp. 155-157

²⁸⁸ P-414; Testimony of Fox on July 12, 2005 at pp. 247-251; Testimony of Jai on August 30, 1995 at pp. 157-159

he was concerned about IMC members misunderstanding sensitive information or not understanding that the information had not yet been confirmed. Fox further testified that he used his own judgment in filtering information he provided to protect public and officer safety.²⁸⁹

312. Fox obtained additional information from Parkin and then updated Jai. He advised Jai that the OPP did not want to be on the IMC call. He further advised that the OPP had met with Glenn George, the spokesperson for “the Stoney Pointers” and that there were allegations there was a burial ground in the park. Fox advised Jai of the Kettle and Stoney Point Band meeting and that the occupiers had been invited but had not attended. Fox further advised of the outcome of the Band’s meeting and that Ovide Mercredi had offered to mediate.²⁹⁰
313. On August 2, 1995, Fox reported on Ipperwash to Deputy Minister Todres of MSG. He advised that he had been in contact with Coles, Parkin and Carson. Todres testified before the Commission that she had no concerns about this and regarded it as necessary to quickly obtain the information the IMC required in order to have the facts to rely upon in making its recommendations.²⁹¹
314. Fox advised Todres of the situation in an email at 11:34 and again repeatedly referred to the occupiers as the “militant faction” occupying the base. He advised her that there were four scenarios which he regarded as the most probable:
 - a. Escalation of tensions between the Kettle and Stoney Point Band and the occupiers with the result that the band sought an injunction against the occupiers;
 - b. The federal government seeking an injunction against the occupiers to facilitate the environmental assessment;
 - c. MNR seeking to pursue legal and enforcement remedies with respect to the water supply and the possible park takeover; and
 - d. A blockade of the beach by the militant faction.

²⁸⁹ Testimony of Fox on July 11, 2005 at pp. 70-71, 131-134, July 12, 2005 at pp. 251-255; Testimony of Jai on August 30, 1995 at pp. 169-171

²⁹⁰ P-505; Testimony of Jai on August 30, 2005 at pp. 169-172

²⁹¹ P-502; Testimony of Todres on November 29, 1995 at pp. 324-326

Fox indicated that he had requested that ONAS research any outstanding claims with respect to the park. He advised that the OPP's response to date was prudent and appropriate and cautioned against any heightened overt action by the police.²⁹²

x) IMC Meeting of August 2, 1995

315. As Chair of the IMC, Jai convened a meeting of the IMC. Like some of the IMC meetings concerning Ipperwash in 1993, the IMC meeting was attended by both civil servants and political staff, which was typical. It was Jai's first meeting as Chair. Eighteen people attended the meeting which lasted a little less than two hours.²⁹³

316. The general aims of the IMC were the same in 1995 as it had been in 1993: to prevent occupations and blockades or, failing that, to try and end them as quickly and safely as possible. Its main roles were to share information and develop recommendations. The guidelines were also the same.²⁹⁴

317. At the IMC meeting, Jai circulated background material consisting of several information notes. One note described the history of West Ipperwash Beach and how it had been surrendered in 1927. Another note set out the history of the acquisition of the lands that became Ipperwash Provincial Park. The second note about the park referred to the federal government's 1942 expropriation of the lands which became Camp Ipperwash and the removal of the residents to the Kettle Point reserve. The note explained that there are "Stoney Point people" currently re-occupying the Camp who spelled their name with an "e" to distinguish themselves from the recognized First Nation name.²⁹⁵

318. A third note circulated at the IMC meeting considered the possible existence of legal actions or land claims with respect to the park. It indicated that there "are no legal

²⁹² P-502; Testimony of Fox on Testimony on July 11, 2005 at p. 72

²⁹³ P-506; Testimony of Jai on August 30, 1995 at pp. 138-139; Testimony of Christie on September 26, 2005 at pp. 58-59

²⁹⁴ P-303; Testimony of Jai on September 12, 2005 at pp. 232-235; Testimony of Spiegel on September 21, 2005 at pp. 79-83

²⁹⁵ P-503; Testimony of Jai on August 30, 2005 at pp. 178-179

actions commenced at the present time by either the First Nation or the Stoney Point Group against Ontario in respect of lands in the Park.” It went to indicate:

The only apparent significant legal activity directly affecting the Park by either the First Nation or the Stoney Point Group occurred in May, 1993, when what was the then newly established Stoney Point Group served a bailiff’s order on MNR stating its intention to occupy a part of the Park. In June, 1993 MNR sent letters to the Chief of the First Nation and a representative of the group stating that Ontario is in lawful possession of the Park lands which were lawfully purchased from private individuals in 1938. The letter to the group states that the bailiff’s process and documentation is invalid. The letters also state that MNR will address matters of information sharing and economic opportunity pertinent to the First Nation with its Chief and Council.²⁹⁶

319. Jai recalled that at the meeting on August 2, 1995, the IMC discussed the title to Ipperwash Provincial Park and the fact that the land had been sold to a private landowner and then the Province had bought it from the private landowner. She testified that they were comfortable that the province had good title. They also confirmed that there were no land claims.²⁹⁷
320. At the beginning of the meeting, MNR raised its immediate concern as to whether the people in the park were in any danger at all. MNR advised that the park could hold 1,500 to 2,000 people when full and that there had been threats of an occupation. The IMC was advised that Sturdy of MNR had been dealing with Carson of the OPP. Fox then advised the IMC of the takeover of the Camp on July 29, 1995 and that the OPP was investigating the incident regarding the bus driver.²⁹⁸
321. Fox advised that Chief Tom Bressette had held a community meeting but no one for the “dissident group” attended. He further advised that they had passed a Band Council Resolution saying that the “dissidents” should leave. Fox referred to the water supply issue and the risk of a possible occupation of the park and indicated that

²⁹⁶ P-503

²⁹⁷ P-506; Testimony of Jai on August 30, 1995 at pp. 198-200

²⁹⁸ P-735 (notes incorrectly dated August 3, 1995); Testimony of Christie on September 26, 2005 at pp. 37-39

- there were two ERT teams and a TRU team nearby, there were 50 to 75 people at the Camp and that no weapons were being overtly drawn.²⁹⁹
322. Sturdy reported on a meeting between MNR and DND and the measures taken to address the water supply issue. He then reported to the IMC on some of the comments made by the camp occupiers regarding Ipperwash Provincial Park, such as “soon you’ll be paying us for the park”. He also advised that the occupiers had told Carson that in addition to Ipperwash Provincial Park, they were interested in taking over Matheson Drive, a road separating the park and the camp.³⁰⁰
323. Peter Allen, Executive Assistant to the Deputy Minister of MNR, reported on the confrontation referred to previously in paragraph 250 involving the Stoney Point Group in which an individual was dragged with his vehicle and run over. Sturdy explained that the incident was caused by a camper from Michigan who had insisted on going on to Camp Ipperwash ignoring signs warning campers not to go on DND land. Allen indicated that even if people were warned, the provincial government would still be liable if something occurred and that some campers were confrontational. Jai testified before the Commission that she found it hard to believe that the incident involving the camper had occurred because she had not heard about it from Fox.³⁰¹
324. Allen asked what was the risk to the people at the park and indicated that they needed a risk assessment. He further queried if the magnitude of risk was such that they needed to close the park.³⁰²
325. Fox advised that there were many risks in visiting a park such as the risk of falls, cliffs, bears, fights with other campers, motorcycle gangs. He went to advise as recorded by Jai in her notes that it “seems illogical that they [would] invade the park.

²⁹⁹ P-507; P-735; Testimony of Christie on September 26, 1995 at pp. 41-43; Testimony of Jai on August 30, 1995 at pp. 179-181

³⁰⁰ P-507; Testimony of Jai on August 30, 2005 at pp. 181-182

³⁰¹ P-507; P-735; Testimony of Jai on August 30, 2005 at pp. 183-187; Testimony of Christie on September 26, 2005 at pp. 48-50

³⁰² P-507; P-735; Testimony of Jai on August 30, 2005 at pp. 187; Testimony of Christie on September 26, 2005 at pp. 50-52

- More likely [that they] would block [the] road.” Fox testified before the Commission that at the time of the IMC meeting on August 2, 1995, he continued to be sceptical that an occupation would occur but, in hindsight, he was in error in that respect.³⁰³
326. At the IMC meeting, Baldwin indicated that MNR had lived through this all summer and stressed the importance of frequent communication as the situation could change quickly. Baldwin noted that there were evacuation plans in place and barricades to prevent campers from entering Camp Ipperwash. He advised that the First Nation didn’t challenge the ownership of the park and that Chief Tom Bressette and the Band viewed the occupation as “illegal”. He went on to indicate that if the provincial government closed the park, Chief Tom Bressette would be upset as it would recognize the “validity of the dissident group”.³⁰⁴
327. Sturdy then indicated that he felt that there was a greater risk this year. He referred to locking up Matheson drive gate and the comments made last night. Sturdy stated that he felt that the occupiers might use similar tactics to those used to takeover Camp Ipperwash, specifically the use of a large group of people. He then was recorded by Jai as asking “What do we do then?”³⁰⁵
328. Fox responded by indicating that two years ago, the dissident group did occupy the park in a ceremonial way and eventually lost interest and left. They did not evacuate the park at that time. Their activities were non-threatening. He stated that he would be more concerned if the group was being supported by the Mohawks of Akwesasne and noted that Chief Tom Bressette had been trying to discourage groups from supporting the “dissidents.” Fox testified before the Commission that Parkin had expressed to him prior to August 2, 1995, the concern that warriors would be involved in the occupation and that it was the collective experience of police officers that when the warrior society was involved, situations tended to get worse.³⁰⁶

³⁰³ P-507; Testimony of Jai of August 30, 2005 at pp. 187-188; Testimony of Fox on July 12, 2005 at p. 282

³⁰⁴ P-735; P-507; Testimony of Christie on September 26, 2005 at p. 53; Testimony of Jai on August 30, 1995 at pp. 188-191

³⁰⁵ P-507; Testimony of Jai on August 30, 2005 at pp. 188-191

³⁰⁶ P-507; Testimony of Jai on August 30, 2005, pp. 189-191; Testimony of Fox on July 11, 2005 at pp. 120-123

329. The question of an altercation between the dissidents and the Band was raised and Fox advised that an altercation was possible or the Band could seek an injunction. They again discussed Matheson Drive and the access to the park.³⁰⁷

330. Allen then asked if there was corporate agreement that the Solicitor General take any necessary actions required to stop the dissident group. Jai responded that there was support for an appropriate response depending on the situation. The participants then agreed that OPP and MNR would take the lead. Jai summarized the consensus as based on her notes:

We will keep in close communication; that we will trust John Carson, the OPP person on site who knows the situation well and has a good handle on the situation. The OPP is in place and can take appropriate action. If an occupation occurs, our committee will meet again. We all agree that safety will be the foremost; that the risk will be assessed by those on the ground, which is both the OPP and the MNR, and they can take whatever action they feel is necessary.³⁰⁸

331. Jai and Fox knew about the allegations concerning a burial ground prior to the August 2, 1995 IMC meeting as did Sturdy, manager for the south-western zone including Ipperwash Provincial Park for the MNR. Jai and Sturdy were asked at the Inquiry and did not recall it being raised at the IMC meeting. On August 4, 1995, Jai spoke with Sturdy after he communicated with her regarding a note that was being provided to campers indicating that travel on to the Army Camp Beach east of the park was prohibited and that it should be considered a high risk area. Sturdy confirmed that the cultural site was called “Stony Point”. There were rumours of a burial site at the park but they were not confirmed; however, there was definitely a burial site at Camp Ipperwash.³⁰⁹

332. Jai testified that she and Fox spoke about the burial ground at some point and he commented that there were probably human remains throughout all of southern

³⁰⁷ P-507; P-735; Testimony of Jai on August 30, 1995 at pp. 189-191; Testimony of Christie on September 26, 2005 at pp. 53-55

³⁰⁸ P-507; Testimony of Jai on August 30, 2005 at pp. 192-193

³⁰⁹ P-647; Testimony of Jai on August 30, 2005 at pp. 170-171, 196-198; Testimony of Fox on July 11, 2005 at p. 88; Testimony of Sturdy on October 18, 2005 at pp. 254-256

Ontario, where there had been intensive native occupation for centuries. Jai further testified that their assumption was that there probably was a burial ground; however, even if there was, that still did not give the First Nation group that right to occupy Ipperwash Provincial Park. She testified that, under any government, even if there were a burial ground, “it wouldn’t have meant that the occupation was legal.”³¹⁰

333. Jai testified that the burial ground issue was a substantive issue which was beyond the scope of the IMC and that, as a matter of practice, they did not research these issues. Nothing was done about the burial ground allegation and Jai went on vacation from August 21, 1995 to Labour Day.³¹¹

xi) Ministerial Briefings and Updates

334. Jai testified that at end of the IMC meeting, MNR, the landowner, was very concerned, but she and Fox were less concerned in light of the previous limited occupation of the park. Sturdy testified that, following the meeting, he accepted the assessment of the situation by the OPP that it was not necessary to close the park at this point in time and communicated that to his Assistant Deputy Minister on August 4, 1995. He advised the Assistant Deputy Minister of MNR that it would be desirable to maintain things as normal as possible and that to close the park might be regarded as an invitation to occupy it or give effect to the rumour.³¹²
335. At the time, Sturdy advised his assistant deputy minister that the province had acquired the park through the normal process and no formal land claim had been filed. He further advised that additional MNR security had been assigned for the long weekend, namely three conservation officers, who, unlike park wardens, carried firearms and had additional training and experience.³¹³
336. Jeff Bangs and David Moran, executive assistants to the Minister of Natural Resources and to the Attorney General respectively, testified before the Commission

³¹⁰ Testimony of Jai on August 30, 2005 at pp. 205-206

³¹¹ Testimony of Jai on August 30, 2005 at pp. 201, 204-205

³¹² P-779; Testimony of Jai on August 30, 2005 at p. 202; Testimony of Sturdy on October 18, 2005 at pp. 258-261

³¹³ P-779; Testimony of Sturdy on October 18, 2005 at pp. 258-264

- regarding their understanding of the situation following the IMC meeting on August 2, 1995. Bangs testified that the IMC meeting reflected information he had received the week prior from briefings within MNR. Both Bangs and Moran testified that they were advised of the history of Camp Ipperwash. Moran testified that there was an understanding that the delay by the federal government with respect to the return of Camp Ipperwash was creating a problem with respect to the park. Bangs understood that in addition to the possibility of an occupation of the park, there was a suggestion that this would spread to other properties.³¹⁴
337. Both Bangs and Moran testified that they understood that Province had good title to Ipperwash Provincial Park. Bangs added that the park had been obtained from a third party. Following the meeting, they both understood that the assessment was that a takeover of the park was not likely. Bangs testified that the OPP was in charge of the situation, was in the area and that surveillance was underway. Moran also testified that he was aware that the OPP had contingency plans in place.³¹⁵
338. Bangs briefed his minister on the meeting of August 2, 1995 and conveyed the assessment that had been conveyed to him. Similarly, Moran briefed the Attorney General that the occupation of the park was a potential issue but provided him the assurances that he had received at the meeting that the situation was well in hand.³¹⁶
339. The Deputy Attorney General at the time, Larry Taman, testified that he was not aware of the IMC meeting on August 2, 1995 and did not know if he received the minutes as it was not typical for him to receive them unless his staff thought that he needed to see them.³¹⁷
340. On August 8, 1995, there was a briefing for the Attorney General regarding Ipperwash Provincial Park as well as other aboriginal issues. There was a reference

³¹⁴ Testimony of Bangs on November 3, 2005 at pp. 27-28, 30-31, 35-37; Testimony of Moran on October 31, 2005 at pp. 172-174

³¹⁵ Testimony of Bangs on November 3, 2005 at pp. 32, 36-37; Testimony of Moran on October 31, 2005 at pp. 178-179

³¹⁶ Testimony of Bangs on November 3, 2005 at pp. 37-38; Testimony of Moran on October 31, 2005 at pp. 179-182

³¹⁷ Testimony of Taman on November 14, 2005 at pp. 77-79

to the Stoney Point “dissidents” and it was explained that this was a federal issue because Camp Ipperwash was federal property. The Attorney General was advised that the camp was immediately adjacent to the park. Elizabeth Christie, a lawyer at MAG who attended the August 8 briefing, recalled that they advised that title to the park was good and that the province had purchased it from the third parties unlike the camp which had been expropriated. The Attorney General was advised that there was no lawsuit regarding the park.³¹⁸

341. Attorney General Charles Harnick was advised that there was a ceremonial site located in the park and that MNR had agreed that the First Nation people could visit that site whenever they wanted. Christie’s notes from the briefing indicate that the information from MNR was that things were quiet at the time but that the OPP was “monitoring the situation very closely” (emphasis in the original). MAG staff advised the Attorney General that the core group of the occupiers at the camp were the families who had been evicted though there were some people from other First Nations. They also informed the Attorney General that the First Nation did not condone the occupation.³¹⁹
342. Harnick testified that he was aware of MNR’s concerns about a potential takeover of Ipperwash Provincial Park. He testified that he was aware that the OPP and MNR were dealing with the issues at the park but did not know their contingency plans.³²⁰
343. Chris Hodgson, Minister of Natural Resources at the time, testified that he learned about the potential occupation of Ipperwash Provincial Park on the August long weekend. The press were calling about an incident in front of the park involving a vehicle, campers at the park and occupiers of Camp Ipperwash. Hodgson did not recall the specifics, but thought that a camper had a broken leg. Bangs told them that the press was phoning for a comment, so they asked for briefings from the ministry.

³¹⁸ P-735; Testimony of Christie on September 26, 2005 at pp. 31-36

³¹⁹ P-735; Testimony of Christie on September 26, 2005 at pp. 31-36

³²⁰ Testimony of Harnick on November 24, 2005 at pp. 57-60, 65-66

- Ron Vrancart, MNR Deputy Minister, and Peter Allen, his executive assistant, gave them a briefing on the history of the situation.³²¹
344. Hodgson testified that in his briefing on the history of the Ipperwash Provincial Park, he learned about the land at the park and that the province had clear title. They discussed that the federal government not handing the land back to the First Nation people had resulted in frustrations. There was information about the need for an environmental clean-up. They learned that a dissident group, which was not recognized by the local Chief and Council of the Kettle and Stony Point Band or the federal government, had taken over Camp Ipperwash.³²²
345. Vrancart recalled being advised of the report of the occupiers driving onto the beach and scaring park users and reporting that to his minister. He testified that he recognized that this was an MNR matter as it involved their park but he viewed it as an OPP issue. Vrancart so advised his minister and indicated that he should not be the spokesperson.³²³
346. Hodgson testified that he received a verbal report from Bangs and Vrancart regarding the August 2, 1995 IMC meeting. While Vrancart did not recall seeing the minutes of the August 2, 1995 meeting of the IMC or being briefed on it, he testified that the IMC's recommendation was consistent with general MNR approach to empower their frontline staff to make decisions. Vrancart further testified that he understood that the OPP would be responsible for law and order and the MNR would assist in ensuring that Ipperwash Provincial Park would be protected; MNR would stick to safety issues surrounding the operations of the park. Vrancart testified that Minister Hodgson shared this view.³²⁴

³²¹ Testimony of Hodgson on January 12, 2006 at pp. 42-45

³²² Testimony of Hodgson on January 12, 2006 at pp. 45-47

³²³ Testimony of Vrancart on October 27, 2005 at pp. 141-145; Testimony of Hodgson on January 12, 2006 at pp. 42-45

³²⁴ Testimony of Vrancart on October 27, 2005 at pp. 139-142, 143; Testimony of Hodgson on January 12, 2006 at pp. 59-60

347. Hodgson testified that he was advised that the park and roads around Camp Ipperwash were targets for an escalating campaign to get the federal government's attention. He recalled being advised that it was not an MNR issue. The OPP was on site and patrolling the area. He was not aware of OPP or MNR contingency plans. He understood that ONAS was the lead for the IMC and assumed that ONAS could give direction to their staff to avoid violent confrontations and try to resolve situations.³²⁵
348. Todres, Deputy Minister of the MSG, was made aware of the takeover of the barracks by Fox and Patrick. She testified that it was a watching brief and they were not particularly concerned. Todres did not see the minutes of the IMC meeting on August 2, 1995 and thinks that it is likely that she was out of town and would have been briefed on her return in mid to late August. She had no concern about the urgency of the file.³²⁶
349. Robert Runciman, the Solicitor General, was not aware of the August 2, 1995 IMC meeting or that Fox had attended on behalf of his ministry. He did not recall issue notes dated August 2 and 3, 1995 from the OPP Critical Issues Notes Group but believes that they may have been brought to his attention. The issue notes dealt with Camp Ipperwash and the OPP's role to keep the peace there but did not address a potential occupation of Ipperwash Provincial Park.³²⁷
350. Deb Hutton, who was the executive assistant in the Premier's Office responsible for short term policy, did not attend the August 2, 1995 IMC meeting. Her assistant Brett Laschinger attended and he would have briefed her about the meeting and told her that MNR would be dealing with the situation and that, if an incident occurred, MNR and the OPP did not have to wait for the IMC to meet again to take actions necessary to protect public safety.³²⁸

³²⁵ Testimony of Hodgson on January 12, 2006 at pp. 51-56, 65-67

³²⁶ Testimony of Todres on November 29, 2005 at pp. 316-317, 326-327

³²⁷ P-563; P-589; Testimony of Runciman on January 9, 2006 at pp. 92-96

³²⁸ Testimony of Hutton on November 21, 2005 at pp. 137-141

351. On any given day, Hutton would be made aware of 30 to 40 issues from various ministries but not all issues required action on her part. Since this was not something that the Premier needed to deal with in the short term, she probably didn't bring it to his attention.³²⁹

xii) OPP Intelligence, Public Information and Community Reaction

352. On August 3, 1995, Parkin updated Mansell, who was part of the Critical Issues Group in the Commissioner's Office, and copied Fox on the strategy in the worst case scenario, namely the occupation of Ipperwash Provincial Park. He advised that MNR officials remained firm that there was no land claim dispute with regards to the park.³³⁰
353. The OPP deployed an Emergency Response Team whose members conducted uniform patrols on a rotating basis at Ipperwash Provincial Park and the general vicinity on a 24 hour basis. The OPP continued to monitor the situation and to obtain intelligence.³³¹
354. On August 4, 1995, Carson was advised of information provided by informants of the presence of outsiders at the Camp, including one who was reported to have military experience with explosives. Carson also received reports of gunfire in the air and was advised that the military believed that Glenn George had a handgun. On August 15, 1995, Carson was advised by Staff Sergeant Bouwman that he had met with Glenn George who continued to maintain that Ipperwash Provincial Park, Pinery Park and the land between the Kettle Point reserve and Ipperwash Camp were native lands.³³²
355. There were reports in the media regarding the occupation of the barracks and the withdrawal of the army "to avoid bloodshed". One article dated August 3, 1995 referred to the fears of Band members that weapons were being "brought onto the

³²⁹ Testimony of Hutton on November 21, 2005 at pp. 141-143

³³⁰ P-416; Testimony of Parkin on February 6, 2006 at pp. 116-119

³³¹ Testimony of Carson on May 12, 2005 at pp. 108-109

³³² P-410, pp. 27-28, 31; Testimony of Carson on May 12, 2005 at pp. 140-142, 156-157

- military base by Mohawks involved in the 1990 armed standoff with the military in Oka” though it acknowledged that the claim was disputed by occupiers and police.³³³
356. Another article of the same date quoted Gerald George as saying that he left the camp after the occupation took a bad turn. Gerald George also stated that there were weapons at the camp, though the article said that Rose Manning disputed the presence of weapons. The article further reported that Gerald George had attended the general band meeting where many had expressed concerns about natives and the presence of natives from other reserves.³³⁴
357. Gerald George testified that that there were deer hunting rifles at the camp (.22’s and a shotgun). He further testified that he heard from one of his cousins that someone had a semi-automatic SKS at the camp. The existence of semi-automatics at the camp was disputed by other witnesses; however, whether or not such weapons were present, the OPP received reports to that effect.³³⁵
358. Marcel Beaubien, who had been elected as the local Member of the Provincial Parliament in June 1995, testified before the Commission about concerns raised by some of his constituents. West Ipperwash Beach was the first constituency issue of significance which he had to deal with after his election. He also received reports of concerns from some residents with respect to Camp Ipperwash. Some told him that they were being harassed and intimidated and lived in fear.³³⁶
359. Following the takeover of the barracks and the withdrawal of the army, Beaubien received many calls from his constituents who were concerned that the occupation had spread to the whole camp. Many thought that the policing was inadequate. Some residents complained that when incidents occurred, police would pursue individuals

³³³ P-194

³³⁴ P-120; P-194

³³⁵ P-1194; Testimony of Gerald George on January 13, 2004 at p. 45-47; Testimony of Chris Martin on March 27, 2006 at pp. 270-283; Testimony of Vince George on April 5, 2006 at pp. 70-71; Testimony of Speck on March 22, 2006 at pp. 70-71

³³⁶ Testimony of Beaubien on January 18, 2006 at pp. 279-287, 312-314, January 19, 2005 at pp. 29-34, 39-40

- but stop when they went on to the camp. Some constituents told him that they felt that a different law applied there.³³⁷
360. Some constituents told him that they were going to arm themselves to defend their property which caused him a lot of concern. Beaubien would have passed this on to the OPP.³³⁸
361. The OPP was aware of the various concerns and the complaints regarding policing. Beaubien wrote to the Attorney General on July 31, 1995 regarding the concerns of some of his constituents. Beaubien also spoke with Lacroix, the detachment Commander in Petrolia, whom he knew from his time as mayor of Petrolia. Beaubien made him aware of the law enforcement concerns and harassment. On August 8, 1995, Carson spoke to Parkin about Beaubien's letter and the concerns that law enforcement was nonexistent and that the OPP did not appear interested in getting involved.³³⁹
362. On August 11, 1995, Parkin, Carson, Lacroix and Linton met Beaubien. They discussed the concerns raised. Parkin testified that he understood that some of Beaubien's constituents were not happy with the level of policing and there was great animosity for what some residents saw as unequal policing. Parkin testified that Beaubien appeared to be under pressure from his constituents and was frustrated by the situation. The OPP explained that they were providing appropriate policing services in the circumstances.³⁴⁰
363. On August 30, 1995, Gerald George wrote another letter to the editor in the *Forest Standard* in which he referred to an article the previous week about natives harassing a family on the Camp Ipperwash beach. Gerald George testified that he had heard

³³⁷ P-1025; Testimony of Beaubien on January 18, 2006 at pp. 315, January 19, 2006 at pp. 13-16, 29-34, 39-40

³³⁸ P-1025; Testimony of Beaubien on January 19, 2006 at pp. 19-20

³³⁹ P-534; Testimony of Beaubien on January 18, 1995 at pp. 294-299; Testimony of Carson on May 12, 2005 at pp. 144-147

³⁴⁰ Testimony of Carson in May 12, 2005 at pp. 144-147; Testimony of Parkin on February 6, 2006 at pp. 131-134

reports that campers were being harassed by some of the occupiers on the beach and that this was creating problems between the native and non-native communities.³⁴¹

364. Gerald George referred to the occupiers as “animals” and “jerks” and said that they were not Stony Pointers. He indicated in the letter that various relatives, including his mother and grandparents, were Stony Pointers and they never acted this way. He complained that “when the army pulled out of Camp Ipperwash, the actions that followed reminded me of the L.A. Riots.” He concluded by asking that people not think that all Chippewas act like the “army camp Indians.”³⁴²
365. Gerald George testified before the Commission that he did not want the actions of some to reflect on the Kettle and Stony Point Band membership as a whole. He further testified that he did not want people to think that the Band Council supported actions of harassing non-natives. Gerald George testified that he should have restricted his criticism to those who were harassing people on the beach and in the park. Gerald George acknowledged that the letter could increase tensions and regretted it.³⁴³
366. Beaubien testified that he heard rumours of a potential park occupation from his constituents. He further testified that he may have heard about this from Kobayashi and passed it on to his constituents. He would have told his constituents that the situation was being monitored as he was trying to keep things calm.³⁴⁴

xiii) OPP Plans and Project Maple

367. On August 17, 1995, Carson updated Parkin and they discussed the MNR’s position on the ownership of Ipperwash Provincial Park. Carson testified that there was a sense that some people in MNR did not think that they needed to obtain an injunction

³⁴¹ P-73; Testimony of Gerald George on January 13, 2005 at p. 49-50

³⁴² P-73

³⁴³ P-73; Testimony of Gerald George on January 13, 2005 at pp. 49-50, 184-185

³⁴⁴ Testimony of Beaubien on January 19, 2006 at pp. 69-72

because they felt that they had clear title. Coles was to speak with Baldwin to obtain written direction of the MNR position and Carson was to call Fox with an update.³⁴⁵

368. Later on August 17, 1995, Carson spoke with Fox who advised that the information from ONAS was that there were no outstanding land claims to the park.³⁴⁶
369. Coles was on annual leave but upon his return on August 22, 1995, he met with Sturdy and brought up the issue of injunctions with him. Coles also spoke with Baldwin but cannot recall if he was provided with written direction. Sturdy testified that he received a request to provide clear proof of title, a statement of MNR's position if a native occupation occurred and a letter to the OPP with MNR's position statement. Sturdy did not believe that he drafted a letter from the district.³⁴⁷
370. On August 24, 1995, Sturdy called Carson and advised that documentation regarding ownership would be provided on August 27, 1995. Sturdy testified that he did provide Carson with that information in late August.³⁴⁸
371. On August 24, 1995, Sturdy received a series of documents concerning the threatened occupation of Ipperwash Provincial Park in 1993. One of those documents was a Minister's Note from the Deputy Minister of Natural Resources dated June 14, 1993 indicating that it was the opinion of Legal Services that the bailiff's order had "no force or effect since legal ownership by the MNR is clear." Copies of the letters sent to Maynard T. George and Chief Tom Bressette of June 1993 setting out the provincial government's position at the time were also included as were 1993 procedures for frontline staff dealing with the issue and some questions and answers for responding to media enquiries.³⁴⁹

³⁴⁵ P-410, p. 33; Testimony of Carson on May 12, 2005 at pp. 159-163

³⁴⁶ P-410, p. 34; Testimony of Carson on May 12, 2005 at pp. 164-165

³⁴⁷ Testimony of Coles on August 15, 2005 at pp. 148, 169-173; Testimony of Sturdy on October 18, 2005 at pp. 265-266

³⁴⁸ Testimony of Sturdy on October 18, 2005 pp. 265-266; Testimony of Carson on May 12, 2005 at pp. 174-178

³⁴⁹ P-811; Testimony of Sturdy on October 19, 2005 at pp. 203-211

372. On August 28, 1995, Carson met with Coles and Constable Ken Deane who was Acting Sergeant at the time for the Tactical Response Unit (“TRU”) and they reviewed possible tactics in regards to Ipperwash and discussed possible alternatives and the capabilities of the ERT and the TRU. They considered various issues including the existence of weapons.³⁵⁰
373. Coles testified that he attended some preliminary meetings about the development of the OPP’s contingency plan at this time. Coles testified that the premise of the plan was that MNR legally owned the land. MNR had provided evidence of that and the OPP understood that MNR had legal title.³⁵¹
374. Carson testified that on August 29, 1995, he met with Detective Sergeant Wright, Sergeant Stan Korosec, one of the ERT leaders, Deane and others to brainstorm various options and scenarios that could develop in regards to the Ipperwash Provincial Park and to develop a strategy for planning to deal with that particular eventuality. The plan became known as Project Maple.³⁵²
375. Carson had previously been involved in the issues surrounding West Ipperwash Beach. At the meeting on August 29, 1995, Carson wanted to ensure that everyone who participated understood the differences between West Ipperwash Beach and Ipperwash Provincial Park. He indicated with respect to West Ipperwash Beach that there was a civil dispute between the elected band at Kettle Point and the cottage owners over the surrender of land years ago. In contrast, Carson indicated that “the issue of the potential occupation of Ipperwash Provincial Park was an illegal occupation.” Sergeant Kent Skinner, leader of the TRU testified that, while he did not attend the planning meeting, he was aware of this.³⁵³
376. Carson testified that at the August 29th meeting, they discussed various scenarios, most of which Carson had raised with Sturdy at the beginning of August. If only one

³⁵⁰ Testimony of Carson on May 12, 2005 at pp. 175-176

³⁵¹ Testimony of Coles on August 15, 2005 at pp. 175-177, August 16, 2005 at p. 26

³⁵² P-424; Testimony of Carson on May 12, 2005 at pp. 187-188

³⁵³ Testimony of Carson on May 12, 2005 at pp. 174-175, 187-192; Testimony of Korosec on April 18, 2006 at pp. 22-23; Part IV para 216

or two people came in to the park, then they would be treated as trespassers and would be arrested and removed. Another scenario involved officers cohabiting with the occupiers inside the park while MNR worked towards an injunction. A third scenario involved a larger group of people and potential violence. In that case, the OPP would withdraw from the park and the MNR would obtain an injunction. The OPP also discussed a scenario whereby the police would guard the perimeter of the park and prevent people from coming in. They rejected it because of logistics as they could not indefinitely maintain officers there once the park was closed.³⁵⁴

377. At the meeting on August 29, 1995, the OPP identified the unit commanders and the chain of command. On September 1, 1995, Carson held a planning meeting in London which was attended by the senior officers who would be involved in dealing with the potential occupation of Ipperwash Provincial Park, including the leaders of the four ERT teams, Deane on behalf of the TRU, criminal investigators and other OPP officers responsible for intelligence, communications and technical support, logistics, negotiations and media coordination.³⁵⁵

378. The objective of the OPP was “[t]o contain and negotiate a peaceful resolution.” The plan envisaged the following as set out in the minutes of the September 1, 1995 planning meeting:

If the park is taken over, possibly approximately 20 people will enter the Park and not willing to leave. MNR will be responsible to tell these individuals to leave because they are trespassing. If they do not, then the OPP will be advised and we will attend to advise them they are trespassing. If they do not, MNR will issue a court injunction to have these people removed. This may take some time to obtain. The problem is to keep the people out, rather than [sic] trying to get them out.³⁵⁶

379. Carson testified that he gave a best educated guess as to how the occupation would begin. He planned to ask the occupiers to leave but expected that the occupiers would

³⁵⁴ Testimony of Carson on May 16, 2005 at pp. 10-13

³⁵⁵ P-421; Testimony of Carson on May 16, 2005 at pp. 14-17

³⁵⁶ P-421

- refuse to do so. The plan envisaged that MNR would seek an injunction from the Courts to have the occupiers removed.³⁵⁷
380. Carson and other OPP officers testified that by “negotiation”, the OPP did not mean negotiations of any substantive claims but simply efforts to keep the peace.³⁵⁸
381. Carson went on to discuss at the meeting the establishment of a security perimeter or cordon and the difficulty of preventing other people from coming in to the park to join the occupiers. They discussed the need to contain the situation on several occasions throughout the meeting.³⁵⁹
382. The planning meeting minutes refer to the existence of weaponry at the camp. Carson testified that, while he didn’t believe that the majority of the occupiers who normally resided at the Kettle Point would use firearms against his officers, some of the intelligence indicated that there were other people at the camp who had the potential to engage in different behaviour. At the planning meeting, Carson indicated that “there is potential for violence.” Before the Commission, Carson testified that this reflected the activities that had taken place at Camp Ipperwash at the end of July and that the incident with the school bus on July 29, 1995 was very much a concern.³⁶⁰
383. Carson testified that he was also concerned about violence with firearms. The planning meeting minutes indicate that “[i]n the event shots are fired, the area will have to be secured.” Carson testified that they had some discussion about deploying the Tactical Rescue Unit and trying to contain the perimeter in such a worse case scenario. He indicated at the planning meeting that it might be necessary to have two TRU teams depending on the circumstances.³⁶¹

³⁵⁷ Testimony of Carson on May 16, 2005 at pp. 21-22

³⁵⁸ Testimony of Carson on June 2, 2005 at pp. 148-148; Testimony of Seltzer on June 13, 2005 at p. 183

³⁵⁹ P-421; Testimony of Carson on May 16, 2005 at pp. 22-23

³⁶⁰ Testimony of Carson on May 16, 2005 at pp. 25-27

³⁶¹ Testimony of Carson on May 16, 2005 at pp. 28-31

384. Carson recognized that outsiders trying to get into the park were “the main concern for our perimeter.” He repeated that the “whole reason for the cordon is to maintain the amount of people in the park.”³⁶²

385. Korosec testified that he met with Deane on August 31, 1995 and looked at the different access points to Ipperwash Provincial Park and considered checkpoint positions and considered some of the resources required such as the number of officers, vehicles and prisoner vans. Korosec helped prepare part of Project Maple and confirmed that the plan was to have two ERT teams deployed and two others alternate for a total of 58 ERT members to secure the perimeter.³⁶³

386. Carson discussed the injunction and its timing several times at the September 1, 1995 meeting. At one point, the minutes indicate that he said the following:

Even if this is peaceful, the best we could hope for is to see a court order 24 hours later. While we are waiting for the injunction, the ERT and TRU will be there working operational. The reason for containing is we are trying to stop any additional people coming into the Park.³⁶⁴

387. Carson testified that one scenario envisaged that, while waiting for the injunction, the OPP would cohabitate in the park with the occupiers which was what he meant by “operational”. If there more people and violence, the OPP would withdraw until MNR obtained an injunction.³⁶⁵

388. Wright testified that he recalled a discussion at the meeting on September 1, 1995 that MNR would seek an injunction and that the OPP would then act under the authority of that court order. He further testified that there was no doubt in his mind that the park belonged to the province. Carson had told him that it had been researched and that there was clear title of the park to the province. OPP Detective Sergeant Trevor Richardson also testified that he was aware of research into title and understood that

³⁶² P-421

³⁶³ P-424; Testimony of Korosec on April 5, 2006 at pp. 291-295, 315

³⁶⁴ P-421

³⁶⁵ Testimony of Carson on May 16, 2005 at pp. 10-13, 75-76, 80-81

title was clear. Richardson testified that he regarded any possible occupation of the park as illegal.³⁶⁶

389. Korosec testified that he took notes of the three steps that would be followed in the event that occupiers entered the park: i) MNR would ask them to leave; ii) if they didn't, the OPP would ask them to leave; and iii) if the occupiers didn't, MNR would obtain an injunction which could take 24 hours. He testified that he understood that MNR would seek an injunction within 24 hours. Wright and Korosec testified that they understood that, once the OPP received the injunction order, the OPP would enforce the court order and take the park.³⁶⁷

390. At the planning meeting, Carson advised that Richardson was responsible for all criminal investigation that occurred as well as preparing the paperwork and charges that go along with that. Carson indicated that a chart identifying various charges that might apply had been set up for use by everyone on the ground and arrest packages were being prepared.³⁶⁸

391. Carson then explained that an injunction would not only provide the OPP with direction from the Court but also any contravention of the injunction would constitute various Criminal Code offences. The minutes from the meeting set out Carson's comments as follows:

The reason we are getting the injunction as it gives us all the Criminal Code charges. MNR is literally prepared to go into court at a minute's notice. MNR has clear title.³⁶⁹

392. Richardson testified that he spoke to the OPP legal branch at 10:40 on August 30, 1995 to confirm with them that the charges that the OPP believed might occur were proper. They discussed what would happen before a court order and what would happen after a court order because, while there was no court order at the time, they

³⁶⁶ Testimony of Wright on February 21, 2006 at pp. 177-179; Testimony of Richardson on June 8, 2006 at pp. 280-282

³⁶⁷ P-1302; Testimony of Korosec on April 5, 2006 at pp. 296-298, April 18, 2006 at pp. 23-24; Testimony of Wright on February 22, 2006 at 107-108

³⁶⁸ P-421; Testimony of Carson on May 16, 2005 at pp. 57-58

³⁶⁹ P-421; Testimony of Carson on May 16, 2005 at pp. 80-81

anticipated that MNR might obtain an injunction. Richardson also had a conversation with Diane Foster, the local Crown Attorney at 14:10. She agreed with the charges and potential offences that might occur. These charges that were contemplated were ultimately reflected in Project Maple. The charges included trespass under the *Trespass to Property Act* as well as various criminal offences.³⁷⁰

xiv) OPP Discussions with MNR

393. After meeting with the OPP unit leaders on September 1, 1995, Carson also called a meeting with MNR staff to discuss MNR's role as to what they would do with regard to the injunction. Sturdy testified that he, Baldwin, Kobayashi and Vervoort all attended the meeting.³⁷¹
394. Sturdy recalled that the OPP seemed to feel that they had good intelligence that the park would be occupied on either Monday or Tuesday. It was a strong likelihood. Sturdy testified that, at the meeting, Carson described it as a policing matter and that MNR would act in a support capacity. Carson would look to them to secure an injunction, to assist with communications and to provide logistical support.³⁷²
395. Sturdy testified that MNR's position was that the province acquired the land from third parties through a normal process, there were no native land claims to Ipperwash Provincial Park and an occupation would be an illegal occupation. Vrancart, Deputy Minister of MNR, testified that he believed that he would have been made aware that this was MNR's position prior to September 5. Sturdy confirmed that he communicated this position to Carson at the meeting on September 1, 1995.³⁷³
396. Sturdy testified that at the September 1, 1995 meeting with Carson they discussed a scenario whereby Kobayashi would serve a trespass notice to occupiers and that an

³⁷⁰ P-1671; Testimony of Richardson on June 8, 2006 at pp. 77-80

³⁷¹ Testimony of Carson on May 16, 2005 at p. 145; Testimony of Sturdy on October 18, 2005 at pp. 278-279

³⁷² Testimony of Sturdy on October 18, 2005 at pp. 280-281, 284-286

³⁷³ Testimony of Sturdy on October 18, 2005 at p. 285; Testimony of Vrancart on October 27, 2005 at pp. 107-108

appropriate letter and appropriate signs should be prepared. Sturdy testified that while MNR's contingency plan was not discussed, Carson already had a copy.³⁷⁴

397. Kobayashi testified that, following the meeting with Carson on September 1, 1995, he understood that, in the event of an occupation of the park, the OPP expected MNR to rapidly seek and obtain an injunction. He understood that the meeting with Carson on September 1, 1995 was to ensure that, in the event of an occupation, the notice to trespass would be ready to go.³⁷⁵

xv) Preparations for the Occupation

398. MNR continued to prepare for the possible occupation. Kobayashi testified that preparing the trespass notice was a district responsibility and he was concerned when he had not received it on September 1 or 2, 1995. On September 2, 1995, Kobayashi sent Sturdy an email asking for a copy of the George letter to use as a model with respect to the drafting of the *Trespass to Property Act* letter. Kobayashi drafted a notice of trespass which he forwarded to Vervoort to finalize.³⁷⁶

399. The notice prepared by Kobayashi stated as follows:

I Les Kobayashi, Park Superintendent for Ipperwash and Pinery Provincial Parks and a representative of the Ministry of Natural Resources, the occupier of Ipperwash and Pinery Provincial Parks do hereby order you to leave Ipperwash Provincial Park under the authority of Section 3(1) (b) of the Trespass to Property Act, Chapter T. 21 as amended. You are not permitted on the property known as Ipperwash Provincial Park for at 10:01 PM of today's date I have officially closed Ipperwash Provincial Park pursuant to my authority under Section 32(1) of Ontario Regulation 952, R.R.O. 1990, made under the Provincial Parks Act.³⁷⁷

400. On September 4, 1995, at 13:07, Daryl Smith, the MNR communications officer, sent an email to Sturdy and the members of MNR critical incident team, Baldwin,

³⁷⁴ Testimony of Sturdy on October 18, 2005 at pp. 281-282

³⁷⁵ Testimony of Kobayashi on October 25, 2005 at pp. 210-211

³⁷⁶ P-784; Testimony of Sturdy on October 18, 2005 at pp. 287-290; Testimony of Kobayashi on October 24, 2005 at p. 204

³⁷⁷ P-784

Kobayashi, Vervoort and Elliott enclosing an initial draft of communications material with respect to the Ipperwash situation. The communications material consisted of possible questions and answers explaining how the Province acquired the park and its popularity and facilities. The communications material made clear that the Stoney Point people were not a recognized First Nation and that MNR was committed to continue to maintain its excellent rapport with the elected representatives of the Kettle and Stoney Point First Nation. The material indicated that MNR was unaware of any formal land claim that had been filed and that any land claim would be against the federal government to which the land had been surrendered in 1928.³⁷⁸

401. In response to the question of what was MNR's position respecting any incursion by native people into Ipperwash, the communications material indicated that anyone is welcome to use the park, native or non-native and that, after September 4, 1995, while the park is closed, the public could still access it free of charge. The communications material further indicated as follows:

However, the superintendent does have the option of further "closing" the park to the public at any time. This would legally bar any public presence.

MNR does not condone any activity by native peoples that can be viewed as an "occupation," temporary or otherwise. Any presence in the park by anyone in contravention of the Provincial Parks Act and Regulations will be viewed as illegal. Similarly, any damage to park facilities will not be tolerated.³⁷⁹

402. The communications material included some questions and answers in the event of an occupation including the following:

Q15: What is MNR's position respecting any occupation of Ipperwash Provincial Park by native peoples?

A15: MNR views any occupation as illegal.

Q16: What is MNR's role in preventing/terminating such an occupation?

³⁷⁸ P-817

³⁷⁹ P-817

A16: The role of handling all on-site aspects of such an illegal occupation rests with the Ontario Provincial Police. MNR staff will assist the OPP as appropriate.³⁸⁰

403. The OPP continued to monitor incidents in the area of the park and prepared for the possible occupation. On September 3, 1995, Carson spoke to Coles at 20:30 regarding the operational plan and his September 1, 1995 meeting with MNR. They also discussed the deployment of video cameras to monitor park activity. At 21:00 that day, he spoke with Detective Inspector Hutchinson of the OPP who was in British Columbia. They spoke briefly about the occupation that was occurring there at Gustafsen Lake and Hutchinson advised that one of the First Nations people in that occupation had been at Camp Ipperwash and left.³⁸¹
404. Carson sought various resources that might be necessary. He contacted the Superintendent of St. John's Ambulance at 21:05 on September 3, 1995 who agreed that one of their trailers could be used as a communication trailer in the event of the occupation. The communication trailer would be deployed at the MNR parking lot close to the park from which ERT leaders would operate. At 14:15 on September 4, 1994, Carson called Inspector Frew of GM Diesel regarding the availability of Light Armoured Vehicles ("LAV's"). Carson testified that he was aware that LAV's had been needed at Gustafsen Lake and wanted the LAV's in the event that the OPP needed to rescue personnel.³⁸²

B. ANALYSIS AND SUBMISSIONS

i) Position and Actions of the First Nation Peoples

405. Between 1993 and 1995, differences remained among various members of the Kettle and Stony Point Band regarding splitting the Band and the means to bring about the return of Camp Ipperwash. We submit that there is some basis for the conclusion that the federal government's delay in returning Camp Ipperwash exacerbated

³⁸⁰ P-817

³⁸¹ P-410, p. 51; Testimony of Carson on May 16, 2005 at p. 144

³⁸² P-410, p. 52; Testimony of Carson on May 16, 2005 at pp. 150-152, 156-158

tensions within the Band, while at the same time, the lack of unity within the Band, made negotiation with the federal government more difficult.³⁸³

406. In any event, what is clear is that in July 1995, some of those who were occupying the rifle ranges used physical force and some violence to occupy the barracks, the built-up area of Camp Ipperwash. We submit that the evidence is clear that the federal government, the DND, then physically withdrew from Camp Ipperwash within hours to avoid further confrontation and violence. As a result, the occupiers were entirely effective in physically obtaining the land.³⁸⁴
407. We submit that the takeover of Camp Ipperwash represented a significant escalation in the actions by the occupiers. We further submit that the actions taken in July 1995 were very different in nature than those taken in 1993. While the action in 1993 could be regarded as a protest, we submit that the takeover of the barracks in July 1995 cannot be regarded as a protest aimed at bringing about attention in order to effect change through legal means. We submit that in July 1995, the occupiers simply took matters into their own hands and used physical force, violence and the threat of more violence to take what they regarded as theirs. We submit that these actions constitute the use of a self-help remedy outside the bounds of the law.³⁸⁵
408. While physically withdrawing from the camp, the federal government did not cede legal ownership to the occupiers or to the Kettle and Stony Point Band. Consequently, the issue of the legal ownership of, legal authority over, and liability for, Camp Ipperwash remained unresolved. We submit that this created a jurisdictional “no-man’s land”. In any event, there was a perception among some local residents that a legal vacuum existed and this perception increased tensions and concerns which were then communicated to the OPP.

³⁸³ Part IV, para. 232-247, 256-259

³⁸⁴ Part IV, para. 260-272

³⁸⁵ Part III, para. 77-82, 84-87; Part IV, 260-272

409. The totality of the evidence does not suggest that the actions of the occupiers in using physical force to take over Camp Ipperwash were supported by the majority of those who had an interest in the former Stony Point reserve. In any event, the Chief and Council, who were the only legally authorized representatives of the members of the Kettle and Stony Point Band, publicly condemned the actions.³⁸⁶
410. The evidence indicates that the occupiers now included people who were not descendants of former residents of the Stony Point or members of the Kettle and Stony Point Band. This raised concerns for Band members and their Chief and Council sought to have the outsiders leave unsuccessfully. We submit that by the summer of 1995, the Kettle and Stony Point Band Chief and Council had no control and little or no influence over the occupiers.³⁸⁷
411. The occupiers made threats with respect to taking over the park. As in 1993, while there was a reference to the existence of an unspecified burial ground, we submit that the comments made by occupiers did not indicate that the purpose of any occupation of the park would be to protect any burial grounds. We submit that instead there were bald assertions that the park was their land and that there were burial grounds. We further submit that the comment “soon you’ll be paying us for the use of the park” suggests that, as with Camp Ipperwash, what was now being contemplated was an actual and permanent takeover of the park or at least one of undefined duration.³⁸⁸
412. We submit that there is no evidence that in the summer of 1995, the majority of the members of the Kettle and Stony Point Band had turned their mind to any claim for ownership of Ipperwash Provincial Park or that they had any concerns with respect to the need to protect any possible burial grounds. We submit that while there were numerous issues raised by the Stony Point Group with the Kettle and Stony Point Band between 1993 and the summer of 1995 regarding Camp Ipperwash and the issue

³⁸⁶ Part IV, para. 288-294

³⁸⁷ Part IV, para. 253-255, 288-294, 354

³⁸⁸ Testimony of Wright on February 21, 2006 at p. 133; Testimony of Chris Martin on March 27, 2006 at pp. 319-322; Testimony of Dew on April 3, 2006 at pp. 297-303; Part III, para. 115; Part IV, para. 273-275, 312, 322, 331

of a separate Band there is no evidence that those issues included the park specifically or any need to protect any possible burial grounds there.³⁸⁹

ii) Positions and Actions of the OPP

413. We submit that consistent with their position in 1993, the OPP were of the view that an occupation of the park would be a police matter as soon as they became aware of the threats to occupy the park in 1995. This is evident from the fact that the OPP discussed their plans on July 30, 1995, hours after the DND's late night abandonment of Camp Ipperwash. We submit that this is also evident from the meeting that Carson had with Sturdy on August 1, 1995 where he explained that, if a small group occupied the park, the OPP would just arrest and remove them but, if a larger group occupied the park, the OPP would want the MNR to obtain an injunction.³⁹⁰

414. We submit that Carson's discussion with Sturdy reflected his assessment at the time. We further submit that if the OPP regarded an occupation by a small group as warranting arrest and removal by the OPP then there is no reason in principle why a larger group would not warrant the same treatment.³⁹¹

415. We submit that Carson's view that an injunction should be obtained in a situation involving a large group of occupiers simply reflected the OPP's discretion in enforcing the law and recognized the practical difficulty of safely arresting and removing a large group. We submit that this is consistent with the OPP's 1993 plans. Those 1993 plans considered the contingency that the existing large group of occupiers then on the rifle ranges occupied the park and envisaged that the OPP would try to use an injunction to persuade the occupiers to leave, and if they refused, a large number of OPP officers (on a one to one ratio with occupiers) would proceed to arrest and remove them.³⁹²

³⁸⁹ Part IV, para. 233-247, 256-259

³⁹⁰ Part IV, para. 273-280

³⁹¹ Part IV, para. 279-280

³⁹² Part III, para. 159-161; Part IV, para. 279

416. We submit that when the police exercise their discretion as to when and how they enforce the law, they must consider the circumstances of each matter separately. There has been reference to colour of right at the Inquiry which requires clarification.
417. Colour of right is not a legal right but an honest but mistaken belief that one has a legal right. This honest but mistaken belief provides a defence to some offences, most notably to charges characterized by wilful and forbidden acts in respect of property. Colour of right requires an honest belief in a state of affairs which, if it existed, would be a legal justification or excuse to a particular charge. It is often regarded not so much as a defence but as a failure to prove the *mens rea* or mental element of a particular offence, which is why colour of right does not necessarily apply to all charges.³⁹³
418. A belief in a moral claim is not sufficient to establish colour of right. The person who seeks to rely on the defence must be able to honestly say: “I actually thought that I had a legal right to do this.” It is not enough for the person to say: “I honestly thought that I should have a legal right to do this” or that “In a more properly ordered legal system, I would have a right to do this.”³⁹⁴
419. The history of West Ipperwash Beach is a good example of how the particular circumstances of each case can affect the exercise of the police discretion in enforcing the law. In 1981, when landowners had provided documentation to support their claim, but the First Nations people had declined to provide anything in support of their claim, the Crown Attorney had advised that trespass charges could be laid. The residents had provided some proof of their claim, but the First Nation had not demonstrated an honest belief that the land was theirs. However, after the First Nation had commenced litigation in 1992 claiming the land belonged to them, the fact that the First Nation had initiated litigation was evidence of their honest belief that the

³⁹³ Testimony of Hutchison on August 29, 2005 at pp. 41-43; *R. v. Watson* (1999), 137 C.C.C. (3d) 422 (Nfld. Ct.); *R. v. Johnson* (1904), 7 OLR 525 (Ont. H.C.J.); *Criminal Code*, ss. 322, 429, 446

³⁹⁴ Testimony of Hutchison on August 29, 2005 at pp. 41-43; *R. v. Hemmerly* (1976), 30 C.C.C. (2d) 141 (Ont. C.A.)

land belonged to them. As a result, the Crown Attorney determined that there was no reasonable prospect of conviction, and advised against laying trespass charges.³⁹⁵

420. The evidence is that, already in 1993, Carson had an understanding of the history of Camp Ipperwash and the park. When there were threats to occupy the park in 1995, he requested further confirmation that the provincial government owned the park and that the OPP had received that information. The evidence is clear that, as of 1995, while members of the Kettle and Stony Point Band had filed land claims and both they and members of the Stoney Point Group had initiated litigation with respect to other parcels of land and other matters, no one had ever filed any claim to the park.³⁹⁶

421. We submit that the mere existence of the possibility of a defence is not a basis for assuming that there would be no reasonable prospect of conviction. While there were some bald assertions of unspecified burial grounds and that the park belonged to the occupiers of Camp Ipperwash, under the circumstances, it is not clear that such comments would give rise to a defence of colour of right. We submit that, among other issues, it might depend on the particular charge.³⁹⁷

422. In any event, the evidence is clear that, by the end of August 1995, Carson distinguished Ipperwash Provincial Park from the situation at West Ipperwash Beach and the police regarded a possible occupation of the park as trespassing and illegal and had considered which charges would likely apply. We submit that, as in 1993, the OPP planned to contain the situation pending an injunction. We further submit that the OPP in 1995 clearly wanted, and expected, that MNR would obtain an injunction quickly, hopefully within 24 hours.³⁹⁸

423. We submit that there is no evidence that the OPP's position and plans were determined or in way influenced by ministers, including the Premier, or their political

³⁹⁵ Part IV, para. 214-224

³⁹⁶ Part IV, para. 214-224, 279-284, 317-319, 367-375

³⁹⁷ Testimony of Wright on February 21, 2006 at p. 133; Testimony of Chris Martin on March 27, 2006 at pp. 319-322; Testimony of Dew on April 3, 2006 at pp. 297-303; Part III, para. 115; Part IV, para. 273-275, 312, 322, 331

³⁹⁸ Part IV, para. 373-379, 386-397

staff in 1995. On the contrary, the evidence clearly indicates that the ministers and their political staff had no knowledge of the OPP's operational plans.³⁹⁹

424. We submit that, prior to the occupation, the OPP were aware of the existence of firearms at Camp Ipperwash and of various confrontations and incidents which had occurred previously including the takeover of Camp Ipperwash. The OPP were aware of the difficulty in securing the park and preventing access from the camp in the event of an occupation. The OPP were also aware of the presence of outsiders, people unrelated to the former residents, at Camp Ipperwash. In preparing for the occupation, the senior officers of the OPP who were to deal with an eventual occupation discussed all of these concerns and considered how to deal with them.⁴⁰⁰

iii) Position and Actions of the Provincial Government

425. As in 1993, the threat to the park affected various ministries. The evidence is that the provincial government received information regarding the situation from both the OPP (through the MSG or MNR) and MNR officials on the ground directly. We submit that the provincial government received information regarding Ipperwash pursuant to its different roles and responsibilities. The Deputy Minister of the MSG and her office received information so that they could brief the minister as necessary, pursuant to the minister's general responsibility to account to the public for the OPP and its operations. We submit that, in that sense, this was a "watching brief" like many others.⁴⁰¹

426. We submit that the provincial government also had other roles and responsibilities to fulfill in part because of its position as landowner of the park in trust for the people of Ontario. We further submit that these other responsibilities necessitated having information regarding the situation on the ground, including some understanding of

³⁹⁹ Testimony of Harris on February 14, 2006 at pp. 62-63, February 16, 2006 at pp. 241-242; Testimony of Harnick on November 24, 2005 at pp. 65-66, November 28, 2005 at p. 73; Testimony of Runciman on January 9, 2006 at p. 96; Testimony of Hodgson on January 12, 2006 at pp. 66-67; Testimony of Hutton on November 23, 2005 at p. 410

⁴⁰⁰ Part IV, para. 225-231, 248-255, 260-273, 354-361, 367, 377-384

⁴⁰¹ Part III, para. 120-121; Part IV, para. 295-314, 320-329, 334-352

the OPP's role and plans. We further submit that this need had long been recognized and addressed by the formation and continued use of the IMC under the previous Liberal and NDP governments.⁴⁰²

427. In 1993, there had been several IMC meetings regarding Camp Ipperwash and the threat to the park so that ministries could share information and fulfill their respective responsibilities and be consistent as a government. We submit that IMC meetings in 1995 were held for the same purposes. We submit that the Commissioner of the OPP and the Deputy Solicitor General both understood that Fox would attend the IMC meetings in his capacity as an adviser to the Deputy Minister of the Solicitor General. We further submit that Fox fulfilled the same role that had been fulfilled by other police officers seconded to the government in the past.⁴⁰³

428. The participants reviewed the issue of ownership and, as in 1993, were comfortable that MNR as part of the provincial Crown had valid title to the park. The evidence also indicates that at the IMC meeting on August 2, 1995 participants had different opinions regarding the threat to the park and the issues it raised and expressed them freely. We submit that as, in 1993, the IMC as of August 2, 1995 regarded the provincial government's role as one for MNR. Indeed, following the IMC meeting, the only ministry which took any actions with respect to the government's roles and responsibilities prior to the actual occupation was MNR. We submit that ONAS did nothing following the IMC meeting and that it is clear that the Acting Director of ONAS saw no role for ONAS at that time.⁴⁰⁴

429. Now faced with the threat of a possible takeover of the park, MNR considered the issue and took the position, in advance of the occupation, that an occupation would be trespassing and would be illegal. We submit that there is no evidence that this position was one determined by politicians or political staff within MNR or otherwise in 1995. On the contrary, the evidence clearly indicates that the position was taken

⁴⁰² Part III, para. 119-120

⁴⁰³ Part III, para. 121-128; Part IV, para. 300-303, 311-314

⁴⁰⁴ Part III, para. 171-172; Part IV, para. 333, 317-329, 370-371, 393-397, 398-402

by civil servants within MNR, a position consistent with the one taken two years earlier under an NDP government.⁴⁰⁵

430. We submit that prior to the actual occupation, MNR had taken steps in preparation for an occupation consistent with their position that an occupation would be trespassing and would be illegal, including the preparation of a notice of trespass and MNR contingency plans. Clearly, this was not a “watching brief” for MNR. Consistent with the provincial government’s responsibility to communicate their position to the public, MNR also prepared communications materials for the media that reflected their position that an occupation would be trespassing and illegal. Again there is no evidence that these steps were directed by politicians or political staff within MNR or otherwise in 1995. On the contrary, the evidence clearly indicates that these steps were taken by civil servants within MNR and were a logical extension of the position taken two years earlier.⁴⁰⁶

431. With respect to Hutton, we submit that the evidence is clear that she did not attend the IMC meeting on August 2, 1995 and that, while she would have obtained a briefing subsequently, she otherwise had no involvement of any kind whatsoever in the situation prior to the occupation.⁴⁰⁷

432. Prior to the occupation, the threat to the park was also a matter for the police. We submit that there is no evidence that this was a result of any position determined by ministers, including the Premier, or their political staff in 1995. On the contrary, the evidence indicates the OPP were already involved and had met with frontline MNR officials and taken steps on the ground before the IMC meeting on August 2, 1995 and the briefing of the ministers. We submit that the participants at the IMC meeting on August 2, 1995 recognized, and the Chair stated, at that meeting that public safety was, as it always is, the first priority and left that matter with the police.⁴⁰⁸

⁴⁰⁵ Part IV, para. 280-285, 318-319, 398-402

⁴⁰⁶ Part IV, para. 370, 373, 393-402

⁴⁰⁷ Part IV, para. 350

⁴⁰⁸ Part IV, para. 273-287, 330, 423

PART V – OCCUPATION OF IPPERWASH PROVINCIAL PARK

A. SUMMARY OF FACTUAL EVIDENCE

i) September 4 Incidents

433. On the afternoon of September 4, 1995 at approximately 16:00, there was an incident at Matheson Drive on the beach on the east side of the park. Constables Jacklin and Myers had attended in a marked cruiser and were moving debris off the road from a fire the night before when Roderick George also known as “Judas” George, drove up with his brother Stewart and stopped very close to the police car. Roderick George testified that he was a “principle person” among the occupiers at Camp Ipperwash and others looked to him along with Glenn George.⁴⁰⁹
434. Jacklin testified that the parties appeared “highly intoxicated” and Roderick and Stewart George acknowledged at the Inquiry that they had been drinking. They testified that additional First Nations people arrived, though differed as to whether there were approximately three or fifteen additional people. Stewart acknowledged that some of the additional natives had been drinking.⁴¹⁰
435. Roderick and Stewart George testified that they said that it was their land and told the police that they should leave. The police called for back-up as they perceived that the situation was escalating and that there was the potential for violence. Additional police attended, there was some further yelling at police and the police withdrew.⁴¹¹

⁴⁰⁹ Testimony of Jacklin on April 25, 2006 at pp. 85-87; Testimony of Roderick George on November 23, 2004 at pp. 56-57, 105-110

⁴¹⁰ Testimony of Jacklin on April 25, 2006 at p. 87; Testimony of Richardson on June 8, 2006 at pp. 105-106; Testimony of Stewart George on November 2, 2004 at pp. 121, 128-129; Testimony of Roderick George on November 23, 2004 at pp. 110-111, November 24, 2004 at pp. 139-141

⁴¹¹ Testimony of Jacklin on April 25, 2006 at pp. 88-90; Testimony of Korosec on April 6, 2006 at pp. 18-21; Testimony of Richardson on June 8, 2006 at pp. 106-109; Testimony of Stewart George on November 2, 2004 at pp. 49-52, 117-118; Testimony of Roderick George on November 23, 2004 at pp. 108-109, November 24, 2004 at pp. 139-141

436. Jacklin testified that during the incident, Stewart George said “How many rifle sights do you think you’re in”, which he took seriously and as a threat, but Stewart denied making the comment. Constable Neil Whelan, who had been dispatched to assist, testified that when he arrived, he saw a First Nation male at the trunk of another car start to pull out the butt of a firearm. However, another First Nation male motioned to leave it. Stewart denied seeing a First Nation reach into a trunk for a rifle. Whelan reported his observations to Richardson and to Korosec who in turn reported them to Carson.⁴¹²
437. Roderick George testified that he suggested to David George that if the police didn’t leave, he should take his chainsaw and cut down the trees and block Matheson Drive. He further testified that, after the police withdrew, David George did cut down the trees and block the road. Gransden saw a tree being cut down on Matheson Drive and reported it to Korosec.⁴¹³

ii) Beginning of the September 1995 Occupation

438. Korosec testified that he was called to assist at the east gate of the park at approximately 19:30 on September 4, 1995. He spoke to Bert Manning who told him that they were going to occupy the park. Korosec told Manning that it was a provincial park which closed at 22:00 and after that time, people in the park would be trespassing. Manning replied that it was their land, but agreed that there was no hurry and to meet the next day to try to resolve the situation.⁴¹⁴
439. Korosec testified that then Glenn George and a few other cars showed up. Glenn George was agitated, yelling that they were coming to take the park and to tell all the people living west of the park to Ravenswood that they were taking their land next. They began to cut the chain to the park and said that they were taking the park. Manning said that they were going to have a meeting the next day, but Glenn said:

⁴¹² Testimony of Jacklin on April 25, 2006 at p. 89; Testimony of Korosec on April 6, 2006 at pp. 18-21; Testimony of Stewart George on November 2, 2004 at pp. 51-52; Testimony of Richardson on June 8, 2006 at pp. 110-111; Testimony of Whelan on March 29, 2006 at pp. 114-116

⁴¹³ Testimony of Roderick George on November 24, 2004 at pp. 142-143; Testimony of Gransden on March 30, 2006 at p. 75; Testimony of Korosec on April 6, 2006 at p. 22

⁴¹⁴ Testimony of Korosec on April 6, 2006 at pp. 24-27

- “No meeting.” Whelan also testified that Bert Manning tried to convince the occupiers not to open the gate but failed.⁴¹⁵
440. Jacklin, Whelan and David George testified that the police asked the group not to break the chain on the gate with a tire iron, but natives used bolt cutters to cut the chain. Other First Nation witnesses confirmed that occupiers cut the locks to gain entry. Numerous cars and people started to enter the park.⁴¹⁶
441. Korosec told the ERT team members in the park to evacuate the day users. OPP and First Nation witnesses testified before the Commission that members of the public were still visiting and that the police directed them to leave.⁴¹⁷
442. Korosec called the Communication Centre and advised George Speck and Wright that the occupation was taking place. He spoke with Carson by phone at approximately 19:45 and Carson directed him to secure the maintenance building due to concerns for gasoline and equipment. Korosec made plans to have two four-man units do that.⁴¹⁸
443. Kobayashi had been informed that the occupation was taking place by his assistant, Don Matheson and he arrived at the main gate to the park, near the kiosk at approximately 20:30. Korosec advised him that people were taking over the park and the last of the visitors were still leaving the park. Once the evacuation was finished, 12 ERT officers and Kobayashi assembled near the kiosk close to the main gate.⁴¹⁹
444. By 20:50, Carson had arrived at the command post in Forest. Korosec called the command post and Carson directed Korosec to maintain his position, control the bridge and keep control of the maintenance building. Carson then had Wright call the communication centre to have another Emergency Response Team (ERT #2) attend at

⁴¹⁵ Testimony of Korosec on April 6, 2006 at pp. 28-31; Testimony of Whelan on March 29, 2006 at pp. 126-128

⁴¹⁶ Testimony of Jacklin on April 25, 2006 at pp. 106-110; Testimony of Whelan on March 29, 2006 at pp. 126-128; Testimony of David George on October 19, 2004 at pp. 154-155; Testimony of Warren George on December 8, 2004 at p. 132; Testimony of Marlin Simon on September 29, 2004 at pp. 9-11

⁴¹⁷ Testimony of Korosec on April 6, 2006 at pp. 29-31; Testimony of Jacklin on April 25, 2006 at pp. 110-111; Testimony of Kevin Simon on December 1, 2004 at p. 157, December 2, 2004 at pp. 191-192

⁴¹⁸ Testimony of Korosec on April 6, 2006 at pp. 30-32

⁴¹⁹ Testimony of Kobayashi on October 24, 2005 at pp. 209-215, 217; Testimony of Korosec on April 6, 2006 at pp. 31-32

- Forest immediately and to have the two other ERT teams (ERT # 3 and ERT #6) attend in the morning. They planned to have two ERT teams, or approximately 30 officers, on duty at any time during the day and at night.⁴²⁰
445. It was getting dark and there were people all over the place. Whelan and Korosec testified that the occupiers started throwing fluorescent phosphorous flares among the officers which could burn clothing or skin. Parks testified that one landed quite close to him. Wesley George testified that he lit several strobe light firecrackers and threw them at police officers because he just “felt the urge.”⁴²¹
446. At approximately 19:30, Roderick “Judas” George approached and told the police to leave. Kobayashi, who was present, testified that Roderick George hollered and screamed: “Get out of our park” and gave a countdown. Kobayashi testified that the group of occupiers got bigger and tighter. Numerous witnesses confirm that Roderick George then hit the back window of a cruiser with a wooden club with such force that he shattered the window.⁴²²
447. Kobayashi was concerned that if the MNR personnel and OPP did not leave there would be violence or they would be removed by force by the occupiers. OPP officers expressed similar concerns. Korosec testified that it was the most difficult situation he has been in with the OPP. He called Carson who told him not to have anyone get hurt, to withdraw from the park and report to the Forest detachment. The OPP and MNR then withdrew.⁴²³
448. At 21:40, Carson and Wright discussed an attempt to cohabit the park. They considered the possibility and timing of putting officers into the park at the bridge to

⁴²⁰ P-426, p. 1; Testimony of Carson on May 16, 2005 at pp. 160-161, 165, 168-171, 206-209

⁴²¹ Testimony of Whelan on March 29, 2006 at pp. 132-134; Testimony of Jacklin on April 25, 2006 at pp. 110-112; Testimony of Wesley George on November 30, 2004 at pp. 189-191; Testimony of Kobayashi on October 24, 2005 at pp. 218-219; Testimony of Korosec on April 6, 2006 at pp. 33-35

⁴²² Testimony of Kobayashi on October 24, 1995 at pp. 218-219; Testimony of Jacklin on April 25, 2006 at pp. 112-113; Testimony of Whelan on March 29, 2006 at p. 135; Testimony of Roderick George on November 23, 2006 at pp. 118-120

⁴²³ P-426, pp. 1-2; Testimony of Kobayashi on October 24, 1995 at pp. 218-221, October 25, 2005 at p. 182; Testimony of Jacklin on April 25, 2006 at pp. 112-115; Testimony of Carson on May 16, 2005 at pp. 171-172; Testimony of Korosec on April 6, 2006 at p. 33

regain access: “tonight versus tomorrow”. No officers were put into the park as a result of this discussion.⁴²⁴

449. At 21:45, Kobayashi arrived at the command post and briefed Carson and Wright as to what had occurred at the park. He advised that Roderick George “was just uncontrollable” and indicated that there were tanks of gas that could explode near the maintenance facility.⁴²⁵

450. At 21:56, Carson distributed copies of Project Maple plans to his officers. Carson testified that Project Maple became fully operational some time after 21:00.⁴²⁶

iii) Attempts to Serve Notice of Trespass for Injunction

451. Shortly after the occupation commenced, the OPP turned to the issue of the trespass notice and the injunction. When Kobayashi arrived back from the park at 21:45, Carson discussed with Kobayashi and with Wright posting signs throughout the park and providing notice that the park was closed. Carson stated to Wright and Kobayashi that the officers and MNR had to advise the occupiers that the park was closed and that they were trespassing. He wanted to ensure that no one would be hurt.⁴²⁷

452. Carson expected that the occupiers were not going to leave when advised that they were trespassing. He indicated “Let’s let them refuse to leave, then we will get [a] court injunction.” Kobayashi testified before the Commission that he understood that the reason for serving notice that night was so that work could move ahead in terms of getting the injunction. Kobayashi indicated to Carson that if they served the trespass notice tonight, then Peter Sturdy could begin working on an injunction.⁴²⁸

⁴²⁴ P-426, p. 3; Testimony of Carson on May 16, 2005 at pp. 175-176; Testimony of Wright on February 21, 2006 at pp. 225-228, February 22, 2006 at pp. 11-14

⁴²⁵ P-426, p. 3; Testimony of Kobayashi on October 24, 2005 at pp. 224-225

⁴²⁶ P-426, p. 3; Testimony of Carson on May 16, 2005 at pp. 161, 181-182

⁴²⁷ P-426 p. 3; Testimony of Carson on May 16, 2005 at pp. 177-179

⁴²⁸ P-426, p. 3; Testimony of Carson on May 16, 2005 at pp. 178-179; Testimony of Kobayashi on October 25, 2005 at pp. 212-213

453. At 21:52, Kobayashi called Sturdy and advised him of the situation. At 21:59, Kobayashi advised that the letter was being sent down regarding trespassing.⁴²⁹
454. At 22:18, Carson called Fox because he was the First Nations advisor at the Ministry. Carson testified that he was the “go to guy” at the Ministry who could assist them by providing the accurate and up-to-date information required to move on the injunction. When he spoke to Fox, Carson advised him that 40 natives were in the park and explained the earlier problems that had occurred that afternoon. He told Fox that they planned to serve the notice that night and work on the injunction.⁴³⁰
455. At 22:26, Carson was shown the signs to be posted: “Park Closed No One Unauthorized Person Permitted Beyond This Point.” Carson indicated that they had to get the papers served so that “by daylight we are operational.” Korosec testified that he understood Carson to mean that they needed to serve the papers that night so as to move ahead to seek the injunction in order that the OPP could then enforce the injunction the next day.⁴³¹
456. At 22:45, Carson asked if there was any discussion about trespassing when they first entered. Korosec explained that when the occupiers first arrived, the park was not closed. Then Glenn arrived, threatening that they would take Ravenswood next. Carson asked Korosec if he felt okay about serving the papers. Korosec replied that they should be okay.⁴³²
457. The OPP decided that Vince George, an OPP officer and brother of Ron George, would go with Kobayashi to serve the papers. At 22:45, Carson asked for two two-man vehicles to accompany those serving the notice.⁴³³
458. The federal Member of Parliament Rose Marie Ur, a Liberal, called Carson at 22:55 on behalf of her constituents. Carson advised her that natives were in the park,

⁴²⁹ P-426, p. 4

⁴³⁰ P-426, p. 4; Testimony of Carson on May 16, 2005 at pp. 184-185

⁴³¹ P-426, p. 4-5; Testimony of Korosec on April 18, 2006 at pp. 25-26; Testimony of Carson on May 16, 2005 at pp. 188-192

⁴³² P-426, p. 6

⁴³³ P-416, p. 6; Testimony of Carson on May 16, 2006 at pp. 195-196

- assured her that adequate resources were being used and that the OPP was working with MNR to address the issues. Carson then called Coles at 23:02 and advised him of the situation and of the “hard time experienced at the gate”. He also advised Coles that he had advised Ur that a letter was being served “as we speak.”⁴³⁴
459. At 23:43, Carson advised Seltzer, who had just arrived, that the notice was being served.⁴³⁵
460. Kobayashi testified that there were two attempts to serve the notice of trespass. They first met Bert Manning and some other occupiers in a truck. Vince George said that they had a notice of trespass and Manning said that he was not a spokesperson and would try to find a spokesperson. They waited several minutes. Manning then came back and told them to leave “his f**ing land”. Manning said that no one had been appointed as an Elder to accept the notice but that there would be a spokesperson in the morning.⁴³⁶
461. After they walked out of the park, they decided to go to Matheson Drive and try to serve the notice. They waited at the gate and an individual on an All Terrain Vehicle approached. Kobayashi approached the vehicle to try to serve the notice, but the person kept backing up so that Kobayashi could not get close enough to serve the notice. The person then yelled at them to get off their land.⁴³⁷
462. David George testified that on September 4 or 5th, Kobayashi and Vince George approached David George in his car with his brother Clayton George carrying a paper in their hands. David and Clayton George backed up the car and left without speaking to them. David George testified that he did not want to take the paper because he thought that it was something about trespassing. Clayton George agreed

⁴³⁴ P-426, p. 6-7

⁴³⁵ P-426, p. 9

⁴³⁶ Testimony of Kobayashi on October 24, 2005 at pp. 228-231, 234-235

⁴³⁷ Testimony of Kobayashi on October 24, 2005 at pp. 231-233

that he told his brother not to take the paper and that it was clear that they were trying to serve them with papers that challenged their occupation.⁴³⁸

463. At 0:38, Carson spoke to Korosec who advised that they had attempted service and were told to come back at noon tomorrow. Carson told them to come back to the Forest Detachment. At 00:45, Carson told Wright that he was content that the occupiers had been notified (verbally) that they were trespassing.⁴³⁹

464. When Vince George returned, Carson spoke to him at 1:10. Vince stated Manning was intoxicated and would not talk to him, but they would meet around noon. At 1:13, Carson gave the order to establish the checkpoints and indicated that they would “hold tight tonight”.⁴⁴⁰

465. At 1:19, Carson called Sergeant Doug Babbitt, the OPP media officer, and explained that they had attempted service of the trespass notice but the occupiers refused to accept it. At 2:00, the OPP issued a press release with respect to the occupation. The press release stated in part as follows:

At around 7:30 p.m. on 04th of September approximately 25 to 40 First Nations People entered the park which was closing for the season. (The park had no campers in it and day use visitors were evacuated by park staff.) The group was confronted by Ontario Provincial Police officers and told to leave the park as they were trespassing. The trespassers refused to leave. At 11:35 p.m. the Ministry of Natural Resources Park Superintendent, accompanied by members of the O.P.P., served notice to the occupiers of the park, indicating that they were trespassing, contrary to the Trespass to Property Act, and that they were to vacate the park. The occupiers refused to accept the service and refused to leave the park. At present O.P.P. members are patrolling the area and monitoring the situation.⁴⁴¹

⁴³⁸ Testimony of David George on October 19, 2004 at pp. 176-179, November 1, 2004 at pp. 194-195; Testimony of Clayton George on November 4, 2004 at pp. 215-218, November 8, 2004 at pp. 65-68

⁴³⁹ P-426, p. 12; Testimony of Carson on May 16, 2005 at pp. 217-218

⁴⁴⁰ P-426, p. 13; Testimony of Carson on May 16, 2005 at pp. 221-223

⁴⁴¹ P-426, p. 14; P-430

iv) Intentions and Conduct of the Occupiers of Ipperwash Provincial Park

466. A significant number of the occupiers testified before the Commission and cited many reasons for the occupation of the park. Glenn George testified that they occupied the park because it was traditional Stony Point territory, it contained a burial ground and they wanted to look after the water treatment plant in the park. Roderick George also testified that he felt that they were taking back the park because it was their traditional land, as agreed on in the 1827 treaty.⁴⁴²
467. A number of the occupiers who testified before the Commission indicated that their view was that their lands went beyond the camp and park. Most regarded the sandy parking lot as part of their territory. Some, like Kevin Simon and Roderick George, also claimed the cottages in the northeast corner of the park, but stated that they would not have attempted to take them over and remove those who had purchased the land. However, Kevin Simon acknowledged that there were occupiers who did not agree with him and wanted to take back cottages in the northeast corner and those west of the park as far as Ravenswood Road. Marlin Simon also testified that some people suggested that they take over more land, as that would cause them to focus on that land and not worry about the park any longer.⁴⁴³
468. David George testified that he regarded all of Canada as having been taken from his people. He and Mike Cloud asserted claims as far west as Ravenswood and as far east as Port Franks. David George conceded that he had taken steps to secure the land that had previously been taken from his ancestors: first the camp, then the park, and then, if he had his way, he would take it all back. When questioned with respect to the boundaries of his people's land, Mike Cloud would not set a southern limit, saying only that he knew where it was and "that's another battle."⁴⁴⁴

⁴⁴² Testimony of Glenn George on February 1, 2005 at pp. 209-211, February 2, 2005 at pp. 237-240; Testimony of Roderick George on November 23, 2004 at p. 104, November 25, 2004 at pp. 20-21

⁴⁴³ Testimony of Roderick George on November 23, 2004 at pp. 234-236; Testimony of Kevin Simon on December 2, 2004 at pp. 162-167; Testimony of Marlin Simon on September 30, 2004 at p. 191

⁴⁴⁴ Testimony of David George on November 1, 2004 at pp. 121, 210-218; Testimony of Mike Cloud on November 9, 2004 at pp. 130-134

469. Some of the occupiers also referred to the burial grounds as a reason for the occupation. Marlin Simon testified that they took over the whole park because it was the only way to draw attention to their concerns that the burial ground had not been set aside and there were people camping, partying and drinking on a sacred place.⁴⁴⁵
470. However, not all of the occupiers appeared to share the same concerns. Two years in a row, in 1997 and 1998, the park was the venue for a couple of weekend long concerts, the “Aazhoodena Renegade Jamboree” at the “Ex Ipperwash Provincial Park”. A flier the second year noted that drunk driving would not be tolerated but did not suggest that drinking or partying would not be tolerated at the park.⁴⁴⁶
471. David George objected to the hypothetical idea of cordoning off any burial sites which could be specified and returning the park to the province. He testified that he understood that there are burial sites throughout the park but acknowledged that these burial sites did not prevent the occupiers from using the park.⁴⁴⁷
472. Before the takeover of the park, the occupiers made no attempt to raise their views with the provincial government and did not explain their purpose or intentions beyond a few comments in passing that there were burial grounds and it was their land. Roderick George conceded that no one had made efforts to communicate to the provincial government that they believed that they were entitled to the park lands. As Glen Bressette acknowledged, unlike the camp, there were no public protests, letters or marches for the return of the park.⁴⁴⁸
473. Once the occupation began, Kevin and Marlin Simon both testified that the occupiers decided not to appoint a spokesperson because they felt that their other spokespersons

⁴⁴⁵ Testimony of Marlin Simon on September 28, 2004 at pp. 214-217

⁴⁴⁶ P-128; Testimony of Nicholas Cottrelle on January 18, 2005 at pp. 284-289

⁴⁴⁷ Testimony of David George on November 1, 2004 at pp. 208-209

⁴⁴⁸ Testimony of David George on October 19, 2004 at pp. 147-148; Testimony of Glenn George on February 1, 2005 at pp. 213-214; Testimony of Roderick George on November 25, 2004 at p. 21; Testimony of Glen Bressette on November 10, 2004 at pp. 90-91

had been harassed in the past. Kevin acknowledged that the occupiers and supporters coming in and out of the camp were asked to identify a spokesperson.⁴⁴⁹

474. Although some of the occupiers claimed that the occupation of the park was merely a peaceful protest, a number of occupiers who testified acknowledged that they took the land with no intention of ever returning it. Roderick George testified that this was to be a peaceful protest; however, he, Mike Cloud and Glenn George admitted that the occupiers had a consensus that the park should be taken back and kept forever. Marlin Simon gave similar testimony.⁴⁵⁰
475. Glenn George described the process as repossession of the land: “repo man give them an eviction notice type of thing.” David George testified that he intended that the occupation be peaceful but admitted that he was prepared to use force to take possession of the park. He further admitted that if the police attempted to forcibly prevent them from occupying the park, they would have used their baseball bats and sticks against the OPP or MNR. Glen Bressette also testified that during the initial entry into the park, he was prepared to use his club to force the police to leave.⁴⁵¹
476. Some of the occupiers did not recognize that federal and provincial laws applied in relation to their territory. David George did not believe that “foreign law”, or non-Aboriginal law, applied on their land once they took the park. In Mike Cloud’s opinion, it did not matter whether they were breaking any laws because, in his view, Canada had already broken her own laws.⁴⁵²

⁴⁴⁹ Testimony of Kevin Simon on December 1, 2004 at pp. 212-213; Testimony of Marlin Simon on September 29, 2004 at pp. 33-34, 39-40

⁴⁵⁰ Testimony of Roderick George on November 23, 2004 at p. 79, November 25, 2004 at pp. 20-21; Testimony of Glenn George on February 2, 2005 at pp. 239-240; Testimony of Mike Cloud on November 9, 2004 at pp. 129-130; Testimony of Marlin Simon on October 18, 2004 at pp. 166-167

⁴⁵¹ Testimony of David George on October 20, 2004 at pp. 8-9, November 1, 2004 at pp. 127, 190-191; Testimony of Glenn George on February 2, 2005 at p. 19; Testimony of Glen Bressette on November 10, 2004 at p. 59

⁴⁵² Testimony of David George on November 1, 2004 at pp. 222-223; Testimony of Mike Cloud on November 9, 2004 at p. 130

477. After the OPP withdrew from the park, David George knocked down signs in the park “because it wasn’t a park no more” and acknowledged that the occupation of the park was intended to reassert ownership of the park.⁴⁵³
478. Some of the occupiers were also stealing refrigerators, freezers or other appliances from the park store. Kevin Simon, Roderick George and Glenn George were all aware that people were taking things from the store. Rose Manning acknowledged that someone brought her a freezer.⁴⁵⁴
479. Many of the occupiers testified that they had been instructed that there was to be no alcohol in the park and claimed categorically that no one drank alcohol from September 4th to the 6th; however, others acknowledged that, at various times, they had been drinking. Roderick George acknowledged that he had about 20 beers on the 4th and was still intoxicated when he smashed the window of the cruiser.⁴⁵⁵
480. Stewart George testified that he might have drunk a couple of beers on September 6 but did not drink “too much” because he was still hung over from September 4. Glenn Bressette, another occupier, acknowledged having “a beer” on September 5 or another on September 6 in the evening and that another occupier did too. Glenn Bressette also admitted that he smoked a marijuana cigarette during the day.⁴⁵⁶
481. There is no evidence that any of the others took any action to criticize, sanction, or otherwise halt the acts of violence or destruction of property. Clayton George and Glen Bressette testified that none of the occupiers told Roderick George that the smashing of the cruiser window was not consistent with a peaceful occupation. In

⁴⁵³ Testimony of David George on October 19, 2004 at pp. 175-176, October 21, 2004 at pp. 37-38

⁴⁵⁴ Testimony of Kevin Simon on December 2, 2004 at pp. 198-200; Testimony of Glenn George on February 2, 2005 at pp. 242-244; Testimony of Rose Manning on April 7, 2005 at pp. 151-153; Testimony of Roderick George on November 25, 2004 at pp. 21-22

⁴⁵⁵ Testimony of Elwood George on November 3, 2004 at pp. 45-46, 75; Testimony of Clayton George on November 8, 2004 at p. 83; Testimony of Wesley George on November 30, 2004 at p. 219; Testimony of Roderick George on November 23, 2004 at pp. 120-121

⁴⁵⁶ Testimony of Stewart George on November 2, 2004 at pp. 184-185, 213-214; Testimony of Glen Bressette on November 9, 2004 at pp. 200-201, 219-221

fact, Clayton testified that he regarded this as justified and consistent with a peaceful occupation.⁴⁵⁷

v) OPP Actions on the Morning of September 5

482. At 6:58, Carson returned to the command post and was briefed on overnight activity. By this time, a mobile Command Centre had arrived and was stationed next to the Forest Detachment. After reading a copy of the *London Free Press*, Carson had a discussion with certain members of his management team and they decided to hold a 5 minute debriefing each hour to keep up to date. Carson then briefed the District 3 and 5 ERT teams and advised them that they were just doing containment and controlling movement in the area and indicated that they should plan on being there a few days.⁴⁵⁸

483. At approximately 8:15 a.m., Carson called Chief Tom Bressette and discussed the occupation of Ipperwash Provincial Park. He confirmed with Chief Tom Bressette that the Kettle and Stony Point Band had not issued any land claims with respect to the park. Carson then indicated that as far as the OPP was concerned “it’s clearly a ah trespassing issue”. The taped conversation then proceeded as follows:

BRESSETTE: I think if you checked the records, that particular park was sold by ah, Members of Stoney Point.

CARSON: That’s right, that’s right, it was and then it was sold to individuals and then sold back to the province. I think ah in 1936, if I’m not mistaken and in 38 it was er 36 or 38 it was sold to the province and then made a provincial park at that time.

BRESSETTE: Ah, well that’s my understanding.

CARSON: Yeah.

BRESSETTE: I haven’t really checked all the records on it (u/i)

⁴⁵⁷ Testimony of Clayton George on November 8, 2004 at pp. 62-63; Testimony of Glen Bressette on November 10, 2004 at p. 85

⁴⁵⁸ P-426, pp. 17-19; Testimony of Carson on May 16, 2005 at pp. 239-241

CARSON: Yeah well ah Natural Resources [sic] have done that and we have the documentation for that that that seems to be pretty accurate.⁴⁵⁹

484. Chief Tom Bressette told Carson that someone had told the Stoney Point Group that building a park had desecrated a burial ground there and that “they could get millions of dollars from the provinces as a result of that”. Chief Tom Bressette then indicated as taped:

BRESSETTE: That’s where all of this thing comes from. There’s a bunch of whackos running around loose and ah whatever those people hear from one person they believe it to be the gospel truth.

CARSON: Right.

BRESSETTE: And ah, I don’t know, I think you are going to continue to have problems with our group until somebody ah enforces a law against them.⁴⁶⁰

485. Chief Tom Bressette testified before the Commission that in 1996 or 1997, when the Kettle and Stony Point Band Council offices were occupied the band had obtained an injunction and then had their First Nation police force forcibly remove the occupiers without any violence. Chief Tom Bressette testified that when he made the remark to Carson about enforcing the law, he meant the kind of processes that were later employed in this 1996 or 1997 occupation of the Band Council offices.⁴⁶¹

486. Carson advised that Camp Ipperwash was very different from Ipperwash Provincial Park and that they were going to address the issue at the park by having MNR go before the court and get a court injunction. He told Chief Tom Bressette that the occupiers were going to be given an opportunity to leave but then they were “going to be dealt with as trespassers.”⁴⁶²

⁴⁵⁹ P-444A, tab 3, p. 2

⁴⁶⁰ P-444A, tab 3, p. 3

⁴⁶¹ Testimony of Chief Tom Bressette on March 2, 2005 at pp. 236-237, 253-254

⁴⁶² P-444A, tab 3, p. 4

487. Chief Tom Bressette responded that the Band Council was tired of dealing with “those folks there”, meaning the people occupying the park and that there were people who were “bringing on agitation to the situation”. He testified that the Kettle and Stony Point Band members did not support the actions of the Stoney Point Group between 1993 and 1995 and do not today. Chief Tom Bressette further testified that he was being called regularly and that all of Band Council’s time and efforts in the community were being taken up addressing actions that they did not sanction.⁴⁶³

488. Chief Tom Bressette indicated that Les Jewel seemed to be causing all the trouble and had told the Stoney Point Group that they could take any park in Canada that they wanted. Carson laughed and said “well we’ll have to see what the government says” and indicated that the government would “obviously” be dealing with it at a much higher level and that he was sure that it would be a big issue.⁴⁶⁴

489. Chief Tom Bressette then said the following in the taped call:

BRESSETTE: Well you know it’s too bad you you guys in the defense or the federal people couldn’t get together and try and clean this mess out because that’s what’s causing all this trouble that you’ve allowed to overstep their boundaries in many ways and ah their just using that as a method and it’s sort of building them enthusiasm in em to continue on doing what their doing.⁴⁶⁵

490. Chief Tom Bressette told Carson that “treating them with kid gloves” wasn’t something that the occupiers understood. Both Chief Tom Bressette and Carson agreed to work through the situation together. Chief Tom Bressette testified that by “treating them with kid gloves” he meant that they should use the court process and that they should “do it, don’t just keep talking, essentially.”⁴⁶⁶

491. Carson then contacted Wade Lacroix who advised that he had received a call from Marcel Beaubien. According to Lacroix, Beaubien was irate, but not at the OPP, and

⁴⁶³ Testimony of Chief Tom Bressette on March 2, 2005 at pp. 255-256

⁴⁶⁴ P-444A, tab 3, p. 5

⁴⁶⁵ P-444A, tab 3, p. 5

⁴⁶⁶ P-444A tab 3, p. 6; Testimony of Chief Tom Bressette on March 2, 2005 at pp. 157-158

was going to call the Premier to say that this was “ridiculous” and that he wanted something done. Carson testified before the Commission that he was indifferent to Beaubien contacting the Premier.⁴⁶⁷

492. Carson updated Lacroix that they had four ERT teams and that they were “just trying to contain it.” Carson advised Lacroix that their objective was to “contain and negotiate a peaceful resolution.” Carson then suggested that Lacroix come over to the Command Centre because Lacroix knew “the plan as well as anybody.” Carson indicated that Lacroix had missed out on the planning exercise and then indicated as follows:

Carson: But ah, you have intimate knowledge of all, you know our ninety-three (93) plans.

Lacroix: Okay.

Carson: And ah, they are very appropriate and you know as this thing rolls out you’re probably going to be relieving somebody somewhere.⁴⁶⁸

493. Lacroix testified before the Commission that he was on vacation at the time of the September 1, 1995 Project Maple planning meeting and confirmed that the reference in the call to the 1993 plans was to the plans regarding the occupation of Camp Ipperwash. Lacroix further acknowledged that he was involved over a number of days in the spring of 1993 with Carson in preparing the OPP operations plans and logistics plans in 1993. As a result, he knew the three scenarios including the plans in the event of an occupation of Ipperwash Provincial Park.⁴⁶⁹

494. In the phone call, Carson asked Lacroix to contact Beaubien to find out what information he wanted and mentioned that he was already getting calls last night from the federal Member of Parliament. Lacroix confirmed that the situation was now “provincial” and would call Beaubien back. Lacroix also raised the issue of the

⁴⁶⁷ P-444A tab 4, pp. 8-9; Testimony of Carson on May 17, 2005 at pp. 25-27

⁴⁶⁸ P-444A, tab 4, pp. 9-11; Testimony of Carson on May 17, 2005 at pp. 18-22

⁴⁶⁹ P-1447, pp. 20-22, 26; Testimony of Lacroix on May 8, 2006 at pp. 154-156, 169-170, May 9, 2006 at pp. 163-177

injunction, Carson responded, “Yes Natural Resources are addressing that as we speak.”⁴⁷⁰

vi) MNR Response

495. In the interim, Peter Sturdy, the MNR manager for the south-western zone, had heard of the occupation and was worried and concerned. At 5:52 a.m., he emailed Barry Jones, MNR Legal Director, that the Park Superintendent had closed the park pursuant to his authority under the *Provincial Parks Act* and that the park would have otherwise stayed open to day-users. He further advised of the attempts to serve written notice “indicating that the occupiers were Trespassing under the Trespass to Property Act” but they refused to take the notice. Sturdy then advised as follows:

OPP have requested that we obtain an Injunction. Please can you advise me when this will be available (approx. time required by Court) as this info. is required by OPP.⁴⁷¹

496. At 6:56 a.m. Sturdy sent an email to Peter Allen, the Executive Assistant to the Deputy Minister, Norm Richards, the Director of Parks Ontario, Jones and others which summarized the events of the occupation the evening before and, by way of background, the meeting with Carson on September 1, 1995. Sturdy advised in the email that Carson had suggested at the meeting on September 1, 1995 how the occupation would unfold:

The sequence of events as he predicted would be:

1. small group occupy park
2. MNR closes park and requests group to leave
3. MNR serves group with notice of violation to Trespass to Property Act
4. OPP request group to leave park
5. If group refuse, MNR would seek INJUNCTION
6. OPP would take lead as a Policing matter and attempt to carry out or enforce injunction⁴⁷²

⁴⁷⁰ P-444A, tab 4, p. 9

⁴⁷¹ P-816; Testimony of Sturdy on October 19, 2005 at pp. 24, 252-254

497. Sturdy further advised in the email as to how Carson had described the matter and how Carson saw MNR's role:

Inspector Carson made it clear that the OPP see this as a policing matter and see MNR's role to be one of assisting with the obtaining of an injunction, assisting in communications (media) and logistical support to OPP (accommodation, etc).⁴⁷³

498. Sturdy repeated that MNR's basic position was as follows:

MNR basic position is that:

- * occupation is an illegal occupation
- * MNR acquired [sic] properties from third parties through normal process
- * there are no native land claims to Ipperwash Park.⁴⁷⁴

499. Sturdy noted that as of last night they had proceeded through the first four steps that Carson had outlined and that a request was now with Legal Services to obtain a court injunction. Sturdy concluded the email as follows in capital letters:

PRIORITY ITEM FOR MNR IS TO PROCEED WITH
OBTAINING AN INJUNCTION.

Sturdy testified before the Commission that the injunction process was foreign to him and his sense that an injunction was a priority item came from the OPP's requests.⁴⁷⁵

500. At Queen's Park, the Deputy Minister's Office prepared a briefing note for the minister to advise him in regard to the occupation of the park. Vrancart, Deputy Minister of MNR, testified that it was prepared by someone in his office under his supervision. The briefing note provided in part:

- Ipperwash Provincial Park belongs to the people of Ontario. The province has clear title to the 109 acre property that the park sits on.

⁴⁷² P-782 [emphasis in original]; Testimony of Sturdy on October 19, 2005 at pp. 25-27, 255-258

⁴⁷³ P-782; Testimony of Sturdy on October 18, 2005 at pp. 255-258

⁴⁷⁴ P-782; Testimony of Sturdy on October 18, 2005 at pp. 255-258

⁴⁷⁵ Testimony of Sturdy on October 19, 2005 at pp. 257-258

- This land was surrendered by Aboriginals to Canada in 1928 and sold to private, third party owners in 1929. Ontario purchased this property and followed all necessary legal requirements to obtain title in the mid-1930s.
 - No formal land claim has been filed for this property.
 - Ontario considers the current situation to be an illegal occupation of provincial property by a splinter group from the Kettle Point/Stoney Point First Nation.
 - The bottom line is, these people are illegally trespassing on provincial property and they shouldn't be there.⁴⁷⁶
501. The briefing note indicated that “the Government is considering all possible legal remedies to end this illegal occupation in a peaceful manner.” Hodgson testified that Vrancart advised him that this was an illegal occupation, the police were in charge on the ground and that MNR had very little role to play as they had ensured that staff and camper security were addressed and that ONAS should handle the First Nation issues. Hodgson testified that he shared this view.⁴⁷⁷
502. Hodgson testified before the Commission that he was aware that if an owner or occupier has told someone to leave their property, the police would then have the authority to remove them from the property and arrest that person and charge them for trespassing. Vrancart and Hodgson testified that in regard to the park they understood that MNR served the notice of trespass notice in order have the basis for arresting people should the OPP choose to do so.⁴⁷⁸
503. Hodgson testified that he was not asked about the service of the trespass notice in advance, but would have agreed with this. He regarded the service of the trespass as an operational matter of the OPP on the ground.⁴⁷⁹

⁴⁷⁶ P-918; Testimony of Vrancart on October 27, 2005 at pp. 40-41, 162

⁴⁷⁷ P-918; Testimony of Hodgson on January 12, 2006 at pp. 101-103

⁴⁷⁸ Testimony of Hodgson on January 17, 2006 at pp. 192-198; Testimony of Vrancart on October 27, 2005 at pp. 202-203

⁴⁷⁹ Testimony of Hodgson on January 17, 2006 at pp. 198-202

504. Vrancart testified that he understood that the police had been asked to remove the occupiers on the basis that they were trespassing on private property; however, there is no evidence that an express request was in fact made.⁴⁸⁰

505. Fox was asked about any request to remove the occupiers and testified as to his understanding in that regard as follows:

I believe that that was very early in, when MNR had indicated that it was their land and they had deed and title to it.

I think it was one of those things that may not have occurred precisely on a given date and time, but rather one that the police on the ground, in their discussions with MNR, it was an expectation that people would be removed.⁴⁸¹

506. Carson testified that no one in government suggested to him that they should remove the occupiers without an injunction.⁴⁸²

vii) Discussions at OPP Command Post

507. Carson spoke with Kobayashi at approximately 8:34 regarding the injunction and Kobayashi advised that MNR had talked to a lawyer and they were waiting. Carson gave Kobayashi an update and mentioned that Beaubien was calling the Premier and that that was fine. He advised Kobayashi that the OPP were going to sit tight, get intelligence information and get discussions going.⁴⁸³

508. Carson then met with Ken Williams, the administrator of the Bosanquet Township and they discussed access to Matheson Drive. The local council agreed with getting an injunction. Williams suggested that the municipality declare a state of emergency but Carson cautioned against this and tried to assure him that the OPP had the matter well in hand. Carson also advised Williams about the MNR injunction and is recorded as informing him that “MNR probably won’t get an injunction today.”⁴⁸⁴

⁴⁸⁰ Testimony of Vrancart on October 27, 2005 at pp. 202-203

⁴⁸¹ Testimony of Fox on July 12, 2005 at pp. 35-36

⁴⁸² Testimony of Carson on June 2, 2005 at pp. 9-11

⁴⁸³ P-426, p. 21; Testimony of Carson on May 17, 2005 at pp. 25-27

⁴⁸⁴ P-426, pp. 21-22; Testimony of Carson on May 17, 2005 at pp. 31-38, 40

509. At approximately, 9:10, Carson then spoke with Babbitt, the media officer. Carson confirmed to Babbitt that the people had not said why they were occupying Ipperwash Provincial Park but were just saying “it’s their land.”⁴⁸⁵
510. Carson testified that prior to September 4, 1995 he had heard that some of the occupiers at Camp Ipperwash had commented that there was a burial ground in the park. However, Carson discussed this with Chief Tom Bressette and spoke with Don Matheson, whose father was the original park superintendent at the time the park was built, but there was nothing to indicate that there had been any burial sites at the park. Carson was aware that there was a cemetery at Camp Ipperwash and knew that Dan George, a former Stony Point resident, had been buried there in 1990 when Carson was in charge for the local Forest detachment.⁴⁸⁶
511. Carson advised Babbitt that MNR was going to pursue a court injunction against the natives. Babbitt asked if he could release this information to the media and Carson confirmed that he could.⁴⁸⁷
512. At 9:25, Carson held a briefing at the command post updating the senior officers including Richardson, Wright, Seltzer and Korosec. Richardson advised that they were preparing arrest warrants for Roderick George, Abraham David George and Stewart George. Carson advised as recorded by the scribe that “Tom Bressette’s on board, agrees, thinks they are criminals.” The OPP discussed press releases regarding the warrants for the suspects and Carson indicated that he wanted the public to know what they were dealing with.⁴⁸⁸
513. At the briefing, Richardson asked about the injunction. According to the scribe, Carson replied that “MNR is working on an injunction” and Richardson requested that “we have them fax it, we will need it.” With respect to the MNR injunction,

⁴⁸⁵ P-444A, tab 5, p. 15; Testimony of Carson on May 17, 2005 at pp. 44-51, June 2, 2005 at pp. 68-72

⁴⁸⁶ Testimony of Carson on May 17, 2005 at pp. 50-51, 68-72

⁴⁸⁷ P-444A tab 5, p. 16; Testimony of Carson on May 17, 2005 at pp. 44-51

⁴⁸⁸ P-426, pp. 24, 27

- Carson explained that “the party the injunction is against has the option to appear, doubtful it will happen today.”⁴⁸⁹
514. Carson asked some of the officers to prepare to meet with the occupiers. He instructed Seltzer to go with Wright and speak to Vince George about meeting with the occupiers at noon. Vince George was a First Nation OPP officer who was raised at Kettle Point and whose relatives were Band members.⁴⁹⁰
515. Carson also discussed at the briefing whether it was feasible for the ERT teams to get into the park and continue the “cohabit scenario.” Carson testified that nothing came of this discussion.⁴⁹¹
516. Carson then instructed Wright to find out about intelligence information and to call Robertson about a helicopter. Carson testified that they wanted it for surveillance to monitor activity, check the number of occupiers and identify who was in the park. Carson also asked for an MNR representative to attend the regular briefing meetings to stay informed and provide input where necessary.⁴⁹²
517. At 9:50, Carson spoke with Parkin in a taped telephone call. Carson advised Parkin that there was no clear spokesperson, but suggested it could be Bert Manning, although that seemed to change. The occupiers had rejected a notice and said that they would talk to the OPP at noon. Carson said that he had spoken to Tom Bressette and that there was no support for the occupation from the elected community. There were no demands; they were just stating that it was their land.⁴⁹³
518. Carson also described the altercation of September 4. Parkin asked “Were they told at that time that they were trespassing?” Carson replied that they had. He advised Parkin that MNR was pursuing an injunction.⁴⁹⁴

⁴⁸⁹ P-426, pp. 24-25

⁴⁹⁰ P-426, p. 28; Testimony of Carson on May 17, 2005, pp. 68-69; Testimony of Vince George on April 15, 2006 at pp. 12-13

⁴⁹¹ P-426, p. 24; Testimony of Carson on May 17, 2005 at p.59

⁴⁹² P-426, p. 27; Testimony of Carson on May 17, 2005 at pp. 65-68

⁴⁹³ P-444A, tab 6, pp. 27-28

⁴⁹⁴ P-444A, tab 6, pp. 28-30

519. Carson mentioned attempting to put the ERT back into the park if they could get inside. Carson described the location of the checkpoints. They discussed containment and Carson advised that they could not prevent the occupiers from going between Camp Ipperwash and Ipperwash Provincial Park. Carson advised Parkin that the occupiers had broken into the maintenance shack and they discussed the warrants for the incidents involving the cruiser and the flare.⁴⁹⁵

520. At 10:10, Carson called Inspector Linton, in another taped phone call, and asked him to take the night shift and to switch at about 19:00. Carson stated that they were going to try to “hold the line” and advised that they were not in the park. Linton asked Carson if the plan was to get an injunction. Carson confirmed that the MNR was already pursuing an injunction: “Yep, the MNR are pursuing that as we speak as well as the Township of Bosanquet ah may also get an injunction.”⁴⁹⁶

521. Shortly before 10:50, Wright telephoned Robertson regarding resources. Wright testified that he briefed Robertson because he was the OPP duty officer. During the call which was taped, Wright explained that they had tried to serve notice that the occupiers were trespassing and that there was no doubt that the park belonged to the province. He went on to state:

Wright: Okay. Absolutely no doubt whatsoever about that. So ah – at eleven o’clock this morning, the MNR, and all their ministry levels are meeting and they’re going to go get us an injunction, ‘cause that’s what we want. We want a piece of paper...

Robertson: Mmhmm.

Wright: ...and our intention is to go back in and take that Park.⁴⁹⁷

522. Wright testified before the Commission that he understood that MNR had good title to Ipperwash Provincial Park and he regarded them as the complainant. He testified

⁴⁹⁵ P-444A, tab 6, pp. 32-36

⁴⁹⁶ P-444A, tab 7, pp. 46-47

⁴⁹⁷ P-1098, pp. 1-2; Testimony of Wright on February 22, 2005 at pp. 106-107

- that the OPP weren't going to do anything without a court order and they wanted an injunction. In fact, Wright understood that once the OPP got the injunction, they would be obligated to act on the court order.⁴⁹⁸
523. Wright testified that he understood that the injunction was imminent. He testified that "it was quite obvious" that they were working on the injunction and once they got that court order, their intention was to go back in the park and act on the injunction and take the park. This had nothing to do with the cohabitation plan. Wright understood that Carson would decide how they were going to act on the court order.⁴⁹⁹
524. Wright then discussed with Robertson arrangements for a helicopter. Wright indicated that the occupiers were active between 16:00 and 2:00. The OPP wanted a helicopter there because they wanted to put officers back in to repopulate the park and cohabitate with the occupiers before 16:00. Wright tried to impress upon Robertson that they needed the helicopter before 16:00.⁵⁰⁰
525. At approximately 11:10, Robertson called back and advised that an MNR helicopter could arrive at 14:00 or 15:00. Robertson also advised Wright that he was following up on a request from Coles with respect to a LAV. Wright testified that although he knew that Carson was trying to get a LAV at the scene in case an officer was wounded, he hadn't realized that Robertson had also been made aware of it. Wright testified that eventually an OPP helicopter arrived and the MNR helicopter left.⁵⁰¹

viii) Events on the Ground

526. Having been advised by Carson that they were performing containment only, the ERT members manned the checkpoints or patrolled the perimeter of the park. For those at

⁴⁹⁸ Testimony of Wright on February 22, 2005 at pp. 121-123, 107-108, 110-111

⁴⁹⁹ Testimony of Wright on February 22, 2005 at pp. 107-108, 110-111

⁵⁰⁰ P-1098, pp. 2-5; Testimony of Wright on February 22, 2005 at pp. 108-109, 112-114

⁵⁰¹ P-1099; Testimony of Wright on February 22, 2005 at pp. 123-130

the checkpoints, the shift during the day was uneventful, apart from the fact that children used large bathroom mirrors to shine light into their eyes.⁵⁰²

527. The occupiers testified that throughout the day, people were coming and going, and there were men, women, children and elders in the park. Glen Bressette and Marlin Simon described the mood inside the park as “happy”, although some of the occupiers said that they noticed police cruisers in the area of the park and the camp, as well as a police boat on the water. A car with “OPP Who” written on its side drove erratically in the sandy parking lot, doing “doughnuts” in the presence of the media.⁵⁰³
528. Some of the occupiers also took steps to secure the park. Several of the occupiers testified that they carried clubs and began to gather bricks as early as September 5th, and that they patrolled the perimeter of the park to see what the OPP was doing. Don Bell testified that when he went to the park for surveillance purposes at 10:00, he saw a male occupier cutting down a tree. Bell’s report to Carson, as captured by the scribe notes, states that the occupiers were cutting down the trees at the front gate, “barricading it.”⁵⁰⁴

ix) Updates to Government

529. News of the occupation reached Queen’s Park on the evening of September 4, 1995. Bangs, the Executive Assistant to the Minister of Natural Resources, testified that he was notified by Peter Allen, the Deputy Minister’s executive assistant, that there was an occupation at Ipperwash. Allen said that the deputy was notifying the minister. He relayed information about public safety – the park was closing and there were not

⁵⁰² P-1228; Testimony of Marlin Simon on September 29, 2004 at pp. 65-66; Testimony of David George on October 20, 2004 at pp. 38-39; Testimony of Carson on May 16, 2005 at pp. 239-241

⁵⁰³ Testimony of Marlin Simon on September 29, 2004 at pp. 70-71; Testimony of Glen Bressette on November 9, 2004 at 190-193, 196-199; Testimony of Mike Cloud on November 8, 2004 at pp. 196-198

⁵⁰⁴ P-426, p. 30; Testimony of Marlin Simon on September 29, 2004 at pp. 42-44; Testimony of Clayton George on November 8, 2004 at pp. 80-82; Testimony of David George on November 1, 2004 at pp. 189-191; Testimony of Stewart George on November 2, 2004 at pp. 164-166; Testimony of Bell on June 7, 2006 at pp. 47-49

many people in the park. The OPP had been involved and were certainly the lead on the ground.⁵⁰⁵

530. Bangs called Hutton to inform her of the occupation. They either spoke or he left a message. Bangs testified that there was a protocol between the ministers' offices and the Premier's Office (and also the Cabinet Office) that if a minister's office became aware of a breaking issue that the premier might be asked about or could be reported in the media, the minister's office would notify the Premier's Office. The deputy minister would notify the Cabinet Office. Deputy Minister Vrancart testified at the Inquiry that the media are always more interested in the premier than they are in any individual minister.⁵⁰⁶

531. Hutton testified that she was told that that 30 to 40 people entered the park with the intention of occupying it. She understood that the park had been closed that day and there was no immediate public safety risk, largely based on the fact that campers had gone home. She found out the following morning that her previous understanding was not quite accurate in that the park had in fact been closed because of the occupation.⁵⁰⁷

532. At 9:00 the following morning, she attended the daily meeting of the Premier's Office senior staff and would have raised it with her colleagues. She spoke to the Premier either that morning or the previous night to update him in accordance with her normal practice and would have told him the information she had received from Bangs. Harris testified that he was told that the park had been occupied by a group similar to the one involved in the takeover of Camp Ipperwash.⁵⁰⁸

533. Other politicians, political staff and various civil servants were also informed of the occupation on the morning of September 5, 1995. Todres, Deputy Minister for the

⁵⁰⁵ Testimony of Bangs on November 3, 2005 at pp. 43-44

⁵⁰⁶ Testimony of Bangs on November 3, 2005 at pp. 44-46; Testimony of Hutton on November 21, 2005 at pp. 155-156; Testimony of Vrancart on October 27, 2005 at p. 78

⁵⁰⁷ Testimony of Hutton on November 21, 2005 at pp. 156-157, November 22, 2005 at pp. 212-213

⁵⁰⁸ Testimony of Hutton on November 21, 2005 at pp. 162-164, 167-168; Testimony of Harris on February 14, 2006 at pp. 66-67

- MSG, testified that she received a briefing from Fox, Scott Patrick, Fox's assistant and Barb Taylor who explained the details of the camp and the park. Taylor, like Fox and Patrick, was fully seconded to the MSG from the OPP and reported only to Todres. Taylor, not Fox, served as the liaison between the OPP and the ministry.⁵⁰⁹
534. Jai testified that she knew about the occupation when she came into work and convened a meeting of the IMC, which was the agreed upon course of action in the event of an occupation. Jai spoke twice with Glenn Brennan of the federal government, INAC, since Camp Ipperwash had already been occupied; however, Jai could not recall the content of her conversations with Brennan.⁵¹⁰
535. Moran testified that after the Labour Day weekend, he received a call that the dissidents had taken over the park and was told that the IMC would be meeting. He notified the Premier's Office of the IMC meeting.⁵¹¹
536. Hutton testified that at some point on Tuesday she was advised of the IMC meeting. She understood that the meeting would deal with the situation, but was not aware of the formal structure of the IMC or its pre-existing mandate and guidelines at the time. Harris knew that there would be a meeting involving the various ministries. Hutton would attend on behalf of the Premier's Office and find out more information.⁵¹²
537. Hutton had worked for the previous leader of the Progressive Conservatives and then become a member of Michael Harris' staff when he became leader of the party. Harris received many updates from her over the years on all kinds of issues. In September 1995, Hutton was responsible for short term policy issues of the day. She briefed Harris, making him aware of various perspectives on an issue and assisting

⁵⁰⁹ Testimony of Todres on November 29, 2005 at pp. 277-283, November 30, 2005 at p. 25; Testimony of Harnick on November 24, 2005 at pp. 66-67; Testimony of Runciman on January 9, 2006 at pp. 96-97; Testimony of Christie on September 26, 2005 at pp. 69-70; Testimony of Hunt on November 2, 2005 at p. 43; Testimony of Moran on October 31, 2005 at pp. 186-187

⁵¹⁰ Testimony of Jai on August 30, 2005 at pp. 211-214

⁵¹¹ Testimony of Moran on October 31, 2005 at pp. 186-188

⁵¹² Testimony of Hutton on November 21, 2005 at pp. 175-178; Testimony of Harris on February 14, 2006 at pp. 66-67

- him in considering the position of the provincial government and its communications.⁵¹³
538. Hutton's role at a meeting with a number of ministries was to ensure that the provincial government take into account the various perspectives of the ministries and to ensure that the government's policy position on any issue was consistent overall.⁵¹⁴
539. Harris testified that he would expect that when she attended meetings as a representative of the Premier's Office, she would obtain information and give input as necessary to reflect the views of the Premier's Office. Harris testified that Hutton and other members of his senior staff could extrapolate what Harris' position would be based on information they had. When attending meetings, Harris would expect her to ask questions where she needed more information to brief him. One of her responsibilities was to say which ministry would be responsible for communications.⁵¹⁵
540. Harris testified that on the morning of the 5th, the primary concern was safety. The second concern was finding out the status of the situation, what the experts had to say, whether there was any threat to safety, and if there was, that they would take any appropriate action. On the morning of the 5th, he saw the MNR and the OPP as responsible for the issue. The MNR were the ones with stewardship for the park and the OPP were responsible for safety.⁵¹⁶
541. Harris testified that prior to the occupation in September 1995, he had not heard of any land claims or longstanding frustrations in relation to the park while in opposition or while Premier. Where there are often longstanding frustrations or claims, he would expect that they would attract the attention of media and would be discussed in the provincial legislature.⁵¹⁷

⁵¹³ Testimony of Hutton on November 21, 2005 at pp. 76-79; Testimony of Harris on February 14, 2006 at pp. 230-232

⁵¹⁴ Testimony of Hutton on November 22, 2005 at pp. 203-204

⁵¹⁵ Testimony of Harris on February 14, 2006 at pp. 88, 230-232

⁵¹⁶ Testimony of Harris on February 14, 2006 at pp. 90-92

⁵¹⁷ Testimony of Harris on February 14, 2006 at p. 233

542. Harris testified that before the occupation of the park, he was aware that the camp lands had been taken from the First Nation and that the federal government had not yet returned them. He assumed that the occupation of the park was an escalation of activity by the occupiers to draw attention to how long it was taking for the federal government to return the camp, rather than action aimed at the provincial government. However, he testified that once the occupiers moved into the park, it became a problem for the provincial government.⁵¹⁸
543. Harris further testified that it would have been his view prior to September 1995 that occupations or blockades by anyone were not an acceptable way to get a government to do something. Prior to September 1995, it was his view that the government should not condone such actions. It would be preferable to avoid it and, if it occurred, it would be desirable to have it come to an end sooner rather than later.⁵¹⁹
544. Hutton testified that she had a couple of preliminary thoughts but viewed the IMC meeting as an opportunity to be briefed and get further information and ideas. One preliminary thought was simply that where there was an obvious set of circumstances that could lead to escalated tensions, the more prudent course was to try and have it end sooner rather than later. This was informed by her general view that public safety was the number one priority.⁵²⁰
545. Hutton further testified that since she had been told that it was a provincial park that had been occupied, her sense was that the province on behalf of Ontarians had ownership. If that was right, her second preliminary thought was that the province should not have any substantive negotiations until the occupation ended.⁵²¹

⁵¹⁸ Testimony of Harris on February 14, 2006 at pp. 48-50, 73-75, February 16, 2005 at pp. 177-180

⁵¹⁹ Testimony of Harris on February 14, 2006 at p. 234

⁵²⁰ Testimony of Hutton on November 21, 2005 at p. 170-174

⁵²¹ Testimony of Hutton on November 21, 2005 at p. 170-174

x) IMC Meeting of September 5, 1995

546. The IMC meeting of September 5, 1995 was held from 11:00 to 14:00 at the offices of ONAS on Bay Street. It was a large meeting involving 23 civil servants and political staff from various ministries. It included participants who had not attended the August 2, 1995 meeting. As some of the attendees did not know each other previously, at the beginning of the meeting people introduced themselves by their name and where they worked.⁵²²
547. The meeting began by reference to the previous meeting of August 2, 1995 concerning a possible occupation of Ipperwash Provincial Park. The group was advised that the occupation had occurred the previous night. Elizabeth Christie, a lawyer from MAG, recalled some background being given about the action against the federal government in regard to Camp Ipperwash, a proceeding against the landowners for the cottage lands at West Ipperwash Beach, and the absence of any land claims regarding the park.⁵²³
548. Christie recalled mention at the meeting of the decision of Mr. Justice Killeen of August 18, 1995, a decision she would have read at the time and which confirmed that the surrender by the Kettle and Stony Point First Nation of the lands at West Ipperwash beach was valid. Christie knew at the time that the province had acquired the park lands by purchasing from private parties, the same way any private landowner would acquire land. Christie indicated at the beginning of the IMC meeting that Mr. Justice Killeen's decision regarding the West Ipperwash Beach lands had the effect of confirming the province's title to the park.⁵²⁴

⁵²² P-509; Testimony of Bangs on November 3, 2005 at pp. 48-49; Testimony of Jai on August 30, 2005 at p. 223-224; Testimony of Hutton on November 21, 2005 at pp. 180-183; Testimony of Fox on July 13, 2005 at p. 223

⁵²³ P-509; Testimony of Christie on September 26, 2005 at pp. 72-74

⁵²⁴ P-509; P-536; Testimony of Christie on September 27, 2005 at pp. 13-16; Testimony of Jai on September 13, 2005 at pp. 42-49

549. Other witnesses including Jai testified that the understanding at the meeting was that the province had good title to the park lands and this was reflected in the minutes of the September 5, 1995 meeting.⁵²⁵
550. Christie recalled a comment by Dan Elliott, one of the MNR representatives who was participating by phone, suggesting that there was some new archaeological evidence of a burial ground which would need to be evaluated. Elliott did not testify before the Commission, but in answers to undertakings he indicated that he was not aware of any such archaeological evidence.⁵²⁶
551. Sturdy testified that he received an email from Elliott on September 5, 1995 at 9:15 indicating that the occupiers had stated that the park contained an ancestral burial ground, but previous archaeological studies had not identified any such burial grounds. Sturdy testified that he asked Terry Crabe to look into it and was advised that morning that the only documented site was the Stony Point (the sacred site). Sturdy did not recall anyone finding any new archaeological evidence of a burial ground in all of the research that they did.⁵²⁷
552. Christie recalled an investigation of a burial ground but they found no evidence. She noted at the time in her handwritten notes that if there was a burial ground, it would not affect title.⁵²⁸
553. Jai testified that, as of September 5 and 6, they had no basis for knowing whether or not there was a burial ground in the park and that it was a second order issue that they did not get to. Jai testified that ONAS had not been approached by the Stoney Point Group to protect any burial ground in the park and, in fact, had not heard of any attempt by the occupiers to contact the provincial government. She testified that the

⁵²⁵ P-509; Testimony of Jai on September 12, 2005 at pp. 57-58; Testimony of Christie on September 27, 2005 at p. 16

⁵²⁶ P-742; Testimony of Christie on September 26, 2005 at pp. 74-75; Inquiry Document # 3000407, answer 135

⁵²⁷ P-786; P-788; Testimony of Sturdy on October 19, 2005 at pp. 27-33, October 20, 2005 at pp. 71-76

⁵²⁸ P-742; Testimony of Christie on September 26, 2005 at pp. 74-75

fact that there were no claims relating to the park and to burial grounds was taken into account in the determination that the provincial government had good title.⁵²⁹

554. Fox summarized what had occurred the previous night. He indicated that approximately 35-40 people were there with camping gear. He advised that the OPP had set up a perimeter around the park and a command post in Forest. He advised that MNR and OPP had told them that they were trespassing. He further advised that OPP had accompanied MNR staff to the park and tried to serve a written notice of trespass under the *Trespass to Property Act* but they had refused to accept it.⁵³⁰
555. Christie testified that she made a note to herself to confirm steps taken to provide notice of trespass. She anticipated litigation might be commenced at this point in the meeting and so wanted to know the precise details of the efforts.⁵³¹
556. Sturdy then provided some further details including the fact that MNR and the OPP had been told to leave the park and that a back window of an OPP cruiser had been broken. He advised that MNR staff were being barred access to the park. He explained that, while the park closed at the end of Labour Day, day users would normally have continued to use the park but now it had been closed to everyone. Sturdy advised that no one seemed to be in charge and that the occupiers would not identify a spokesperson.⁵³²
557. There was a reference to an article in the *London Free Press* that there had been a riot. Christie testified that everyone was concerned about the situation, including MNR employees on the ground. Christie testified that she made a note to herself

⁵²⁹ Testimony of Jai on August 30, 2005 at pp. 205-207, September 12, 2005 at pp. 47-50, 52-54

⁵³⁰ P-509; P-510; P-536; P-742; Testimony of Hipfner on September 15, 2005 at pp. 61-62; Testimony of Christie on September 26, 2005 at pp. 75-76 (Christie recalled MNR representatives reporting this information); Testimony of Jai on August 30, 2005 at pp. 231-233

⁵³¹ P-742; Testimony of Christie on September 26, 2005 pp. 188-189

⁵³² P-509; P- 536; P-742; Testimony of Christie on September 26, 2005 at pp. 76-82, 84; Testimony of Hipfner on September 15, 2005 at pp. 64-67

about a list of names of the occupiers and questioned whether there were any other violent acts because she was thinking of possible litigation.⁵³³

558. Sturdy advised that the occupiers had not issued any statement or communications. Someone asked why the occupiers were there and the participants discussed that. There was a reference to the comment from an occupier “the park’s ours now, they’ll be paying us now” and the suggestion that the burial site was the rationale. There was information that some natives had written “No. 43” which was the number of the Stony Point reserve. Christie recalled that MNR representatives thought that this suggested the occupiers were making a claim to ownership. They assumed that it was the same people who had Camp Ipperwash.⁵³⁴
559. Bangs then suggested that they should consider an injunction and there was then a discussion among MNR representatives in that regard. Sturdy advised that there was a reference to the Town of Bosanquet going after an injunction with respect to the township road that had been blocked.⁵³⁵
560. MNR representatives indicated that the Kettle and Stony Point Band would like to see the government take action against the dissidents because they disagreed with them. Sturdy testified that he had received an email from Elliott that morning indicating that Chief Tom Bressette was “in full support of the MNR and OPP position and plans.”⁵³⁶
561. Others within MNR, likely the Deputy Minister’s executive assistant Peter Allen, indicated that the Deputy Minister didn’t want to go for an injunction. They suggested

⁵³³ P-742; Testimony of Christie on September 26, 2005 at p. 80, September 27, 2005 at pp. 21-23; Inquiry Document 1003741, J. Herbert, “Ipperwash Park Seized by Natives”, *London Free Press* (5 September 1995)

⁵³⁴ P-509; P-730; P-742; Testimony of Christie on September 26, 2005 at pp. 77-79, 85; Testimony of Hipfner on September 15, 2005 at pp. 64-67; Testimony of Prodanou on September 20, 2005 at pp. 148-149

⁵³⁵ P-742; Testimony of Christie on September 26, 2005 at pp. 85-87; Testimony of Hipfner on September 15, 2005 at pp. 67-69

⁵³⁶ P-742; P-788; Testimony of Christie on September 26, 2005 at p. 89; Testimony of Hipfner on September 15, 2005 pp. 69; Testimony of Sturdy on October 19, 2005 at pp. 27-28

that they should not be too precipitous even with respect to an injunction, mentioned that the park was empty and queried the urgency.⁵³⁷

562. Sturdy testified that he understood that the OPP wanted MNR to seek an injunction and assumed that it was the most appropriate way to deal with this. He did not recall expressing this at the meeting. Several witnesses at the IMC meeting testified that they were unaware that the OPP wanted an injunction as soon as possible.⁵³⁸

563. Vrancart testified that he did not communicate with Kobayashi directly at the time and there is no evidence that he communicated with any of the MNR staff on the ground directly on September 5, 1995. Vrancart testified that he did not have a great sense of urgency. He further testified that he was unaware that Sturdy understood from the OPP that an injunction was a priority. Vrancart knew that Kobayashi had attempted to serve the notice of trespass but was unaware that there was any connection with proceeding with an injunction.⁵³⁹

564. There was a query regarding whether an injunction might escalate the situation and someone from MNR indicated that there is “always [the] possibility [that] Mohawk warriors will move in”. Sturdy did not recall if he made the specific comment but he was concerned because of the events that had happened in other occupations, most notably in Quebec where there had been a very confrontational incident. Sturdy was worried for the safety of his staff and the community and concerned that Mohawk warriors could increase the tensions and risks of the occupation.⁵⁴⁰

565. Christie recalled that the reference to Mohawk warriors was made in the context of Gustafsen Lake. She testified that events at Gustafsen Lake were receiving media attention at the time. She recalled general discussion about how long that had

⁵³⁷ P-510; P-536; P-742; Testimony of Christie on September 26, 2005 at pp. 88-90; Testimony of Hipfner on September 15, 2005 at pp. 69-71

⁵³⁸ Testimony of Sturdy on October 19, 2005 at pp. 40-43, 50-51, 69-71; Testimony of Moran on November 1, 2005 at p. 114; Testimony of Jai on September 12, 2005 at pp. 84-85; Testimony of Moran on November 1, 2005 at pp. 112-113

⁵³⁹ Testimony of Vrancart on October 27, 2005 at pp. 34, 109-110

⁵⁴⁰ P-536; Testimony of Sturdy on October 19, 2005 at pp. 54-57

- continued, that it had escalated to the point of helicopter surveillance and gunfire at those aircraft. That situation had become more difficult over time.⁵⁴¹
566. There was a suggestion that they needed more intelligence regarding whether or not there were firearms, followed by a comment that public safety was not an issue. Someone then asked what was the tolerance level of the government if there was an escalation.⁵⁴²
567. Hutton, who had not spoken to that point, testified that she listened to the briefing and put a good deal of stock into what the MNR representatives said on the phone because they were on the ground. The most important information to her was that the province had clear title and this was supported by the fact that the Chief of the Kettle and Stony Point First Nation did not support the occupation. From what she was told, she understood that it was an illegal occupation.⁵⁴³
568. Hutton regarded this as the first time in the new government's mandate that this sort of action had been taken, action outside the bounds of normal democratic processes intended to pressure the government to do something. She testified that protests of an informational nature, petitions, or getting the opposition to ask questions in the Legislature are all legitimate means of getting the government's attention. In September 1995, she was not aware of any such means being used to bring any issues relating to Ipperwash Provincial Park to the attention of the provincial government.⁵⁴⁴
569. Hutton testified before the Commission that she was uncomfortable with the suggestion by some that the provincial government could just wait and see. She was concerned about the broader government perspective and that no response from the provincial government as to its position would suggest to the general public that it took no issue with the type of action taken and that this was a legitimate way for

⁵⁴¹ Testimony of Christie on September 26, 2005 at pp. 90-91, 188-191

⁵⁴² P-742

⁵⁴³ P-536; Testimony of Christie on September 27, 1995 at p. 22; Testimony of Hutton on November 21, 2005 at pp. 190-191, 219-222, 229-230, November 22, 2005 at pp. 264-265

⁵⁴⁴ Testimony of Hutton on November 23, 2005 pp. 403-404

anyone to get the government to do something. They did not want to encourage self-help initiatives.⁵⁴⁵

570. Hutton indicated that the government needed to respond. She did not recall describing the Premier's position as hawkish but did not dispute it. She testified that she felt that the government needed to communicate its policy position that the occupation was illegal and that the government did not condone it. She believed that at the time, the Premier generally thought that they needed to make clear that this action was illegal and the government should take legal steps as a landowner to bring it to an end.⁵⁴⁶

571. Fox testified that he had not thought about the fact that others, natives or non-natives, would be aware of the government's response.⁵⁴⁷

572. Baldwin indicated that there were permanent cottages and homes nearby. He said that the government needed to consider its relationship with the Kettle and Stony Point Band and that they might be frustrated if the province did not take some sort of action. Each hour that passed would increase the concerns of the chief and the First Nation. He specified that Chief Tom Bressette supported the OPP and the MNR.⁵⁴⁸

573. Fox indicated that there were people at the occupation from throughout the province and said that public safety was still a possible concern because the park could not be secured. He advised that as time passed, it would be harder to remove them.⁵⁴⁹

574. Hipfner testified that Fox said that you could not conclude that the lack of evidence of weapons meant that the occupiers did not have guns. She further testified that Fox said that the occupiers of the park had free access and could move in and out of the

⁵⁴⁵ Testimony of Hutton on November 21, 2005 at pp. 205-208, 227-229, November 23, 2005 at pp. 16-17

⁵⁴⁶ Testimony of Hutton on November 21, 2005 pp. 205-208, 230-232, November 23, 2005 at pp. 16-17

⁵⁴⁷ Testimony of Fox on July 13, 2005 at pp. 242-243

⁵⁴⁸ P-510; P-536; P-742

⁵⁴⁹ P-510; P-536

camp and as a result, even if they did not have firearms with them, they might have access to firearms.⁵⁵⁰

575. Christie testified that she was asked about the legal options and she advised the meeting of the following five: Criminal Code (public mischief), the *Trespass to Property Act*, the *Public Lands Act*, the *Provincial Parks Act* and an injunction. Christie testified that in advance of the September 5, 1995 meeting she had spoken with Tim McCabe and Scott Hutchison, two more senior lawyers at MAG in the civil and criminal branches respectively, in anticipation of the need to provide some preliminary advice as to what the province's options were. Christie testified that her reference to the statutes at the meeting was based on her discussions with McCabe and Hutchison and her own knowledge.⁵⁵¹

576. Christie explained that the first four options would not guarantee the occupiers' removal from the land. With respect to an injunction, Christie indicated that it did not have to be an emergency injunction and that they could bring it in the ordinary course. Christie testified that she explained this in response to the previous concern of some within MNR that they would have to act on an injunction immediately. Christie explained the test for an injunction and that once the province had an injunction, the occupiers would have to comply. If they did not, the government could take civil or criminal contempt proceedings against them. Christie testified that none of the lawyers present provided any further advice of the legal rights of the government as a property owner.⁵⁵²

577. Hutton testified that she did not know what kind of options could or should be pursued and so asked questions. She used an example of a private landowner being in a situation involving a group of individuals who were not aboriginal set up on the lawn to find out what might be done in a simple situation.⁵⁵³

⁵⁵⁰ Testimony of Hipfner on September 15, 2005 at pp. 87-90

⁵⁵¹ P-509; Testimony of Christie on September 27, 2005 at pp. 23-25; Testimony of McCabe on September 28, 2005 pp. 56-57

⁵⁵² P-536, p. 5; Testimony of Christie on September 26, 2005 at pp. 96-99, September 27, 2005 at pp. 23-25; Testimony of Jai on August 30, 2005 at pp. 248-250,

⁵⁵³ Testimony of Hutton on November 21, 2005 at pp. 214-216

578. Jai and Christie testified that Hutton did not specify any particular course of action.⁵⁵⁴
579. There was a comment that, if there was a native burial ground, the province should uphold its obligations and deal with it under the *Cemeteries Act* R.S.O. 1990, c. C.4. Christie testified that someone asked that they look into the province's obligations and they did so.⁵⁵⁵
580. Bangs testified that they were guessing as to what was at the root of this and that the burial ground was a possible issue at play along with the possibility that this was a land claim.⁵⁵⁶
581. There was a suggestion that the government needed to find out what the First Nations people really wanted. Christian Buhagier, another participant, raised the concern of doing anything that would confirm the legitimacy of the occupiers and suggested that sending someone from ONAS might confer legitimacy. He indicated that the OPP and MNR were on the ground and running and would be more appropriate.⁵⁵⁷
582. Jai noted that two years earlier the Stoney Point Group had been informed of the province's position regarding title to the park and invited to make a claim, if they had a valid one, but they had never produced one.⁵⁵⁸
583. They discussed communication messages and the minutes record their agreement as follows:
- MNR will act as the spokesperson regarding this matter in the short term. It will inform the public that:
- (1) The Province has valid title to the Park.
 - (2) The occupiers have been told they are trespassing and have been asked to leave.
 - (3) The province will take steps to remove the occupiers ASAP.⁵⁵⁹

⁵⁵⁴ Testimony of Jai on August 13, 2005 at pp. 92-93; Testimony of Christie on September 27, 2005 at pp. 22-23

⁵⁵⁵ P-742; Testimony of Christie on September 27, 2005 at pp. 16-20

⁵⁵⁶ Testimony of Bangs on November 3, 2005 at pp. 263-265

⁵⁵⁷ P-510; Testimony of Hipfner on September 15, 2005 at pp. 77-79

⁵⁵⁸ P-536; Testimony of Jai on August 30, 2005 pp. 257-258

⁵⁵⁹ P-509

584. As the meeting was winding up, someone mentioned that the OPP, within its discretion, would continue to try to remove the occupiers peacefully. There was a comment that, if the charges were laid, the OPP would become the spokesperson and that they would have the discretion to charge. Another person commented that the goal was the removal of the occupiers and the question was methodology.⁵⁶⁰
585. Hutton testified that her understanding was that the injunction appeared to be the only option but understood that the government lawyers would see if there were other civil remedies available.⁵⁶¹
586. Jai testified that Hutton indicated that she wanted an emergency injunction and did not want to wait two weeks. Hutton testified that she was told that getting into court could take a couple of weeks. She was concerned about the length of time for a two week injunction and was not yet ready to recommend it to the Premier. Fox testified that he did not have a view as to which type of injunction should be sought.⁵⁶²
587. Jai testified that she summarized their consensus regarding recommendations: the province would seek an injunction and the OPP, within its discretion, would try to peaceably remove the dissidents. Jai testified that this would involve the OPP asking them to leave because they were trespassers.⁵⁶³
588. At the tail end of the meeting, there was a further update that there were currently 7 to 9 people in the park and that the occupiers had cut down trees to form barricades.⁵⁶⁴
589. The meeting concluded on the basis that MNR would act as spokesperson and inform the public of the communications messages, the lawyers would brief the Attorney General and come up with legal opinions, and the others would brief their ministers. The committee would meet again the next day at 9:30. Hutton testified that she was

⁵⁶⁰ P-536; P-742; Testimony of Jai on August 30, 2005 at pp. 261-263

⁵⁶¹ Testimony of Hutton on November 21, 2005 at p. 216, November 22, 2005 at pp. 203-204

⁵⁶² P-536; Testimony of Jai on August 30, 2005 at pp. 261-263; Testimony of Hutton on November 22, 2005 at pp. 239-241, 244-246; Testimony of Fox on July 11, 2005 at p. 231

⁵⁶³ Testimony of Jai on August 30, 2005 at pp. 261-263

⁵⁶⁴ P-510

satisfied that the communications message would stand as the government's action for that day.⁵⁶⁵

590. Jai testified that no one at the meeting said that weapons or physical force should be used. She further testified that it was appropriate for the IMC to review the options put forward, ask questions, articulate these perspectives and insights and that no one had suggested that the discussions should not have happened with these participants.⁵⁶⁶

xi) Follow-up from the IMC

591. Hutton testified that she was responsible on behalf of the Premier's Office for determining which ministry would be the government spokesperson where an issue affected various ministries. She further testified that she would have informed Paul Rhodes, who was responsible for short term communications in the Premier's Office, that Hodgson was the communications person and indicated what the main media messages were.⁵⁶⁷
592. Hutton testified that she would have briefed Harris on the IMC meeting of September 5, 1995 with respect to the information learned and the views at the meeting. She also would have advised him that Hodgson was to be the spokesperson and indicated to him the main messages for the media. She testified that she was waiting for any other options that might have been developed. She therefore would have advised Harris that they were leaning toward an injunction, but that there was some more work to be done over night and they would meet again the following day. She also would have communicated that the OPP was on the ground and monitoring the situation and that there was no way to control access to the park. Hutton did not believe that she otherwise discussed the role of the OPP with Harris.⁵⁶⁸

⁵⁶⁵ P-509; Testimony of Hutton on November 23, 2005 at p. 83

⁵⁶⁶ Testimony of Jai on September 13, 2005 at pp. 132-133

⁵⁶⁷ Testimony of Hutton on November 21, 2005 at pp. 260-261, November 23, 2005 at pp. 400-402

⁵⁶⁸ Testimony of Hutton on November 21, 2005 at pp. 254-257, November 22, 2005 at pp. 10-11, 14-16

593. Harris testified that he was made aware that the OPP had left the park because of intimidation by the occupiers, that the occupiers were in control of the park and that they were not saying what they wanted. He recalled the concerns of the residents that summer about escalation.⁵⁶⁹
594. Harris testified that by the evening of September 5 or the morning of September 6, he was of the view that there was no question that the park belonged to MNR, that the occupation was not supported by the Chief of the Band and that the occupation was illegal. Harris further testified that if it was an illegal occupation and did not involve any special, constitutional right, it was and is his view that any Canadian, including native, should be treated the same as he would be.⁵⁷⁰
595. Harris testified that he understood that a number of questions were asked at the IMC meeting and options had been discussed, but that there was a consensus that the government should move to get an injunction. He was of the view that it was the provincial government's responsibility to respond and that taking no action was a mistake. He concurred with the consensus regarding an injunction. The preference was to obtain an injunction as soon as possible but they needed information from the lawyers. He understood that the lawyers were to report back the next day and that they would get an update.⁵⁷¹
596. Vrancart, the MNR Deputy Minister, received an update from his executive assistant Peter Allen regarding the IMC meeting. Vrancart testified that his advice to his minister (as reflected in the briefing note) did not change as a result of the update, except for the issue of the government spokesperson. Since the Premier's office had been involved in the discussions as to who should speak on the issue, Vrancart testified that he thought that it was appropriate that his minister take the lead of this particular communication though he continued to recommend to his minister that he should not be in front of the issue.⁵⁷²

⁵⁶⁹ Testimony of Harris on February 14, 2006 at pp. 69-72, 97-98, 100-102

⁵⁷⁰ Testimony of Harris on February 14, 2006 at pp. 72-73, 86-88

⁵⁷¹ Testimony of Harris on February 14, 2006 at pp. 88-90, 94-98

⁵⁷² Testimony of Vrancart on October 27, 2005 at pp. 41-42

597. Bangs testified that he expressed the view to Hutton that his minister, the Minister of Natural Resources, should not take the lead; however, Hutton told him that his minister would handle it for the time being. Hutton testified that Hodgson was appropriate because, as the Minister of Natural Resources, he was responsible for the park which had been occupied.⁵⁷³

xii) Media Reports and Public Concerns

598. While the IMC was meeting, it appears that the media had picked up the information released by the OPP media officer Babbitt with Carson's approval that MNR was seeking an injunction. At noon, CBC news was reporting that MNR would be seeking an injunction. At 13:00, the media were reporting that MNR was in court that day and that they wanted the court to tell the occupiers to leave, but that that could take a day or two. Anna Prodanou, the ONAS Communications Officer, testified that she received a transcript of the news announcements from the provincial government's news media transcription service.⁵⁷⁴

599. At the hearing before Justice Daudlin on September 7, 1995, Justice Daudlin indicated that he had been hearing about an injunction through the media since the beginning of the week.⁵⁷⁵

600. Various occupiers testified that they were aware that there was going to be an attempt to get an injunction, but they were not interested in the court process. Stewart George and approximately five other people heard about the injunction over a radio while listening at the park store. Stewart did not recall that anyone cared whether an injunction was obtained or talked about doing anything about the possible injunction. Marlin Simon was also aware about the injunction, and said that they were reluctant

⁵⁷³ Testimony of Hutton on November 21, 2005 at p. 249, November 23, 2005 at pp. 400-402; Testimony of Bangs on November 3, 2005 at pp. 69-72

⁵⁷⁴ Testimony of Prodanou on September 20, 2005 at pp. 251; Inquiry Document # 1001490

⁵⁷⁵ P-737, pp. 2-3

to take any papers from the police as they did not want to be served with papers relating to the injunction.⁵⁷⁶

601. While the IMC was still meeting at 13:00, the local mayor Fred Thomas and the Chief Administrative Officer Ken Williams issued a press release entitled “Reign of Terror Continues” which stated as follows:

“The current reign of terror in our community continues”, Mayor Fred Thomas advised Council this afternoon, one day after a group of Indians illegally took over Ipperwash Provincial Park.

“First, they kicked the Army out of the Army Camp and now they kicked the Province out of the Park. What’s next...?”, Thomas wondered. “The Federal Government assured me that all these terrorist activities would be confined within the perimeter of the Army Camp, but this hasn’t happened.”

Members of Council stated ... “Our residents are terrified. There have been sexual and physical assaults on the beach, shots fired at our workers and buildings burnt to the ground. To date, there have been no arrests and none planned as far as we know. This sends out a message that illegal activities in Canada today are rewarded rather than punished and that is wrong.”

“I have heard rumours that people are buying guns to protect themselves and their families. Surely this is not a recipe for peace, order and good government”, the Mayor stated.

The Town is demanding that the Provincial and Federal Governments initiate appropriate action to remove the illegal occupiers from the land. “The laws of Canada and Ontario must be enforced equally for all Canadians. This reign of terror must stop”, Thomas said.⁵⁷⁷

602. At approximately the same time, the local member of the provincial legislature, Beaubien sent a fax of a draft press release to Bill King, a member of the Premier’s Office and the caucus liaison. Beaubien testified that he received approximately 100 to 150 calls from his constituents that day expressing their fears and complaining

⁵⁷⁶ Testimony of Stewart George on November 2, 2004 at pp. 67-68, 209-211; Testimony of Marlin Simon on September 29, 2004 at pp. 82-83

⁵⁷⁷ P-460

about the level of policing. Beaubien indicated on the fax cover sheet that unless he heard from Queen's Park by 15:00, he would release the draft press release.⁵⁷⁸

603. The press release referred to Gerald George's letter to the editor of August 30, 1995 and agreed that they were not dealing with decent native citizens but "thugs". Beaubien testified before the Commission that he was referring to those occupiers who were harassing and intimidating the public. He queried in the draft press release whether there was a "double standard with enforcement of the law". The press release concluded as follows:

Enough is enough. Where is the leadership from not only the provincial officials, but the federal officials and from the First Nations itself. How can we negotiate with irresponsible, law breaking dissidents. We must come to our senses and take back control before something irreparable happens. As citizens of this country, we have a responsibility to be law abiding, reasonable people. This should apply to all who live here.⁵⁷⁹

604. Beaubien testified that he felt that no one was taking ownership of the situation. He further testified that the reference to "take back control", he meant that they needed to stabilize the situation which had been escalating since June.⁵⁸⁰
605. King received Beaubien's faxed draft press release. King recalled that he called Rhodes about the press release and that they both felt that the draft press release would not be constructive, so King advised Beaubien not to send the press release. King did not recall if he told him that it was a provincial park issue and an MNR issue but testified that he would have viewed that as consistent with the government position.⁵⁸¹
606. King did not speak to the Premier or Hutton about the press release. King did not recall if he said the Premier was or was not following it closely; however, he probably

⁵⁷⁸ P-953; Testimony of Beaubien on January 19, 2006 at pp. 108-111, 128-131

⁵⁷⁹ P-953; Testimony of Beaubien on January 19, 2006 at pp. 116-119

⁵⁸⁰ P-953; Testimony of Beaubien on January 19, 2006 at pp. 122-124

⁵⁸¹ Testimony of King on November 16, 2005 at pp. 175-176, 291-294

would have because he usually told caucus members that the Premier cared very much about their issue and was on top of it.⁵⁸²

607. Beaubien took the advice and did not send out the press release. Beaubien did not speak with anyone else in the Premier's Office but would have spoken with Leslie Shimmin and Peter Allen of MNR as he had been told it was an MNR issue. Beaubien spoke with Lacroix that afternoon and also with Coles and relayed his constituents' concerns. He testified that he may have told Lacroix that there would be a press release.⁵⁸³
608. Beaubien spoke to the media on September 5, 1995 and indicated that the province would uphold the law no matter who was involved and that, if the occupiers were there illegally, they would be asked to leave. The article appeared the following day.⁵⁸⁴
609. Hodgson also spoke to the media. Hodgson testified that the media showed up at his office, en masse, to do a scrum. Hodgson testified that he generally agreed with the substance of the messages set out in the minutes of the IMC. The news conference began as follows:

Minister: Well, basically what we have here is that we have a problem at Ipperwash. A splinter group of the Kettle Point and the Stoney Point First Nations have occupied our provincial park. I'm sure that you are all aware of that and that is why you are here.

The point that we want to make quite clear is that the provincial government, through the MNR, paid for this land legally back in the 1930s. There is no claim to this land that we are aware of -- no formal claim has been made. The people that have entered the park are illegally trespassing, and we intend to explore remedies to try to rectify the situation. So, that is basically the story in a nutshell.

Question: What is the remedy that you're looking at?

⁵⁸² Testimony of King on November 16, 2005 at pp. 176, 253-256, 291-296

⁵⁸³ Testimony of Beaubien on January 19, 2006 at pp. 109, 124-127, 132-140, January 24, 2006 at pp. 229-230

⁵⁸⁴ P-962; Testimony of Beaubien on January 19, 2006 at pp. 140-142

Minister: Well, we are going to examine, for example, the use of injunctions, other possible measures. I don't want to limit the scope of that, but the bottom line here is that it is our park -- we paid for it -- and they are illegally trespassing upon it.

Question: It doesn't sound like you are looking at consultation at this point?

Minister: Well, there is not much to consult about. They are illegally trespassing.

Question: Minister, the mayor and the others called it basically a "reign of terror." He says that people are being assaulted on the beach, buildings are being burnt to the ground, and basically lawlessness in the area, and that the provincial and federal governments should step in and impose the law.

Minister: I don't want to deal in rhetoric. I understand the mayor has got concerns -- the whole township would. We have concerns as well. We're trying to do our best to make sure we rectify the situation in a manner that's legal.

Question: How quickly do you intend to act?

Minister: Quickly.

Question: How long will this injunction take?

Minister: I'm not sure. You'd have to ask the Attorney General.⁵⁸⁵

610. Hodgson was asked how long the occupation would take and responded as follows:

Question: How long before this is resolved, as far as you're concerned?

Minister: I can't give you a time right now.

Question: Are you going to court -- within the next day or two?

Minister: We don't know. We're looking at all the options right now, but that's one that I mentioned that could be a possibility.⁵⁸⁶

⁵⁸⁵ P-727; Testimony of Hodgson on January 12, 2006 at pp. 110-115

⁵⁸⁶ P-727

611. Harris testified that Hodgson's communications reflected the views of the government.⁵⁸⁷
612. At 14:33, Dan Elliott, the local MNR liaison officer who had joined the morning IMC meeting by phone, sent an update to civil servants within MNR regarding Ipperwash. He reported that the IMC was pursuing an injunction to remove the occupiers and would meet again tomorrow to report on progress. He indicated that there was a need to identify a native spokesperson and clearly understand what the occupiers wanted. He advised that OPP negotiators and Kobayashi had gone to the park to see the occupiers but the "native occupants would not talk to them."⁵⁸⁸
613. Elliott advised in the email that the minister had experienced a media scrum and that communications material had been prepared which he would fax to Daryl Smith. Elliott further advised that the minister's office was receiving calls from many Bosanquet Township residents and that Peter Allen, the Deputy Minister's executive assistant, was requesting that those calls be redirected to the local office and a staff person identified to handle the calls using the communications material.⁵⁸⁹
614. At 14:59, Daryl Smith sent an updated version of the communications material distributed the previous day. This version of the communications material took the same position as the one from the previous day and most of the responses were identical. With respect to the question regarding the MNR's position, the communications material now added the information that the park superintendent had served notice that the occupiers were trespassing and requested them to leave but the occupiers did not comply.⁵⁹⁰
615. With respect to the question regarding MNR's role in preventing or terminating such an occupation, the communications material continued to indicate that the handling of all aspects of the situation rested with the OPP and that MNR's role was simply to

⁵⁸⁷ Testimony of Harris on February 16, 2006 at pp. 184-185

⁵⁸⁸ P-819; Testimony of Sturdy on October 19, 2005 at pp. 273-277

⁵⁸⁹ P-819

⁵⁹⁰ P-818

assist. In addition, the material also now indicated that “MNR is currently seeking an injunction to assist in this process.”⁵⁹¹

xiii) OPP Operations

616. Meanwhile, Carson continued to pursue various resources for every eventuality. He obtained an update regarding the status of the helicopter and continued to follow-up on the Light Armoured Vehicles. Seltzer advised him that all the OPP negotiators had been contacted. Two officers who had contacts or relations with Kettle Point were reluctant to act as negotiators because they lived in the area. Carson suggested that Seltzer and Wright have a face to face meeting with the occupiers. He also spoke with Skinner about the role of TRU as back-up and requested that the TRU team report to the Pinery bunk house to be available as needed.⁵⁹²
617. The OPP had continued to follow the status of the injunction based on information from Kobayashi. At 10:37 and again at 10:45, there were references to the blockade meeting to discuss the injunction. At 11:04, Carson advised a briefing meeting that the blockade committee was meeting for a consensus on the injunction. In his second report to Parkin, Carson passed on MNR’s advice that the IMC would meet to discuss their support for the injunction.⁵⁹³
618. At 12:03, Parkin sent an email to Mansell and Duffield and copied it to Fox. The email reflected the information regarding the occupation that Parkin had obtained from Carson. The email advised of the altercation the night of September 4 and indicated that MNR was attempting to obtain an injunction and had tried to serve a notice indicating that the occupiers were trespassing. The email indicated that negotiations were stalled because the occupiers had consumed “quite a bit of alcohol” and were “hostile”. The email further advised that no weapons were used, although

⁵⁹¹ P-818

⁵⁹² P-426, pp. 31-32, 34; P-427, p. 423; P-444A, tabs 9, 10; Testimony of Carson on May 17, 2005 at pp. 119-136, 148-150

⁵⁹³ P-426, pp. 29-30, 32; P-444A, tab 11, p. 65; Testimony of Carson on May 17, 2005 at p. 121

one person had tried to remove a rifle from his trunk but was told not to do so by his own people.⁵⁹⁴

619. At approximately 12:15, Carson spoke with Babbitt who informed him that Chief Tom Bressette was on CBC radio saying that they did not condone what was happening in the park. Carson advised Babbitt that they were picking up the arrest warrants so Babbitt could prepare a press release.⁵⁹⁵
620. At approximately 13:30, Vervoort advised Carson as recorded in the handwritten scribe notes that “Ron Baldwin still on teleconference first hemming and hawing, enough input persuaded them yeah emergency or 2 to 4 weeks.” Carson testified that he was advised that there were two kinds of injunctions: an emergency 24 hour one and another that took 2 to 4 weeks.⁵⁹⁶
621. The scribe notes record that Carson questioned “if Ministry of Natural Resources is not prepared to get an injunction”. Carson testified that Vervoort advised him that he thought that they were prepared to seek an injunction and did not know who was not. Carson testified as follows in regard to his reaction:

My big concern here was that we needed an injunction and I was starting to get a little anxious here when I started hearing discussion about, well, we're not sure which order we're going to get. Is it going to be -- or take a longer period of time to get it?

And they started using time lines like two (2) weeks. Certainly it caught my attention very quickly and -- so I started to challenge them as to, wait a minute here, what's going on?

Like, are they serious about this or is this -- or are they not serious about it? And if it's going to take us two (2) weeks to get it then we need to make sure our media releases start reflecting the time lines and, you know, the -- and start doing some appropriate information work to apprise the public as well.⁵⁹⁷

⁵⁹⁴ P-429; Testimony of Parkin on February 7, 2006 at pp. 36-37; Testimony of Carson on May 17, 2005 at pp. 198-199

⁵⁹⁵ P-444A, tab 13, p. 84; Testimony of Carson on May 17, 2005 at pp. 167-169

⁵⁹⁶ P-426, p. 35; P-427, p. 431; Testimony of Carson on May 17, 2005 at pp. 171-172

⁵⁹⁷ P-426, p. 35; P-427, p. 431; Testimony of Carson on May 17, 2005 at pp. 171-172

622. Fox testified that he had no views about the timing of an injunction and was not aware of Carson's concern that an injunction could take as long as two weeks. Fox agreed that Carson, as the Incident Commander on site, was in a better position than he was to determine what was necessary.⁵⁹⁸
623. In the interim, the OPP had attempted to open a dialogue with the occupiers to no avail. Wright testified that he, Seltzer and Kobayashi had gone to the park. They left at 12:12 and drove Wright's unmarked car down to the sandy parking lot area. They stood at the fence line and attempted to get the attention of the occupiers. Wright recalled people in and around the area. He indicated that he wanted to speak to Glenn George because he had spoken to him previously in August during a fatal motor vehicle accident. His job was to introduce Seltzer to the occupiers but no one wanted to speak to them. Kobayashi was there again to try to give formal notice about trespass.⁵⁹⁹
624. Wright testified that there were a number of natives there, but there was no real dialogue. Wright recalled that when a car came by, he told the occupants that he wanted to talk to Glenn George. They attempted to talk to anyone that went by or was within earshot. He testified that one of the people in the vehicle swore in his general direction and others in and around the store directed comments at him too.⁶⁰⁰
625. At 12:49, Wright called by radio and advised that they were going to wait for someone to come. At 13:20, he called and advised that this was not working, so he was going to try at the camp gate. Wright went to the gate and spoke to Manning and advised that they wanted to open a dialogue. Manning said that his people were happy to have their burial ground. Wright asked if they had a spokesperson and Manning responded that he needed to speak the elders. Manning said that they should come tomorrow at three o'clock.⁶⁰¹

⁵⁹⁸ Testimony of Fox on July 13, 2005 at p. 267

⁵⁹⁹ P-1086, p. 74; Testimony of Wright on February 22, 2006 at pp. 136-142

⁶⁰⁰ P-912; Testimony of Wright on February 22, 2006 at pp. 140-142, 148-149

⁶⁰¹ P-1102; Testimony of Wright on February 22, 2006 at pp. 142-146, 150-152

626. Wright advised Manning that the people from the park were there unlawfully. He also said that there was going to be an injunction and the occupiers would be entitled to come to the hearing to give their side of the story. Manning replied and said that they were not interested because it was white man's court. Wright indicated that they should leave because the province owned the park.⁶⁰²
627. At 13:54, Wright returned from Ipperwash Provincial Park and updated Carson about his attempts to open a dialogue. Wright advised that he had made it clear to Manning that they were trespassing. Wright and Seltzer advised that the occupiers were disorganized and nervous. They wanted the blockades (i.e. the checkpoints) removed but Wright had responded that the OPP was not going away. Carson indicated that the blockade committee was still meeting.⁶⁰³
628. At approximately 14:00, Carson followed up with respect to the Light Armoured Vehicles. He spoke with Elgin Austin of the London Police Department and advised that the OPP would not even think of "taking any action ah of trying to move anybody" before the MNR received the injunction. Nonetheless, Carson wanted to make arrangements for the LAV's out of an abundance of caution. When Austin suggested to Carson that the injunction was not going to be a fairly immediate thing, Carson replied that "Well, there is the emergency type one they can get within a day." Carson went on to say "if there [sic] not prepared to do that then I have to you know we have to really re look at our whole situation here."⁶⁰⁴
629. At 14:17, Bill Dennis brought a copy of the Town of Bosanquet "Reign of Terror Continues" press release into the command post, where Carson was located. According to the scribe notes, the press release stated that residents were very upset and wanted the government to remove the occupants.⁶⁰⁵

⁶⁰² Testimony of Wright on February 22, 2006 at pp. 152-154

⁶⁰³ P-426, pp. 35-36; Testimony of Carson on May 17, 2005 at pp. 172-174, 195-197; Testimony of Wright on February 22, 2006 at pp. 158-162

⁶⁰⁴ P-444A, tab 14, pp. 100-102; Testimony of Carson on May 17, 2005 at p. 181

⁶⁰⁵ P-426, p. 37

xiv) Fox Call with Carson

630. At approximately 14:50, Fox called Carson and told him of his impressions of the IMC meeting. Fox told him that Hutton had attended on behalf of the Premier's Office and indicated that she was an "attractive lady" who he thought was "very much empowered". Fox indicated that the Premier's position was that there should be no different treatment of the people in this situation, in terms of native or non-native and wanted them out. Fox then indicated that he had advised that this was different as it could involve land claims and treaties and then advised "[s]o I said I'm not suggesting for a minute that the course of action is a course of non-action". He told Carson that he had advised the IMC that his theory had always been to "make haste slowly."⁶⁰⁶
631. Fox then told Carson that MNR were against getting the injunction and that they had referred to Criminal Code offences such as mischief and to trespass. However, Fox indicated that they agreed to get the enjoining order. He then complained that the participants had gotten right into the "minutia" of the notice of trespass. Fox told Carson that he had explained to the IMC participants that he was sure that the occupiers had been told that they were trespassing.⁶⁰⁷
632. Fox asked what were the occupiers' demands and Carson advised that they had none and that it was in their "terminology burial grounds." Carson further advised "So there there are no demands other than it's their property and for us to stay the hell off."⁶⁰⁸
633. Fox then again referred to the IMC meeting and indicated that Baldwin had asked why the occupiers couldn't be charged with mischief as they were cutting down their trees and that he had explained that they needed to be identified. Carson then advised that they had identified three individuals and had warrants for their arrest.⁶⁰⁹

⁶⁰⁶ P-444A, tab 16, pp. 115-117

⁶⁰⁷ P-444A, tab 16, pp. 117-118

⁶⁰⁸ P-444A, tab 16, p. 119

⁶⁰⁹ P-444A, tab 16, pp. 119-121

634. Fox then again raised the IMC meeting and said that he had prefixed his remarks with a briefing in which he explained that there were 35-40 people and said that he thought that he wouldn't have to explain any more. He then indicated that he thought that the "whole f**in group is on some sort of testosterone [sic] or testausterine [sic] high" and that he had told them "here's the strategy that those folk will employ. The women and children will be at the forefront." Fox indicated that was what the police would be faced with.⁶¹⁰
635. Jai testified that she did not assume from the information provided that because women and children were present, if the OPP tried to arrest the occupiers, the occupiers would put their women and children on the front line. She didn't recall being advised of the smashing of the cruiser window and regarded the occupation as peaceful. She testified that she had not turned her mind to the question of what would happen if the police attempted to arrest the occupiers identified as responsible for cutting down trees.⁶¹¹
636. Fox then told Carson that another person from MNR had raised a concern that warriors might show up. Fox said that he had acknowledged that it was a possibility and that the police had information that there were people in the park from other territories. Fox then said "But there is no negotiating with these people I guess" and Carson advised that the occupiers were to talk to them tomorrow at noon.⁶¹²
637. Fox then said that Baldwin had indicated that the numbers had dwindled to seven and Carson and Fox acknowledged that the problem was that numbers could increase as there was unlimited access between the military base and the park as the OPP could not control the access points. The conversation concluded in part as follows:

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

CARSON: Okay.

⁶¹⁰ P-444A, tab 16, p. 121

⁶¹¹ Testimony of Jai on September 12, 2005 at pp. 107-110, September 13, 2005 at pp. 110-112

⁶¹² P-444A, tab 16, p. 123-124

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

CARSON: Good good okay well we'll hold the line I've got another line ringing here.⁶¹³

638. Fox testified before the Commission that when he referred to “the whole f** group” he was somewhat inaccurate. He further testified that he knew that at the end of the meeting of September 5, 1995, the IMC was recommending an injunction and he perceived that Hutton was in favour of an emergency one.⁶¹⁴

639. Fox testified that he was venting his personal frustration at the time and speaking loosely. Fox further testified that Carson did not need to know Fox's views of the IMC and agreed that it was “possible” that it was not appropriate for him to tell Carson the views of the IMC. When asked if not having such communications would be part of the separation of government and police, Fox testified that that would be “part” of it. Fox testified that Hutton never asked him to communicate any message to Carson or any other OPP officer and that he never told her that he would be contacting the OPP to convey what had transpired at the IMC meeting.⁶¹⁵

640. Carson testified before the Commission that during the phone call with Fox, Fox had advised that one injunction could take up to two weeks. Carson testified as follows:

That certainly created some anxiety for me, I can tell you that. And I certainly felt that, you know, we needed the support of an injunction earlier than a two (2) week period.

And I felt that the progression of events, the confrontation that took place when they first came into the park and the – the refusal for any discussion to take place to this point already indicated that, you know, co-operation wasn't something that I was going to see a lot of.⁶¹⁶

⁶¹³ P-444A, tab 16, pp. 124-126

⁶¹⁴ Testimony of Fox on July 13, 2005 at pp. 47-48, 59, 265-266

⁶¹⁵ Testimony of Fox on July 13, 2005 at pp. 49-51, 60-61, July 14, 2005 at p. 51

⁶¹⁶ Testimony of Carson on June 2, 2005 at pp. 33-34

xv) OPP's Continued Operations and Injunction

641. At a briefing at 15:07, Carson reported that “Ron Fox is sitting on the ‘blockade committee’. Sounds like they’re going to get an emergency order.” Carson then advised that they did not have the paperwork for the injunction going yet. Kobayashi confirmed that their intention was to get an injunction. He further advised that research had been done by MNR and that the burial site was at Kettle Point, not at the park.⁶¹⁷

642. At approximately 15:45, Carson made another call with respect to the LAV. During the call, he indicated that at this point in time the OPP was simply securing the general area and that the injunction would be ready “at best late tomorrow”. Carson indicated that once they secured the injunction, the OPP would have to decide “how we act and anything we do at that point would or could be perceived as overt”. Carson noted that “that’s when our risk increases.”⁶¹⁸

643. At approximately 16:15, Carson spoke with Parkin and advised him in a taped phone call of his understanding of what had occurred at the IMC:

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

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

Carson: W (u/i)

Parkin: So.

Carson: Are we prepared to live with that?⁶¹⁹

644. Parkin testified before the Commission that he understood that at that point the government had not made a decision yet. He further testified that when Carson used

⁶¹⁷ P-426, pp. 37-38

⁶¹⁸ P-444A, tab 19, p. 141

⁶¹⁹ P-444A, tab 19, p. 169

the word “waffle” he understood that Carson wanted the government to make a decision about the injunction.⁶²⁰

645. Parkin and Carson also discussed the containment issue:

Parkin: Right and the more that would go in there the harder it's going to be for us to get out.

Carson: Yeah but the reality is that you know.

Parkin: Go in the other way.

Carson: That's right a hundred of em go in there so like you know.

Parkin: We make an issue of stopping them on Army Camp they'd just go in the back door.

Carson: That's right so yeah there's no [unintelligible] to go in there I don't think.

Parkin: Ah I agree with you but it sets up a big problem for [unintelligible]

Carson: Oh I know I know but until we can get control that perimeter in the park itself we're at a loss.⁶²¹

646. Parkin testified that this call reflected his concerns about the geography of the park, specifically that they did not know how many occupiers were going in, whether they had weapons, and generally, what they were dealing with.⁶²²

647. At 17:02, Carson spoke with Inspector Linton who had spoken with Chief Tom Bressette earlier in the day. Linton advised Carson that, as a result of the information he had received from Chief Tom Bressette, Linton was concerned about cottages at the end of Outer Drive. There was also a concern that the Pinery Park would be next.⁶²³

⁶²⁰ Testimony of Parkin on February 28, 2006 at pp. 58-59

⁶²¹ P-444A, tab 21, pp. 167-168

⁶²² Testimony of Parkin on February 8, 2006 at pp. 52-56

⁶²³ P-426, p. 4; Testimony of Carson on May 18, 2005 at pp. 16-18

648. At 17:27, Kobayashi and Vervoort reported that Sturdy was working on a 24 hour affidavit but needed to know the names of the occupiers in the park so Carson instructed Wright to provide the information. Kobayashi reported that Sturdy was going to get the affidavit prepared and signed tomorrow. Kobayashi further advised that they should have it tomorrow.⁶²⁴
649. At the briefing at 18:07, Kobayashi again advised that Sturdy would have the draft affidavit done that night, the lawyer would get back to him tomorrow and then the affidavit would be sent to Sturdy to be signed. Sturdy testified before the Commission that he spent most of his time on September 5, 1995 working on the affidavit for the injunction.⁶²⁵
650. Carson advised at the briefing as recorded in the scribe notes: “Advised members that court injunction is moving along. Advised members to keep tonight quiet, keep an eye on checkpoints and advise logistics what your locations are.”⁶²⁶
651. Carson testified before the Commission that the planned approach to this incident was by means of an injunction and while there were some obstacles at the Ministry level regarding what type of injunction, they were going to pursue that approach. Carson further testified that he wanted to keep this as low-key as possible, hold tight, wait for the injunction and then decide how to proceed.⁶²⁷
652. At approximately 18:30, Carson and Linton drove down toward the park so that Carson could show him the area. Carson then went off duty and Linton took over from him as Incident Commander for the night.⁶²⁸
653. Later that night, Linton spoke with Parkin in another taped phone call and advised that there was a possibility of an injunction the following day.

⁶²⁴ P-426, p. 41; Testimony of Carson on May 18, 2005 at p. 18

⁶²⁵ P-426, p. 41-42; Testimony of Sturdy on October 19, 2005 at pp. 60-61

⁶²⁶ P-426, p. 42

⁶²⁷ Testimony of Carson on May 18, 2005 at pp. 31-32

⁶²⁸ P-426, pp. 42-43; Testimony of Carson on May 18, 2005 at pp. 32-33

DL: And ah – I guess if we – There's supposed to be an injunction tomorrow.

AP: Mmhmm.

DL: As early as tomorrow...

AP: As early as tomorrow?

DL: Yeah

AP: Oh, that's a change – 'cause today when we were talking to them they were going for – they hadn't even [inaudible]...

DL: To look at a twenty-four hour injunction?

AP: Yeah, the emergency or the standard. And they were looking at the standard injunction which is two weeks. But that's good.⁶²⁹

654. Linton and Parkin then discussed that once a court ordered an injunction, the OPP still needed to make some decisions. Their conversation proceeded in part:

AP: Well, that's right. And we've got – you know. We're kind of looking at two options. I mean you've got ah – Because of the thing that's going on out west, and the length of time that's dragged on that, you know. They may have some security that we wouldn't go in...

DL: Yeah.

AP: ... So therefore we may still have an element of surprise that we could use if we [inaudible] the dynamic thing. And then the other is to kind of go up to the front door at ah – you know eleven o'clock or something and say hey this is the injunction and you're out of here and try to do it peacefully.

DL: Yeah.

AP: And so those are the decisions we're going to have to make.⁶³⁰

⁶²⁹ P-1057, p. 4

⁶³⁰ P-1057, pp. 4-6

xvi) Events on the Ground

655. On the evening of the 5th, the occupiers lit a fire and moved some picnic tables into the sandy parking lot. At about 22:00, the police went to the sandy parking lot to check out what was happening in the parking lot. To Neil Whelan, the first officer on the scene, it appeared that the occupiers were building barricades with picnic tables, so he wanted to remove them. Officers expressed the opinion just following the incident that the OPP were “baited” into a confrontation with the occupiers.⁶³¹
656. When they arrived to check out what happened, a confrontation between the occupiers and the police ensued. Several police officers testified that before or during the confrontation, they communicated to the occupiers that the sandy parking lot was not part of the park, that they could not come onto the sandy lot or that they should go back into the park. Mark Gransden said that he explained that the presence of the occupiers and the picnic tables in the parking lot constituted the offence of mischief.⁶³²
657. Some of the occupiers acknowledged that the OPP viewed the sandy parking lot differently than the park. David George testified that he and others had put picnic tables out there to assert ownership. He further testified that, after this incident, he understood that the OPP did not want the picnic tables on the sandy parking lot. David also said that it was fair to say that the OPP would not come into the park as long as the occupiers stayed in the park. Clayton George agreed that it was obvious to him that it was safe in the fenced in park because he knew from the history of the park and the camp that OPP had never pressed the point and had always retreated.⁶³³
658. The occupiers and the police both acknowledge that during the incident a few police cruisers approached and pushed the picnic tables with their cruiser. Some of the

⁶³¹ P-1154, p. 3; P-1372; P-1621; Testimony of Whelan on March 29, 2005 at pp. 145-148

⁶³² Testimony of Gransden on March 30, 2006 at pp. 105-107; Testimony of Dougan on April 3, 2006 at pp. 97-98; Testimony of Marlin Simon on September 30, 2006 at pp. 184-185

⁶³³ Testimony of David George on October 20, 2004 at pp. 33-34, November 1, 2005 pp. 127-128; Testimony of Clayton George on November 8, 2004 at p. 79

occupiers testified that they saw some minor injuries to some of the First Nations people sitting on top of the picnic tables.⁶³⁴

659. Some of the occupiers admitted that they threw, or saw another occupier throw, one or two picnic tables onto the cruiser, and most admitted that they threw rocks at the officers and the cruisers. Constable Bill Bittner was hit in the leg with a rock and his windshield shattered into shards of glass while he was inside. Radio transmissions from the time of the event report that the windows of more than one cruiser were damaged by the rocks.⁶³⁵
660. At 23:42 on the 5th, Constable Larry Parks reported that he had heard what he believed to be 50 to 100 rounds of automatic gunfire. He believes that it was about a kilometre away, down by the beach of the camp. He then confirmed for the command post that he believed he had heard fully automatic gunfire. Some of the officers manning the checkpoints at the time also heard Parks' reports, or subsequently learned about it in briefings.⁶³⁶
661. Tina George testified that she accompanied Russ Jewell and Marlin Simon on target practice at the camp the night of September 5th. She initially stated that she did not hear the gunshots. However, when it was put to her that the Commission anticipated evidence that the police heard gunshots on the 5th, Tina recalled that on either the night of the 4th or the 5th, Russ and Marlin fired between one and ten shots in the bush by the inland lakes of the camp.⁶³⁷

⁶³⁴ Testimony of Whelan on March 29, 2006 at pp. 145-146; Testimony of Gransden on April 3, 2006 at pp. 103-105; Testimony of David George on October 20, 2004 at pp. 14-17; Testimony of Stewart George on November 2, 2004 at pp. 61-65; Testimony of Marlin Simon on September 29, 2004 at pp. 48-51

⁶³⁵ P-1241; Testimony of David George on October 20, 2004 at pp. 14-17; Testimony of Stewart George on November 2, 2004 at pp. 61-65; Testimony of Marlin Simon on September 29, 2004 at pp. 50-55; Testimony of Bittner on May 17, 2006 at pp. 178-179; P-1241

⁶³⁶ P-1226; P-1227; Testimony of Parks on March 28, 2006 at pp. 259-261; Testimony of Poole on May 16, 2006 at pp. 54-56; Testimony of Root on May 16, 2006 at pp. 360-361

⁶³⁷ Testimony of Tina George on January 19, 2005 at pp. 171-176

662. The next day, she returned to the Inquiry and said: “I’d like to change my testimony from about when the target practising took place.” She stated that she was “positive” that it did not happen between September 4th and 6th because she was “certain” that she did not see guns before Dudley George was shot. She then agreed that she was under pressure the previous night because she had realized that her evidence could be damaging.⁶³⁸

xvii) The Morning of September 6, 1995

663. On September 6, 1995, the OPP continued to proceed in accordance with Project Maple. Officers continued to contain the situation, obtain intelligence and attempt to speak with the occupiers while waiting for the provincial government to make a decision with respect to an injunction.

664. When he came on duty on the morning of September 6, Carson was briefed on the events of the previous evening and advised that picnic tables were stacked in the sandy parking lot. Carson sent Wright to investigate. After going to the area, Wright reported that there were twelve tables, two tents and two teenagers in the sandy parking lot. Police witnesses testified that the picnic tables were acting as a barricade and preventing access to the sandy parking lot, which was public property, so ERT members were sent to remove the picnic tables from sandy parking lot.⁶³⁹

665. At approximately 08:30, between 10 and 15 ERT members attended the sandy parking lot and removed the picnic tables. A couple of occupiers were present in the parking lot initially, but left when the police arrived. There was no physical confrontation and police left the scene after removing the picnic tables in a flatbed truck.⁶⁴⁰

⁶³⁸ Testimony of Tina George on January 20, 2005 at pp. 8-14

⁶³⁹ P-426, pp. 47-48, 49; Testimony of Wright on March 7, 2006 at pp. 71-75; Testimony of Huntley on April 27, 2006 at pp. 79, 85; Testimony of Korosec on April 6, 2006 at p. 145; Testimony of Graham on April 21, 2006 at pp. 61-63

⁶⁴⁰ Testimony of Gransden on March 30, 2006 at pp. 120-122, 212-214; Testimony of Speck on March 22, 2006 at pp. 237-238; Testimony of Jacklin on April 25, 2006 at pp. 171-174, April 26, 2006 at pp. 11-14; Testimony of Dougan on April 3, 2006 at pp. 102-104, 160-161; Testimony of Huntley on April 27, 2006 at pp. 79-81, 157-159;

666. At 10:44 hrs, Detective Inspector Jim Hutchinson spoke to Carson on the phone. They discussed this picnic table incident and Carson indicated that “we made a point that there is a line in the sand here,” referring to the sandy parking lot.⁶⁴¹

xviii) Media Reports on September 6

667. On the morning of September 6, 1995, there were a number of articles in the media reporting on the occupation. One editorial indicated that the reason for the occupation of the park were not clear:

Why the natives decided to occupy the park is not quite clear. There was no public attempt at discussion prior to the protest and no indication that Ipperwash Park would become a flashpoint.

The natives claim there is a burial site in the park. A government spokesman says he is unaware such a site exists.

If this burial site was a concern to the natives, one would assume the issue would have been brought to the public’s attention at an earlier date.

Which person or group of people is leading the protest at Ipperwash is also unclear.⁶⁴²

668. Another editorial referred to the issue of Camp Ipperwash but distinguished what had occurred at the park. The editorial noted that the group had raised the issue of a burial ground but opined that it was a serious mistake to “make this kind of protest as a public opening foray into negotiations”. The editorial concluded:

It appears to be a small, extreme group behind this seizure. The extreme elements in native society should be treated just as other anarchist groups would be treated in our society, no matter if their cause is just.

There are those in the native community who have the patience to continue to deal with their legitimate complaints through legitimate

Testimony of Graham on April 21, 2006 at pp. 63-64, 134-136; Testimony of Cousins on January 12, 2005 at pp. 35-40

⁶⁴¹ P-444A, tab 30, p. 230-231

⁶⁴² P-955

channels. Protests and civil unrest have drawn attention to certain causes and likely will continue to do so.

But just as we cannot condone those who are frustrated with the legal system taking the law into their own hands, neither can we condone it when a native rights claim first comes to public attention through an illegal act, such as blockade and seizure of public land. This is especially true when it appears to be an act of a self-appointed band of warriors, rather than a considered action of the larger native community in question.⁶⁴³

669. One article reported in some detail the comments of the Mayor of Bosanquet and his demand that provincial and federal officials remove the occupiers, enforce the laws equally and stop the “reign of terror”. Marcel Beaubien was reported as saying that the law would be enforced no matter who was involved and that “if you are there illegally, you will be asked to leave.” The same article quoted federal Member of Parliament Rose-Marie Ur as saying that this week’s occupation was caused by a “small extremist group” who she felt were not reflective of the total native community. Ur was reported to say that while progress on the return of Camp Ipperwash was slow, it had been moving in the right direction but the occupation of the park would not help.⁶⁴⁴

670. In an article entitled “It’s our Park, Ontario Claims – Court Asked to End Native Takeover”, Minister Hodgson was referred to as indicating that the government would seek any legal means to remove the occupiers, including an injunction. The article further reported Hodgson’s comments as follows:

“No one wants to have a confrontation,” he said. “Public safety’s always at the forefront of these decisions but on the other hand there has been, in our opinion, illegal activity taking place and it should be dealt with.”⁶⁴⁵

⁶⁴³ P-707

⁶⁴⁴ P-955

⁶⁴⁵ P-972

671. Several articles referred to the government seeking an injunction. At least one article continued to report OPP Sergeant Babbitt as saying that “officials with Ontario’s Natural Resources Ministry decided yesterday to go to the courts.”⁶⁴⁶

672. In fact, the government had not yet made its decision and it appears that someone within the office of the Deputy Minister of MNR complained to the OPP about the premature release of a decision regarding an injunction. While none of the witnesses who testified before the Commission had any recollection of the issue, Babbitt raised the complaint with Wright in a taped phone call at approximately 8:20 on the morning of September 6, 1995:

BABBITT: The Deputy Ministers office called from Ministry of Natural Resources.

WRIGHT: Yeah.

BABBITT: Upset that ah it indicates that they have applied for the injunction when is fact they haven’t.

WRIGHT: Yeah.

BABBITT: And they’re meeting again at nine (9) thirty (30) this morning to discuss that.⁶⁴⁷

673. Babbitt went on to make reference to his conversation the previous day with Carson and indicated that Babbitt had been told that they could release the information about the injunction and that “we did say that”. Babbitt reported to Wright that MNR was of the view that they were still discussing the issue, had not yet decided and were to have a meeting this morning at 9:30:

BABBITT: Um but they just they’re of the opinion that ah they’re still discussing it and they have not even decided whether or not they will apply for the affidavit.

WRIGHT: Oh okay so.

⁶⁴⁶ P-972

⁶⁴⁷ P-444A, tab 23, p. 186; Testimony of Vrancart on October 27, 2005 at pp. 111-112; Testimony of Sturdy on October 19, 2005 at pp. 263-264

BABBITT: And they got a meeting this morning at nine (9) thirty (30) so now you know Darryl is they said to him that ah that he says is back peddling err whatever now or backtracking and tryin [sic] to ah tiptoe around the the [sic] issue.

WRIGHT: Yeah.

BABBITT: When the media start cause they're calling saying when's the injunction coming when's the injunction coming.

WRIGHT: Yeah.

BABBITT: Well it hasn't even been applied for now.

WRIGHT: Yeah yeah.

BABBITT: Of course they told me that yesterday.

WRIGHT: Well that's not necessarily a bad thing so we put the heat on those guys right.⁶⁴⁸

674. Wright testified before the Commission that he understood that MNR was always going to get an injunction and now appeared to be backtracking. He further testified that his personal opinion was that it was not a bad thing that they put the heat on MNR.⁶⁴⁹

675. Wright again repeated to Babbitt his view that the government needed to make a decision with respect to an injunction saying as follows in the taped phone call:

WRIGHT: That's not necessarily a bad thing.

BABBITT: So.

WRIGHT: That everybody's putting the heat on them like shit or get off the pot.

BABBITT: Yep.

⁶⁴⁸ P-444A, tab 23, p. 188

⁶⁴⁹ Testimony of Wright on February 22, 2006 at pp. 193-196

WRIGHT: Right cause that's the only way we're going to do it.⁶⁵⁰

676. Wright testified before the Commission that he meant that the only way the OPP would go into the park and deal with the occupiers was with an injunction from the courts.⁶⁵¹

xix) Government Meetings on September 6, 1995

677. As agreed at the IMC meeting on September 5, 1995, the lawyers, Jai, Christie and McCabe, had met later that afternoon to review the options and obtained some input from Scott Hutchison, another lawyer at MAG. Jai testified that their recommendation was to proceed with a regular injunction on notice but on an expedited basis.⁶⁵²

678. Jai prepared a briefing for the Attorney General. The briefing note advised of the occupation on the evening of September 4 and stated that there had been “no violence”.⁶⁵³

679. Jai testified that she did not recall the smashing of the window and had not included it in her handwritten notes at the time. She agreed that such conduct is not consistent with a peaceful occupation. Jai characterized what had happened at the time of the takeover of Camp Ipperwash as “minor incidents”. Although she learned in the August 2, 1995 IMC meeting that members of the Stoney Point Group had driven a bus through the military base's gate and the drill hall's doors, then backed up and hit a military jeep dragging it forty feet, she testified that she had understood that no one was in the jeep and had not drawn any inferences from the information.⁶⁵⁴

680. Jai recommended in the briefing note that a civil injunction be sought to provide court authority for removing the occupiers of the park. The briefing note advised that the

⁶⁵⁰ P-444A, tab 23, pp. 188-189

⁶⁵¹ Testimony of Wright on February 22, 2006 at pp. 193-196

⁶⁵² Testimony of Jai on August 31, 2005 at pp. 23-25, 29

⁶⁵³ P-512; Testimony of Jai on August 31, 2005 at p. 25

⁶⁵⁴ P-506; Testimony of Jai on September 12, 2005 at pp. 102-111

injunction could be sought on either “an emergency *ex parte* basis or an interim (less urgent) basis”. Jai testified before the Commission that she had never been involved in preparing an injunction and relied on the advice of two lawyers at MAG in the civil branch, Tim McCabe and his junior Elizabeth Christie.⁶⁵⁵

681. The briefing note further advised that the “chances of success would be higher” with an “interim” or regular injunction but “delay could make it more difficult to remove the occupiers”. Jai testified that she advised Yan Lazor, her superior and the acting Assistant Secretary of ONAS, of Fox’s assessment that the OPP saw it as a “peaceful occupation of a park that had been closed for the season”, and not a major risk to public safety. Lazor approved the briefing note.⁶⁵⁶

682. At 7:19, Sturdy sent an email to Peter Allen, Executive Assistant to the Deputy Minister of MNR and Norm Richards, the Director of Parks Ontario. He advised that 4 OPP vehicles had been damaged by rocks and 100-150 rounds of automatic gun fire were reported from within Ipperwash Provincial Park. He further advised that heavy equipment had been heard to be working within the park but the type was unknown and that helicopter surveillance confirmed that buildings in the park had been broken into and were being used. Sturdy advised Allen and Richards of the “Reign of Terror Continues” press release and advised that they continued to receive complaints and reports of concerns from local residents.⁶⁵⁷

683. Sturdy testified that he did not know if the reported gunfire was connected to hunting activities as he received the report from Kobayashi who received it from the OPP. However, he testified that he did understand it to be accurate and reliable. He further testified that, assuming that the gunfire had been related to hunting activities, he still would have been concerned about reports of 100 to 150 rounds of gunfire at night.⁶⁵⁸

684. Sturdy forwarded to Allen, Richards and others the email by Elliot from the previous day which reported on the IMC meeting and the lack of progress in having

⁶⁵⁵ P-512; Testimony of Jai on August 31, 2005 at p. 134

⁶⁵⁶ P-512; Testimony of Jai on August 31, 2005 at pp. 29, 38, 45-46

⁶⁵⁷ P-787; Testimony of Sturdy on October 19, 2005 at pp. 279-283

⁶⁵⁸ Testimony of Sturdy on October 19, 2005 at pp. 64-68, 279-283

- discussions. Sturdy advised in the email that he would review the draft affidavit for the injunction before the IMC meeting today.⁶⁵⁹
685. At approximately the same time, Fox called Carson to receive an update so that he could provide “the Solicitor General update” to the IMC. Fox was advised that the occupiers had started a fire on Army Camp Road and police responding to the scene had been pelted with rocks. Carson further advised Fox of the damage done to the cruisers and that there had been picnic tables piled outside the park which was adjacent to private property. Carson advised Fox of his concern that if the tables were set on fire, there would be damage to the homes. Carson did not advise him of the reports of gunfire.⁶⁶⁰
686. Fox testified that from his update with Carson, he believed that the situation was escalating. He testified that he was concerned that there were a number of things occurring simultaneously which raised issues of police officer safety and public safety, including the issue of fires which could spread to adjacent buildings.⁶⁶¹
687. Jai testified that she called Fox the next morning to ensure that she had the latest information; however, her notes of the conversation primarily recorded the OPP’s information of the previous day. Her notes say that i) arrest warrants had been issued for three people for the incidents on the evening of September 4 including assault, ii) that the group was less organized and controlled than the one that took over Camp Ipperwash, and iii) that there was a greater consumption of alcohol. The only reference to an incident the night of September 5 was to a fire started on the road. Jai could not recall anything other than what was in her notes.⁶⁶²
688. Jai testified before the Commission that she then met with Taman, the Deputy Attorney General to whom Lazor reported, and advised that the legal subcommittee had met and recommended an injunction but felt that there was no case for an *ex*

⁶⁵⁹ P-787

⁶⁶⁰ P-513; Testimony of Carson on May 18, 2005 at pp. 62-65; Testimony of Fox on July 12, 2005 at pp. 24-27; Testimony of Carson on May 18, 2005 at pp. 176-177

⁶⁶¹ Testimony of Fox on July 12, 2005 at p. 21

⁶⁶² P-512; Testimony of Jai in August 31, 2005 at pp. 32-38

parte injunction as there was “no particular urgency”. She advised him that the OPP wanted an injunction and that was one of the reasons the legal sub-committee had recommended one. She further testified that she probably indicated that some people at the IMC wanted to act on a more urgent basis but that the OPP’s view was that the government should proceed cautiously.⁶⁶³

689. Taman testified that he did not understand at the time that the OPP regarded seeking an injunction as a priority item and wanted MNR to seek it rapidly. He understood that the police had no particular desire to go into the park, that they had no strong view with respect to an injunction and were not anxious to have steps taken in that regard while they were trying to stabilize the situation. He testified that he understood that the Premier’s Office was pressing for an injunction.⁶⁶⁴

690. McCabe, who had not attended the IMC meeting the previous day, testified that he was at the meeting with Taman. McCabe, a very experienced civil litigator, testified that he thought that it was certainly a case for an injunction and that a regular injunction would be successful. However, as he understood the circumstances at the time, he thought that if the government were to proceed under an *ex parte* rule, the judge would likely either dismiss it or (more likely) adjourn so that they could serve. Therefore there was a risk that proceeding under an *ex parte* rule could take longer. He thought that the proper course would be to provide notice and seek an abridgement of the notice period; however, he testified that there was nothing wrong or reprehensible in proceeding under the *ex parte* rule. If the government understood the risks involved, it could do that.⁶⁶⁵

691. Jai testified that she and Taman met Harnick and that they briefed him on the limited information that they knew about the occupation. Jai testified that they recommended seeking a regular injunction on an expedited basis and that Harnick was receptive to their recommendation. Harnick testified that he decided that they should proceed with

⁶⁶³ Testimony of Jai on August 31, 1995 at pp. 38, 46-51

⁶⁶⁴ Testimony of Taman on November 14, 2005 at p. 88, November 15, 2005 at pp. 72-73, 76

⁶⁶⁵ Testimony of McCabe on September 28, 2005 at pp. 8-10, 65-70

an injunction as soon as possible and left to the lawyers the issue of whether it should be brought on notice or not.⁶⁶⁶

692. Taman testified that he recalled that Harnick had been speaking with the Premier and members of Cabinet and that it had been decided that efforts should be made to get legal instruments in place in the form of an injunction in order to remove the occupiers and that that should be done within 24 hours. However, Taman's recollection is contradicted by Jai, Harnick and others. Harnick and Harris both testified that they did not speak to each other prior to Cabinet. Runciman could not recall but did not think that he attended a meeting on the morning of September 6 before Cabinet. Furthermore, Taman's recollection is inconsistent with the comments at the IMC meeting on September 6 that the Attorney General recommended seeking an injunction as soon as possible as recorded by several witnesses.⁶⁶⁷

693. Harris testified that by the time the IMC meeting took place on September 6, 1995, there were concerns about possible weapons, that outsiders could take control and that the occupation would no longer be in the control of the occupiers. Hutton had told him that the OPP could not control the site and he was aware that in other situations around this time that others had joined occupations or protests and control had been lost. His view was that the longer the occupation took place, the more likely that reinforcements could come in. The sooner that it could be dealt with and ended the better, so as to minimize safety issues.⁶⁶⁸

xx) IMC Meeting of September 6, 1995

694. The IMC meeting began as scheduled at 9:30. There were 26 people in attendance including several civil servants who had not been present the day before, including Tim McCabe and Scott Hutchison. In accordance with Jai's agenda, the IMC

⁶⁶⁶ Testimony of Harnick on November 24, 2005 at pp. 80-81, 88-90; Testimony of Jai on August 31, 2005 at pp. 56-60

⁶⁶⁷ P-536; P-636; Testimony of Jai on August 31, 2005 at pp. 56-60; Testimony of Harnick on November 14, 2005 at pp. 98-101, 107-108; Testimony of Harris on February 14, 2006 at pp. 108-111; Testimony of Runciman on January 9, 2005 at p. 120; Testimony of Taman on November 14, 2005 at pp. 107-108

⁶⁶⁸ Testimony of Harris on February 14, 2006 at pp. 96-97, 100-102, 122-124

meeting began by reference to the previous day's meeting. The minutes of the September 6, 1995 meeting note that the previous day's "next steps" had been "followed up on as appropriate".⁶⁶⁹

695. The next item on Jai's agenda was "media". Bangs observed that the MNR were following the option for an injunction which was out in the media. Hutton commented at the meeting that an OPP spokesperson was quoted in the press as having said "no effort being used". At the Commission, Hutton testified that she would have been concerned with the OPP speaking on the government's behalf and that his quotes did not reflect the government's message. There was a reference to press clippings and Allen noted that the word "negotiation" had been used but they shouldn't use the word because it denoted things that would not be happening.⁶⁷⁰
696. Fox then provide an update. According to notes taken at the time, he advised the IMC that that an interim spokesperson, Bert Manning, had been "appointed" and a meeting "scheduled" for noon today. The occupiers had made no demands but asserted it was their land and raised the issue of a burial ground. The number of occupiers was still estimated as between 35 to 40 and the total numbers had never been reduced to 7 people. Fox repeated that there was no barrier between the camp and the park and therefore that numbers fluctuated. He also noted that the Chief and Council of the Kettle and Stony Point Band did not sanction the occupation and that this had been reported in the *London Free Press*. Three people had been identified and warrants for their arrest issued. Fox further advised that there had been a "controlled" fire on Army Camp Road and that rocks and bottles had been thrown at the police when they responded. There had been no use of firearms but Carson said that the use of alcohol was high.⁶⁷¹

⁶⁶⁹ P-509; P-536; Testimony of Jai on August 31, 2005 at pp. 72-73

⁶⁷⁰ P-536; P-636; Testimony of Hipfner on September 15, 2005 at pp. 103-104; Testimony of Hutton on November 23, 2005 at pp. 72-77

⁶⁷¹ P-536; P-636; Testimony of Hipfner on September 15, 1995 at pp. 105-107; Testimony of Jai on August 31, 1995 at pp. 77-79

697. They talked about the anticipated meeting with the occupiers. Hutton testified that she was concerned that the discussions not get into substantive negotiations while the occupation was on-going. She indicated that no one other than MNR and the OPP should be involved in discussions because they might get into substantive negotiations.⁶⁷²
698. Allen, the executive assistant to the Deputy Minister of MNR, indicated that MNR viewed this as a police issue and wanted to take a back seat. Fox referred again to the noon hour meeting and advised that the occupiers had been notified and would again be told today that they were trespassing and asked to leave and that the OPP would try to determine what the occupiers' demands were.⁶⁷³
699. Sturdy, the MNR zone manager for south-western Ontario, provided a further update from the ground. Sturdy said that there was heavy equipment work in the park, park buildings were being broken into, and MNR staff were being peppered with calls from local residents expressing their concerns, fear and anger. He said that there was a groundswell of concern and anxiety.⁶⁷⁴
700. The specific concerns and comments which local residents expressed to MNR officials were summarized in an email from Dan Elliott to others within MNR that afternoon as follows:
- Inquiries to the Ministers Office and Premiers Office have been redirected to Dan Elliott in Aylmer. Concerns raised by the public are as follows:
 - Want Premiere Mike Harris to make a public statement
 - Residents safety at risk
 - School Children in area are emotionally upset and parents are requesting police escorts to ensure safety
 - Residents want this issue dealt with in a safe and timely manner

⁶⁷² P-636; Testimony of Hutton on November 22, 2005 at pp. 43-47

⁶⁷³ P-536; P-636

⁶⁷⁴ P-636

- Government needs to take a hard stand NOW or residents will act themselves
- Concerned that homes to the west will be next
- Concern that police cannot guarantee public safety and protection of property
- Want reassurance that action will be taken against natives occupying the park and that residence will not be subject to retaliation by native occupants [emphasis in the original] ⁶⁷⁵

701. Sturdy then advised the IMC of the reports of automatic gunfire. Hutton asked “Can we confirm that?”⁶⁷⁶

702. Hutton testified that it was important to have the report of gunfire confirmed because of concerns for public safety and escalation. Christie also testified that the issue of whether or not there was gunfire was relevant to the IMC as public safety was the paramount issue.⁶⁷⁷

703. Fox testified that he thought that the report of gunfire “is and was a significant piece of information”. Fox further testified that it would be prudent to want to confirm the report but did not recall that it was Hutton who asked for the confirmation.⁶⁷⁸

704. While awaiting confirmation, the meeting proceeded to the next item on Jai’s agenda, the reports of the briefings with the ministers. Bangs, the executive assistant to Minister of Natural Resources Hodgson, advised that his minister had communicated the messages agreed upon but his minister no longer wanted to be the spokesperson. He felt that the matter was spiralling out of control and that the OPP should be the spokesperson. There was a question of what a minister could say now that the OPP was handling the issue especially now that charges had been laid. David Moran,

⁶⁷⁵ P-261

⁶⁷⁶ P-636

⁶⁷⁷ P-636; Testimony of Hutton on November 22, 2005 at pp. 27-29; Testimony of Christie on September 26, 2005 at pp. 134-137

⁶⁷⁸ Testimony of Fox on July 12, 2005 at p. 43, July 14, 2005 at p. 27-28

Executive Assistant to Attorney General Harnick, objected that the OPP could not speak on behalf of the government.⁶⁷⁹

705. Moran advised that his minister was open to direction from the Premier's Office as to which ministry would speak publicly on behalf of the government on the issue. Christie recalled that Kathryn Hunt responded that Minister Runciman had a reservation in view of the protocol of the MSG to not be involved in the day-to-day operations of the police. Allen suggested that the spokesperson be local, but Hutton disagreed and indicated that "ministers cannot duck if scrummed".⁶⁸⁰
706. Hutton testified that she believed that there would be an expectation by the public and the media that the provincial government would respond, particularly on a day when the ministers and the Premier were at Queen's Park for a Cabinet meeting. She further testified that regardless of public or media expectations, she felt that for the sake of overall safety in the long term, the government should indicate that it did not condone the behaviour and because of the illegal nature of the activity, it would not be giving in to it in any way.⁶⁸¹
707. The participants also discussed the injunction. Moran said that Harnick had indicated that if the Attorney General was being asked to seek injunction, they would do it as soon as possible. Jai gave a specific update that she had met with the Deputy Attorney General and the Attorney General. The direction from the Attorney General was to apply for a civil injunction as soon as possible. McCabe advised of the process for an injunction and indicated that the best case scenario was Friday.⁶⁸²
708. Hutton testified that she was concerned that the best case Friday comment might mean slippage, that the government would not get into court until the next week. Given that there was no control of access to the park, she and the Premier were

⁶⁷⁹ P-636

⁶⁸⁰ P-636; Testimony of Christie on September 27, 2005 at pp. 27-32; Testimony of Jai on August 31, 2005 at pp. 87-89; Testimony of Hutchison on August 29, 2005 at pp. 50-56; Testimony of Hunt on November 2, 2005 pp. 125-126, 176

⁶⁸¹ Testimony of Hutton on November 22, 2005 at pp. 62-64

⁶⁸² P-536; P-636

- concerned that the longer the occupation went on, there would be an escalation and she expressed that concern. McCabe did not recall Hutton's response.⁶⁸³
709. Bangs testified that he recalled some difference of opinion regarding the timeframe for the injunction. Fox recalled that Hutton was conveying a sense of urgency. Fox testified that he knew at the time of this meeting that Carson was in favour of an "emergent" injunction and of moving quickly with respect to the injunction.⁶⁸⁴
710. McCabe queried whether the way to proceed might be under the Criminal Code. Fox advised against such an approach.⁶⁸⁵
711. Sturdy then interjected to advise the IMC that he had confirmed the reports of gunfire. Sturdy testified that he likely had someone from his office contact Kobayashi and Kobayashi confirmed the reports. Carson testified that Kobayashi advised him that Fox was not aware of the gunfire reports and asked him to call Fox directly. The scribe notes confirm this as they record that at 11:02 "Kobayashi advised that Ron Fox was not aware of shots being fired last night. John Carson to call Ron Fox direct".⁶⁸⁶
712. Fox did confirm that there had been a report of automatic gunfire. At 11:05, following Kobayashi's advice, Carson called Fox and left him a message asking him to call back. Fox testified that he did not pick up his voice mail but called Carson of his own volition at 11:12, as recorded in the scribe notes. Carson confirmed that there had been a report of automatic gunfire and that he had failed to mention it in their previous conversation.⁶⁸⁷
713. Fox recalled that he explained to the IMC at some point in the meeting that automatic weapons could be confused with several semi-automatic weapons if not examined by

⁶⁸³ P-636; Testimony of Hutton on November 22, 2005 at pp. 64-66, 209-210, 247-251; Testimony of McCabe on September 29, 2005 at pp. 9-11

⁶⁸⁴ Testimony of Bangs on November 3, 2005 at pp. 131-133; Testimony of Fox on July 14, 2005 at pp. 36-39

⁶⁸⁵ P-536; P-636

⁶⁸⁶ P-426, p. 61; P-536; Testimony of Carson on May 18, 2005 at pp. 168-169; Testimony of Sturdy on October 19, 2005 at pp. 73-75

⁶⁸⁷ P-444A, tab 32; Testimony of Fox on July 12, 2005 at pp. 42-44; Testimony of Carson on May 18, 2005 at pp. 168, 176-177

- people who were experts. Fox testified before the Commission that he did not ask Carson who was the source of the report.⁶⁸⁸
714. Jai testified that her recollection in regard to the gunfire report was that there were conflicting reports and that Fox had said that they had no firearms and that some sort of flare was used.⁶⁸⁹
715. Sturdy also advised the IMC that he was concerned about the safety of his staff who were accompanying the OPP to serve the notice of trespass and were “being asked to wear bullet-proof vests.” He further advised that park picnic tables were being piled on the road as barricades. Sturdy testified regarding his concerns based on the number of things that had occurred over the last number of hours. Hutton testified that she was struck by this information and found it very disturbing that civil servants were being asked to wear bullet-proof vests.⁶⁹⁰
716. Hipfner testified that her sense was that Sturdy’s sources of information were not reliable. Her recollection of her observations was that “nobody really reacted to what I think would normally have been considered to be fairly alarming remarks”. Hipfner further testified that her impression was that on September 5 and 6, Fox consistently advised that the occupation was not as volatile as Sturdy had been suggesting “based on wherever he was getting his information from.”⁶⁹¹
717. Kobayashi testified that he wore a bullet-proof vest when he attended at the park and Camp Ipperwash on September 5 to serve notice and is depicted wearing them in newspaper photographs. He further testified that one of his staff was asked to do so with respect to the noon meeting on September 6, 1995.⁶⁹²

⁶⁸⁸ Testimony of Fox on July 12, 2005 at pp. 43-44

⁶⁸⁹ Testimony of Jai on September 12, 2005 at p. 113

⁶⁹⁰ P-536; P-636; Testimony of Sturdy on October 19, 2005 at pp. 75-77, 81; Testimony of Hutton on November 22, 2005 at p. 53

⁶⁹¹ Testimony of Hipfner on September 15, 2005 at pp. 127-128, 241-242

⁶⁹² P-912; P-913; Testimony of Kobayashi on October 20, 2005 at pp. 47, October 26, 2005 at pp. 123-125

718. Jai, the chair of the IMC, then summarized the consensus of the IMC that they would seek an injunction as soon as possible, the OPP would try to get the occupiers to leave by talking to them and would charge them where warranted within police discretion. Jai indicated that all the participants agreed that the goal was to get the occupiers out of the park.⁶⁹³
719. David Carson, a lawyer at ONAS, reported back on the issue of the provincial government's obligations if there were a burial ground. David Carson confirmed that if there were a burial ground, it would not affect the province's title or ownership of the park and explained the applicable procedures pursuant to the *Cemeteries Act*. McCabe opined that the possibility of a burial ground would be unlikely to affect the injunction.⁶⁹⁴
720. The participants then returned to the issue of public communications. Hutton testified that she wanted to know what the government could say publicly about their desire as landowner to have the occupation end. In that regard, she indicated that the province as landowner could ask the OPP to remove the occupiers and asked if MNR had done so, recognizing that how and when would be up to the OPP. Hutton testified that MNR were going to check to see if this request had been made. Hutchison recalled a desire for a message that could legitimately be communicated to the public by the province as a responsible landowner.⁶⁹⁵
721. Sturdy interrupted the discussion regarding communications to advise that there was a tape scheduled for broadcast at noon showing natives with baseball bats coming towards some reporters and their vans and the OPP drawing their guns. Sturdy testified that civil servants are taught to look out for items which would put their ministry or their minister on the front page of the media. Sturdy testified that he received an email from Daryl Smith, the local MNR press officer, in this regard

⁶⁹³ P-536; P-636; Testimony of Jai on August 31, 2005 at pp. 93-94; Testimony of Hutchison on August 29, 2005 at pp. 71-73

⁶⁹⁴ P-536; P-636; Testimony of Jai on August 31, 2005 at pp. 96-97

⁶⁹⁵ P-536; Testimony of Hutchison on August 29, 2005 at pp. 18-19, 77-79; Testimony of Hutton on November 22, 2005 at pp. 35-39

indicating that Smith had seen the “leader tape” so he passed it on to the IMC in light of their mandate to deal with communications issues.⁶⁹⁶

722. On September 6, 1995, CHCH TV ran a news report that mentioned occupiers throwing rocks at OPP police cruisers, mentioned that local non-natives were arming themselves and quoted Bosanquet Administrator Ken Williams saying the community was “terrified.” The footage also included one of the occupiers walking towards the camera with a tire iron.⁶⁹⁷ CKCO TV also ran a quick news update that day regarding the occupation in which the anchor announced that the OPP had “pulled their guns” in an incident with the occupiers but no arrests were made.⁶⁹⁸
723. The IMC concluded its discussions about communications. As Minister of Natural Resources and the property owner, Hodgson would take the lead in communications, though Hutton indicated that the Premier would also be prepared to speak. Hodgson’s office, with help from the Premier’s office, was to manage the municipal leaders and MNR was to develop the communication plan.⁶⁹⁹
724. The meeting concluded with Hutton asking how the participants would be kept up to date on events like the noon hour meeting. Jai advised that Fox would advise her and she would advise the executive assistants.⁷⁰⁰
725. Numerous witnesses testified that the recommendation of the IMC was to seek an injunction as soon as possible. Christie testified that she stopped taking notes of the meeting after Jai summarized that the consensus was to apply for an injunction as soon as possible as she was thinking about the materials that they would need to put

⁶⁹⁶ P-636; P-820; Testimony of Sturdy on October 19, 2005 at pp. 283-287

⁶⁹⁷ P-1146, CHCH TV Hamilton, Channel 11, Newscast re Ipperwash Provincial Park Occupation, September 6, 1995

⁶⁹⁸ OPP “All News Broadcasts” (DVD), News Clip immediately following, P-1146

⁶⁹⁹ P-536

⁷⁰⁰ P-536

together. McCabe testified that he recalled saying to Fox following the meeting that he would need an officer to give evidence and a list of the people in the park.⁷⁰¹

726. Following the IMC meeting and shortly after noon, Fox called Carson. Carson was in a meeting so Wright took his call. Fox advised Wright that a Tim Egar would be contacting him. Fox testified that he meant McCabe. Fox asked Wright for confirmation that the media were approached by a couple of people with bats and occupiers and the police were required to take “action.” Wright advised that they had heard that stuff and that they had watched the news and that was not what had happened. Wright advised of the report of hearing automatic gunfire and referred to the picnic table episode that morning explaining that two ERT teams had removed the picnic tables while ten officers with guns provided cover. Fox then advised that it was “my big job to keep the political folks out of the hair of the operational people”. Fox testified before the Commission that this referred to his perception that a great part of his time was being spent running down rumours and he felt that he should be the filter of police information to the IMC.⁷⁰²

727. Wright testified that he and other members of the OPP watched the media reports from time to time between September 4 and 6, 1995; however, he did not recall seeing the media clip from CHCH. He was aware that the Chief and Council of the Kettle and Stony Point First Nation did not support the occupation and was also aware of the general sense in the community that people were concerned with what they perceived as a lack of response from the OPP and were considering arming themselves.⁷⁰³

⁷⁰¹ P-636; P-742; Testimony of Christie September 26, 2005 at pp. 142-143; Testimony of McCabe on September 28, 2005 at pp. 72-74; Testimony of Jai on August 31, 2005 at p. 113; Testimony of Hunt on November 2, 2005 p. 55

⁷⁰² P-444A, Tab 34; Testimony of Fox on July 12, 2005 at pp. 52-55

⁷⁰³ Testimony of Wright on March 7, 2006 at pp. 76-81

xxi) Dining Room Meeting

728. The Premier and the ministers were having their weekly Cabinet meeting that day. Hutton attended at the Cabinet meeting with the intention of updating the Premier regarding the IMC's recommendations. The ministers did not discuss the Ipperwash situation at the Cabinet meeting but subsequently attended an informal meeting in a dining room close to the Cabinet chamber. The Premier, Hodgson, Harnick and Runciman attended the meeting, as did their executive assistants and the three deputies, Taman, Todres and Vrancart and others.⁷⁰⁴
729. Runciman testified that Vrancart provided a summary of the situation on the ground from MNR's perspective and that Vrancart said that there had been gunfire heard and someone thought it was an AK47 being shot off. There was also a comment that warriors were coming from various parts of North America. Runciman testified that this was somewhat alarming.⁷⁰⁵ Harris testified that it was confirmed that the park could not be contained and that there was some discussion of Gustafsen Lake.⁷⁰⁶
730. Hutton testified that Deputy Minister Todres commented that they needed to be clear that the government has a role to play and the police have a role to play and these should not be confused. Other witnesses also recalled a comment along those lines.⁷⁰⁷ Taman testified that he and Todres spoke about it. Todres testified that she was late arriving at the meeting. No one expressed any disagreement with the principle.⁷⁰⁸
731. Taman testified that he understood that the Premier's position was that it was not appropriate for the First Nations people to be in the park and wanted steps taken to remove them and that this was a policy position which the government and the

⁷⁰⁴ Testimony of Hutton on November 22, 2005 at pp. 76-80, 84-88; Testimony of Todres on November 30, 2005 at pp. 50-52; Testimony of Runciman on January 9, 2005 at pp. 127-129; Testimony of Taman on November 14, 2005 at pp. 119-120; Testimony of Harris on February 14, 2006 at pp. 124-125

⁷⁰⁵ Testimony of Runciman on January 9, 2006 at pp. 126-139

⁷⁰⁶ Testimony of Harris on February 14, 2006 at pp. 130-131

⁷⁰⁷ Testimony of Hutton on November 22, 2005 at pp. 103-105; Testimony of Harris on February 14, 2006 at pp. 130-131

⁷⁰⁸ Testimony of Taman on November 14, 2005 at pp. 120-121; Testimony of Todres on November 30, 2005 at pp. 52-54

Premier, as the elected representative of the people of the province, was entitled to take. He further testified that he understood that the Premier expected them to use professional judgment in how they went about doing that. Hutton recalled that Taman explained the two types of injunctions as did many other witnesses. She further testified that for her the information about the injunctions was a recap of information she had been provided at the IMC meetings.⁷⁰⁹

732. Fox testified that he arrived when the meeting was in progress and that he was asked by the Deputy Minister of the MSG or the Solicitor General to provide an update on what was transpiring on the ground and did so. Hodgson raised the issue of automatic gunfire and Fox explained that automatic gunfire can sometimes be mistaken for semi-automatic gunfire by people who are not experts.⁷¹⁰ Harris also testified that there was a question as to whether it was an automatic weapon or a rapid firing semi-automatic but he thought that the distinction was not significant.⁷¹¹

733. Harris testified that there was a discussion about the length of time to get an injunction. He understood that Tuesday night had been a little more rowdy than Monday night and it was his view, which he thought was shared by the majority, that the sooner this occupation could be ended, the more likely it would be ended peacefully with nobody being hurt.⁷¹²

734. Harris testified that he asked questions about what actions were taken and how had this happened. He wanted to ensure that he had the facts. He wanted to be able to answer questions from the media.⁷¹³

⁷⁰⁹ Testimony of Taman on November 14, 2005 pp. 116-117; Testimony of Hutton on November 22, 2005 at pp. 105-107; Testimony of Harris on February 14, 2006 at pp. 130-131; Testimony of Runciman on January 9, 2006 at pp. 134-139

⁷¹⁰ Testimony of Fox on July 12, 2005 at pp. 64-66

⁷¹¹ Testimony of Harris on February 14, 2006 at pp. 131, 136

⁷¹² Testimony of Harris on February 14, 2006 at pp. 140-143

⁷¹³ Testimony of Harris on February 14, 2006 at pp. 145-146

735. Harnick testified that the consensus was to seek an injunction as soon as possible.⁷¹⁴ Runciman testified that the assumption was that an *ex parte* injunction would be sought. Todres also testified that was her understanding. She further testified that there was a sense of urgency which she said they had not felt before the meeting.⁷¹⁵ Taman did not recall a direction coming out of the dining room meeting to apply for an *ex parte* injunction. He further testified that he understood that the government wanted the lawyers in court quickly and saw the rest as “lawyer’s technicalities”. Taman further testified that he did not think that it made much difference whether the injunction was brought *ex parte* or not as the judge would not make any important order without hearing from the parties. He testified that he regarded this then and now as a “bit of a red herring”.⁷¹⁶
736. Deputy Minister Todres recalled that Minister Hodgson commented in frustration “Get the f**ing Indians out of my park” while Minister Harnick thought that it was the Premier who had said in a moment of anger “I want the f**ing Indians out of the park.” Neither witness suggested that the comments referred to the use of force. None of the other 11 witnesses who testified indicated that anyone at the meeting made such a comment. Patrick and Fox recalled Hodgson having a heated discussion with Fox but Todres, Taman and others did not. The evidence of all the witnesses was that the outcome of the meeting was that the government would proceed with an injunction and the evidence is clear that there was no other direction or instruction.⁷¹⁷

⁷¹⁴ Testimony of Harnick on November 28, 2005 at pp. 11-12

⁷¹⁵ Testimony of Todres on November 30, 2005 at pp. 54-56; Testimony of Runciman on January 9, 2006 at pp. 139-141

⁷¹⁶ Testimony of Taman on November 14, 2005 at pp. 132-133

⁷¹⁷ Testimony of Fox on July 12, 2005 at pp. 70-73, July 14, 2005 at p. 50; Testimony of Bangs on November 3, 2005 at pp. 90-91, 98-99, 102; Testimony of Taman on November 14, 2005 at pp. 113-114, 116-119, 124-125, 128-129, 134-136; Testimony of Hutton on November 22, 2005 at pp. 106-108, 119-120, 172-176; Testimony of Todres on November 30, 2005 at pp. 53-57, 61-63, 65-66, December 1, 2005 at pp. 23-24; Testimony of Harnick on November 28, 2005 at pp. 9-12, 20-24; Testimony of Hodgson on January 12, 2005 at pp. 199-201, 207; Testimony of Patrick on October 17, 2005 at pp. 107-111, 140, 149-150; Testimony of Vrancart on October 27, 2005 at pp. 62-63, 65-67; Testimony of Moran on November 1, 2005 at pp. 19, 26-27, 31; Testimony of Hunt on November 2, 2005 at pp. 65-66, 70-73; Testimony of Runciman on January 9, 2006 at pp. 140-141, 144-145, 147-148, January 11, 2006 at pp. 294-296; Testimony of Harris on February 14, 2005 at pp. 134-136, 153-155, 157-158

737. Todres testified that the lead ministry for the next step would be MAG and for her it was still a “watching brief”. Hutton testified that once the government decided to seek an injunction, obviously the spokesperson would be the Attorney General. Hodgson also testified that he knew that Harnick would be the spokesperson with regard to the injunction and was pleased about that.⁷¹⁸

xxii) Preparation for the Injunction

738. Taman spoke to Christie after the dining room meeting. Christie recalled that Taman told her to proceed with an injunction as quickly as they possibly could.⁷¹⁹

739. Shortly after 14:00, Fox called Carson and advised him that the relevant individual from the MAG who was putting together the injunction materials was McCabe not Eager. Fox advised that the lawyers were preparing to bring an ex parte injunction and advised that the test is emergent circumstances. Fox then advised Carson that at the meeting there was a mention of “machine gunfire” and how he had explained the difference between machine gunfire and semi-automatic, namely, how several rapid firing weapons might sound like machine gunfire. Carson concurred. Fox testified that he called Carson to advise him of “other sources of information with respect to police activities” and to gain Carson’s perspective so that he could report back at the next IMC meeting.⁷²⁰

740. Fox then indicated that McCabe had indicated that they had affiants from MNR who “are going to say it’s their property and here’s the deed and you know all of the rest of it” but that McCabe needed somebody with a police perspective. Fox then advised that “they’re pushing to get this done quick.” Fox testified before the Commission that he was referring to the government wanting to get a court date promptly. Fox

⁷¹⁸ Testimony of Todres on November 30, 2005 at pp. 70-71; Testimony of Hutton on November 22, 2006 at pp. 53-54; Testimony of Hodgson on January 12, 2006 at pp. 189

⁷¹⁹ Testimony of Christie on September 26, 2005 at pp. 146-147

⁷²⁰ P-444A, tab 37, pp. 258-260; Testimony of Fox on July 12, 2005 at pp. 104-105

then advised Carson that the lawyers were thinking that they would do a presentation before a Judge Gardiner from Lambton County tomorrow or tonight.⁷²¹

741. Fox then advised that the lawyers had asked if Carson could appear to give his evidence in person and Fox said that he was sure it would be okay. Carson indicated that he did not have a problem with that so long as the Chief Superintendent and the Commissioner agreed and Fox indicated that they should confirm that. Carson then informed Fox that Chief Superintendent Coles was present at the Command Post.⁷²²

742. Fox then commented to Carson that “we’re dealing with a real redneck government”; “They are f**in barrel suckers they just are in love with guns” and “they couldn’t give a shit less about Indians”. Fox testified before the Commission that the reference to “redneck” was a reference to the position of the government that there is one justice for all and no differential treatment for anybody and attributed the sentiment to comments he believed that the Premier had made at the dining room meeting. Fox further testified that the third comment was based on his “general sense”.⁷²³

743. Fox reviewed a Conservative policy document dated January 1995 entitled “A Voice for the North” which provides in part as follows:

The result of continuing economic hardships and the difficulty of maintaining their traditional lifestyles, value and culture are well known. Native peoples in the North suffer from higher rates of unemployment, disease and depression than non-natives.

We believe that many of the social problems being suffered by native communities can be directly linked to the lack of economic and community development on reserve lands. We will work closely with native leaders to promote and encourage this development so that native Canadians can use their creative and entrepreneurial talents to the fullest.

⁷²¹ P-444A, tab 37, pp. 260-261; Testimony of Fox on July 13, 2005 at pp. 99-100

⁷²² P-444A, tab 37, pp. 261-262

⁷²³ P-444A, tab 37, p. 262; Testimony of Fox on July 12, 2005 at pp. 106-108

Ontario's native population has been marginalised in many ways, leading to tensions and social problems in both native and non-native communities. We hope to break this cycle through fair and inclusive treatment that recognizes those communities as equal.

Fox acknowledged that the policy document extracts did not sound like something that is said by people who couldn't care less about First Nations people or who could reasonably be characterized as "redneck".⁷²⁴

744. Fox testified that the second comment was a reference to the IMC and dining room meetings where he felt that there was "an over-emphasis placed on weaponry". Fox further testified that he was speaking emotionally but didn't believe that he was speaking without regard for the accurate and careful facts. Fox later acknowledged that no one at the IMC meetings said they loved guns and, in fact, members of the IMC were concerned about the reports of gunfire.⁷²⁵

745. Fox then went on to advise Carson that he had been paged to go to the "legislative building" to "meet the Deputy", had threaded his way through a media scrum and then attended the dining room meeting. Fox indicated that he had walked in on the tail end of a conversation involving the Premier who he indicated left the room shortly thereafter. Fox made a couple of comments regarding his perceptions of the Premier as a person and what the Premier's beliefs were. Fox then described at considerable length his perceptions of a dialogue which he had with Hodgson after the Premier left the dining room. Fox told Carson among other commentary regarding Hodgson "I thought you little pr**k I've got shoes older than you".⁷²⁶

746. Fox then advised Carson that the "upshot" was that McCabe was asking whether in Carson's opinion they could say "with certainty to a court that there is a need for an

⁷²⁴ P-925; Testimony of Fox on July 13, 2005 at pp. 101-104

⁷²⁵ Testimony of Fox on July 12, 2005 at p. 107-109, July 14, 2005 at p. 50

⁷²⁶ P-444A, tab 37, pp. 263-267

emergent order that makes it an ex parte order”. Carson replied that he thought that they could based on “the progression of events”.⁷²⁷

747. At approximately 14:45 McCabe himself called Carson regarding the injunction. He advised that the court was available at 9:00 in Sarnia the next day. McCabe asked Carson if he would be available and Carson indicated that he had discussed it with Chief Superintendent Coles and that it would either be himself or another officer from the Command Post who was “every bit as up to speed on the issues” as Carson was. Carson testified before the Commission that because he needed to stay at the Command Post as he was the Incident Commander, he discussed with Coles having Wright provide the evidence.⁷²⁸
748. McCabe advised Carson that the circumstances on the ground were relevant evidence to the injunction. McCabe indicated that people were concerned about the reports of gunfire, the fire and the alcohol and those sorts of things. McCabe asked Carson if they worried him and Carson said “Yes.” Carson advised McCabe that the fire the previous night had been set up as an “ambush”. He indicated that when his officers attended to deal with it, they got bombarded with rocks which damaged the windshields on three cars but fortunately no officers had been hurt.⁷²⁹
749. With respect to gunfire, Carson advised that it was a significant factor from a safety point of view because he knew that there was weaponry down there but he was careful to specify that the gunfire was back in the bush and the occupiers had not pointed weapons at the police. Carson indicated that “there’s no reason to believe that the firing we heard last night ah was anything more than audio for our benefit.” Carson testified before the Commission that he thought the overnight shots had been for intimidation.⁷³⁰

⁷²⁷ P-444A, tab 37, pp. 267-268

⁷²⁸ P-444B, tab 39, pp. 267-270

⁷²⁹ P-444B, tab 39, pp. 271-272

⁷³⁰ P-444B, tab 39, pp. 272-273; Testimony of Carson on May 18, 2005 at p. 252

750. Carson advised McCabe that, in his opinion, an injunction should be granted on an urgent basis.⁷³¹
751. McCabe and Christie continued to prepare to attend in court the following morning to seek the injunction. McCabe spoke again with Carson at approximately 16:10 who advised that Wright would attend on the injunction. Carson advised McCabe that Wright would be able to speak authoritatively on the issues as he had been involved in all aspects of this operation and could provide some background regarding the occupation of Camp Ipperwash in 1993. Carson further advised that Wright had been involved in the execution of the search warrants regarding the shots fired at the military helicopter in 1993. Carson indicated that he would advise Wright when to attend.⁷³²
752. Meanwhile, Sturdy had discussed with Allen, the executive assistant to the deputy minister of MNR, his concerns about the safety of his staff at Ipperwash Provincial Park in view of the reports of gunfire and the request that MNR staff wear bullet-proof vests.⁷³³
753. At some point during September 6, 1995, Deputy Minister Vrancart had a briefing note prepared for his minister which indicated in part as follows:
- The government is seeking an injunction requiring those illegally occupying Ipperwash Provincial Park to remove themselves. The injunction will also require that the dissident group must not impede any person from entering the park.
 - The Ministry of Natural Resources considers the safety of Provincial Park Staff, surrounding property owners and the public to be paramount.⁷³⁴

⁷³¹ P-444B, tab 39, p. 274

⁷³² P-444B, tab 45, pp. 293-295; Testimony of Christie on September 26, 2005 at pp. 154-158, 160; Testimony of McCabe on September 28, 2005 at pp. 109-111

⁷³³ Testimony of Sturdy on October 19, 2005 at p. 82

⁷³⁴ P-919; Testimony of Vrancart on October 27, 2005 at pp. 49-50

754. Vrancart discussed with his minister his concerns for the safety of the MNR staff working at the park. Vrancart sent Sturdy a letter at approximately 16:30 requesting that, under the circumstances, the park's staff be reassigned to other duties until such time as the situation at the park returned to normal. Park staff were re-assigned though the MNR staff who were at the OPP Command Post remained in place.⁷³⁵
755. Bangs forwarded the MNR Deputy Minister's briefing note to the political staff who had attended the IMC meetings and Shelley Spiegel, a civil servant who had also attended the IMC meetings as a representative of Cabinet Office. He further updated them later by forwarding the transcript of the minister's comments to the media the previous day, two press releases from the OPP and Vrancart's letter to Sturdy regarding the re-assignment of park staff.⁷³⁶
756. Bangs also forwarded copies of the briefing note to Beaubien and to King. Beaubien had been continuing to hear from his constituents regarding their concerns and complaints and contacted MNR. Beaubien had heard of a rumour about a possible burial ground and had contacted Leslie Shimmin of MNR earlier in the day and was later advised that they were not aware of any burial grounds and that, even if there were a burial site, it would be dealt with pursuant to the *Cemeteries Act*. Beaubien conveyed that to his constituents.⁷³⁷
757. At approximately 13:15, Beaubien had faxed a letter to King from one of his constituents, a lawyer, which referred to the lack of response to the lawlessness at the park and his concerns regarding the consequences, including the potential for violence. Beaubien testified that he felt that it was representative of the concerns of constituents and sent it to convey the seriousness of the situation.⁷³⁸

⁷³⁵ P-727; Testimony of Vrancart on October 27, 2005 at pp. 70-71; Testimony of Sturdy on October 19, 2005 at pp. 82-83

⁷³⁶ P-732

⁷³⁷ P-732; Testimony of Beaubien on January 19, 2006 at pp. 145-148

⁷³⁸ P-952; P-1030; Testimony of Beaubien on January 19, 2006 at pp. 154-155, 158 -165

758. King testified that he received the letter and was aware of the community's concerns but did not recall passing the fax on to anyone. King was receiving information from Bangs as it involved a provincial park. King testified that he spoke to Hutton once on September 6, 1995 after he received Vrancart's briefing note of September 6, 1995. King asked Hutton about the injunction as he was getting inquiries from Beaubien. Hutton had advised him that the government was looking for a peaceful resolution to the situation as soon as possible, public safety was the number one focus and the government was seeking to achieve that by obtaining an injunction. King relayed that to Beaubien.⁷³⁹
759. Beaubien testified that he advised his constituents of the information reflected in Vrancart's information note but believed that they were already aware of most of it. He further testified that he was sure that he spoke with the Chief Administrator of Bosanquet Township Ken Williams and that they shared the comments and concerns they were hearing from their constituents.⁷⁴⁰
760. In the latter part of the afternoon, the civil servants within the provincial government provided further reports within their ministries. Elliott updated other civil servants at MNR by email at 16:52 that contact had been made with Elizabeth Thunder that morning at 9:15 and that she had confirmed that the Band administration had no claims on Ipperwash Provincial Park. Elliott further advised that Thunder had indicated that she was not aware of any burial grounds within Ipperwash Provincial Park and that the issue would be raised at a council meeting that evening. Thunder also told the media on behalf of the Kettle and Stony Point Band that there were no historical land claims to the park and that the elders were unaware of any burial grounds in the park.⁷⁴¹
761. In the late afternoon, Jai also provided an update to her superior at ONAS. At 17:36, she advised Lazor by email that the tentative meeting with the occupiers had not

⁷³⁹ Testimony of King on November 16, 2005 at pp. 170-172, 178-180, 255-256

⁷⁴⁰ Testimony of Beaubien on January 19, 2006 at pp. 173-177

⁷⁴¹ P-261; P-265; Testimony of Thunder on March 8, 2005 at pp. 208-210

occurred as “the occupiers are not interested in talking”. She further advised that McCabe and Christie would attend in court the next day to apply for the injunction and that a police officer would attend to give evidence in person.⁷⁴²

xxiii) Continued OPP Operations

762. Throughout the day, OPP officers at or around the park investigated the identity and numbers of occupiers in the park for the injunction proceedings and intelligence purposes. Officer Vince George met with a confidential source who informed him that Buck Doxtator, six men from Muncey and a person from Oka were present in the park, and Doxtator had weapons with him. The informant further informed Vince George that the occupiers might further claim land west of Army Camp Road. On a previous occasion the informant told Vince George that Doxtator was very dangerous and known to have guns.⁷⁴³
763. On Carson’s instructions to meet with Kettle Point elders, Seltzer and Lorne Smith met with Earl Bressette on the reserve from mid-morning until the early afternoon. At 14:40, Seltzer returned to the command post and reported to Carson. As part of the briefing, Seltzer passed along information he received about firearms and a dangerous person present in the Ipperwash area. Seltzer also told Carson that there was no information to substantiate the existence of a burial ground.⁷⁴⁴
764. In the interim, Richardson obtained information from a Kettle Point police officer who had spoken with some of the Kettle and Stony Point Band elders who had indicated that there was no burial ground at the park. Later, at a command post briefing with Wright, Bell, and Korosec at 14:27, Richardson relayed the information that he had received indirectly from the Band elders.⁷⁴⁵

⁷⁴² P-654; Testimony of Jai on September 13, 2005 at p. 134

⁷⁴³ Testimony of Vince George on April 5, 2006 at pp. 70-72, 126-132, 139-143; Testimony of Speck on March 22, 2006 at pp. 242-244; Testimony of Bell on June 7, 2006 at pp. 62-64; Testimony of David George, October 20, 2004 at pp. 64-66

⁷⁴⁴ P-1704, pp. 89-91; Testimony of Seltzer on June 13, 2006 at pp. 129-130, 134-144

⁷⁴⁵ P-426, p. 63; Testimony of Richardson, June 8, 2006 at pp. 277-279

765. During the afternoon, the OPP continued to try to open up lines of communication with the occupiers. Wright and Sgt. Marg Eve attended Ipperwash Provincial Park at 15:00 to open negotiations with the occupiers near the camp store. None of the adults sitting on picnic tables in the park, including Les Jewell, would speak to them. The occupiers used large mirrors removed from the park bathrooms to reflect sunlight into the eyes of Wright and Eve. A car drove up to the fence on the park side, which Eve recalled was driven by Glenn George or David George. The passenger in the car informed Wright that the occupiers would “do their talking” or “settle the matter” “with guns”. Wright and Eve returned to the command post and informed Carson of this incident at approximately 16:45.⁷⁴⁶
766. Occupiers who were present during this incident testified at the Inquiry that they did not recall the “talking with guns” comment. However, they admitted to refusing to speak with the police who approached them as they did not regard them as appropriate negotiators.⁷⁴⁷
767. At 15:00, Seltzer left the command post to meet with Smith and Robert “Nobby” George. Robert informed Seltzer that Roderick “Judas” George or Glenn George might be willing to speak to them if no arrests were made. Once the meeting concluded, Seltzer briefed Carson on his meeting before going off duty at 20:00.⁷⁴⁸
768. Kobayashi relayed the information about the court hearing to the unit commanders at a briefing meeting at 18:12 and to Linton at the final briefing before Carson’s departure from the command post. Kobayashi was hopeful that there would be an injunction tomorrow. Before he left, Carson also received an updated copy of the affidavit for the injunction application.⁷⁴⁹

⁷⁴⁶ P-426, p. 66; P-1108, pp. 1378-1379, notes, p. 43; Testimony of Wright on February 22, 2006 at pp. 227-233

⁷⁴⁷ Testimony of Glenn George on February 1, 2005 at pp. 223-228; Testimony of Roderick George on November 23, 2004 at pp. 134-138

⁷⁴⁸ P-1704, p. 92-96; Testimony of Seltzer on June 13, 2006 at pp. 146; 149-151, 160

⁷⁴⁹ P-426, pp. 67-68, 72

769. From 18:42 to 19:05, Carson and Linton met with local MPP Marcel Beaubien and Park Superintendent Kobayashi at the command post. According to the scribe notes, Beaubien advised them that he had sent a fax to the Premier and that he wanted a return phone call regarding his intentions. Beaubien testified that he had not received a response to his September 6, 1995 fax enclosing the constituent's letter and had not communicated any advice to the Premier or his office with respect to an intent to do something concerning the occupation.⁷⁵⁰
770. For the balance of the meeting, Beaubien advised of the concerns and frustrations of property owners, who felt that they were not being treated equally. Carson informed Beaubien of the steps being taken to address the occupation, while stressing to Beaubien that they did not want anyone to be hurt.⁷⁵¹
771. Before Carson left to go off duty that evening, Carson ensured that Linton, the night Incident Commander, had all of the updated information including the status of the injunction and the status of the continuing efforts to obtain all necessary resources. Carson advised him about the reports of gunfire and that they had not been able to confirm that the gunfire heard was automatic. At approximately 19:30, Carson left to go for dinner with friends.⁷⁵²
772. Carson testified that when he left the command post, he expected that things would be status quo. As reflected in the scribe notes, prior to leaving, Carson had expressly instructed his officers in his final briefing at 18:12 that the OPP were to maintain checkpoints, monitor with night vision, sit tight, and see what happened with the injunction in the morning. A number of the OPP officers who were present at the

⁷⁵⁰ P-426, pp. 69-71; P-427, pp. 468-472; P-952; Testimony of Carson on May 19, 2005 at pp. 102-103, June 8, 2005 at pp. 145-117; Testimony of Beaubien on January 19, 2006 at pp. 189-191, 197-198; Testimony of King on November 16, 2005 at pp. 177-179

⁷⁵¹ P-426, pp. 69-71; P-427, pp. 468-472

⁷⁵² P-426, p. 72; Testimony of Carson on May 19, 2005 at pp. 111-116

command post at the time of this briefing confirmed before the Commission that they understood that the OPP were to continue to proceed as they had done so far.⁷⁵³

773. Following the final briefing, Kent Skinner, head of the TRU team left the command post for the evening and headed back to the Pinery Provincial Park, where the TRU team was housed throughout the incident. The TRU team members remained on standby. Korosec, the leader of the ERT teams who was in attendance at the 18:12 briefing, testified that he was to debrief the day shift when they went off-duty and then intended to go home.⁷⁵⁴

774. Wright did not attend the 18:12 briefing and did not speak to Carson before Carson left to go off-duty because Wright attended a meeting of local residents to calm their concerns. Wright testified before the Commission that he intended to prepare that evening to give evidence at the injunction hearing the next day. Wade Lacroix was also not at the 18:12 briefing. At 16:30, Lacroix had gone off-duty after doing some administrative work at the Petrolia Detachment and gone home.⁷⁵⁵

B. ANALYSIS AND SUBMISSIONS

i) Position and Action of the First Nation Peoples

775. We submit that the occupation of Ipperwash Provincial Park was very different in nature from the actions taken in regard to the park in 1993 but similar in kind to the actions taken in regard to Camp Ipperwash. The occupation of the park, like the occupation of the barracks a few weeks earlier, involved physical force, some violence against property and people and the threat of more violence. Just as the occupiers' actions caused the military to withdraw from the camp in late July, the

⁷⁵³ Testimony of Carson on May 19, 2005 at pp. 113-114; Testimony of Richardson on June 8, 2006 at pp. 284-285; Testimony of Bell on June 7, 2005 at pp. 265-266

⁷⁵⁴ Testimony of Skinner on April 19, 2006 at pp. 137-138; Testimony of Zupancic on April 24, 2006 at p. 67; Testimony of Beauchesne on May 25, 2006 at p. 13; Testimony of Irvine on May 25, 2006 at p. 257; Testimony of Korosec on April 18, 2006 at pp. 29-30

⁷⁵⁵ P-1448, p. 90; Testimony of Wright on February 23, 2006 at pp. 63-64, March 20, 2006 at p. 173

occupiers' actions in regard to the park caused MNR and the OPP to withdraw from the park within hours to avoid further confrontation and violence. Again, as a result, the occupiers were entirely effective in physically obtaining the land.⁷⁵⁶

776. While some occupiers indicated that they wanted to protect burial grounds in the park, we submit that there is no evidence of any urgent need to take any steps in regard to any burial grounds. There was no indication of any plans to sell the park and build condominiums or to create a golf course. By all accounts, the park was soon to close to camping so that only day users such as hikers, bird watchers or other nature lovers would use it. There is evidence that for some of the occupiers September 4, 1995 was simply as "good a time as only" to go in. In any event, most of the occupiers who testified that they wanted to protect burial grounds acknowledged that they felt the land was theirs and wanted to take it back.⁷⁵⁷

777. We submit that the occupation of the park was not a protest on park lands but a takeover of the park. We submit that this was the intent of at least some of the occupiers and was reflected in their actions. In any event, we submit that where people refuse to communicate their objectives and intentions, the actions of the members of the group speak for them. We further submit that the occupiers as a group did not stop or condemn the violent actions committed by some nor did they stop or condemn the destruction and theft of some government property at the park including trees, picnic tables, signs, freezers and other appliances.⁷⁵⁸

778. We submit that there was evidence of numerous attempts to raise and address the claims of the Kettle and Stony Point Band members in regard to Camp Ipperwash through legitimate means following the expropriation and into the 1990's prior to the takeover in July 1995. There was also considerable evidence of frustration regarding the delays in resolving those issues through legal means. Therefore, while the actions

⁷⁵⁶ Part III, para. 93-101, 135; Part IV, para. 261-267, 271-272; Part V, para. 443-447

⁷⁵⁷ Testimony of Tina George on January 19, 2005 at pp. 98-99; Part V, para. 166, 469-471, 474-475; P- 771; P-816

⁷⁵⁸ Part V, para. 467-468, 474-481

in July 1995 cannot be condoned, they can at least be understood as a reflection of that frustration.⁷⁵⁹

779. We submit that there is no such evidence with respect to any claims regarding Ipperwash Provincial Park. The only attempt to raise and address any issues with respect to the park was the notice provided in 1993 and the placement of the booth for a brief period at that time. In 1993, the Stoney Point Group communicated some grounds to support their view that the park belonged to them which were reviewed by the government at the time and were found to have no legal merit. There is no evidence of any other subsequent attempt by the occupiers to address any issues in regard to the park through legal means prior to or during September 4-6, 1995.⁷⁶⁰

780. We submit that the evidence overall indicates that the occupiers, or some of them, saw that just physically taking land they regarded as theirs was effective in obtaining control of the land and simply chose to repeat a tactic that worked. In any event, we submit that it would be reasonable to perceive that to be the case and that this was, in fact, the perception. In August 1995, Ron Fox thought that the successful takeover of Camp Ipperwash could cause an occupation of the park if that was what the occupiers wanted to do and he communicated that to the Chair of the IMC. On the morning following the takeover on September 4, 1995, Chief Tom Bressette perceived that allowing the occupiers to “overstep their boundaries in many ways” was what was “causing all this trouble” and said so to Carson.⁷⁶¹

781. We submit that the occupiers knew that the OPP and MNR attempted to communicate with them but they refused. The occupiers were advised that they were trespassing and at least some of them knew that the provincial government was seeking an injunction but did not care. We further submit that some of the occupiers were not

⁷⁵⁹ Part III, para. 67-76

⁷⁶⁰ Part III, para. 93, 98-101, 114, 135

⁷⁶¹ Testimony of David George on November 1, 2004 at pp. 126-128; Testimony of Glenn George on February 2, 2005 at pp. 237-239; Part IV, para. 308; Part V, para. 467, 489

prepared to relinquish physical control of the land and were prepared to hold it by force if necessary.⁷⁶²

782. We submit that the evidence overall does not suggest that in 1995 prior to and during September 4-6, 1995, the majority of the descendants of the former residents of the Stony Point reserve were of the view that they had a claim with respect to the ownership of Ipperwash Provincial Park or that they had concerns about the need to protect any possible burial grounds there. There is no evidence that these issues were even raised at Kettle and Stony Point Band meetings in 1995.⁷⁶³

783. In any event, the evidence is clear that both the government and the OPP made inquiries with members of the Kettle and Stony Point Band and were advised that there were no claims to the park and no awareness of any burial grounds within the park.⁷⁶⁴

784. We submit that the evidence is clear that the Kettle and Stony Point Band did not support the actions of those who took over the park. The occupiers of the park now included some people with no connection to the former Stony Point reserve. The evidence is also clear that the Band's opinion was expressed publicly through the media and directly to the OPP and the provincial government. We further submit that it is clear that between September 4 and 6, 1995 Chief Tom Bressette of the Kettle and Stony Point Band was being ignored by the occupiers of the park.⁷⁶⁵

785. We submit that the Chief of the Band was frustrated with the occupiers and felt that there had been enough talking and that the law should be enforced against them by obtaining and enforcing an injunction from the courts. We further submit that the

⁷⁶² Part V, para. 460-462, 474-477, 528, 598-600, 623-626, 765-766

⁷⁶³ P-219; Part IV, para. 246, 288-293

⁷⁶⁴ P-265; P-444A, tab 3; Part III, para. 106-112; Part V, para. 483-484, 559, 572, 760, 763-764

⁷⁶⁵ P-261; P-265; P-444A, tab 13; Part V, para. 487-488, 560, 619, 696, 760, 764

Chief communicated his views to both the representatives of the provincial government and the OPP.⁷⁶⁶

ii) Position and Actions of the OPP

786. We submit that the OPP treated the occupation on September 4, 1995 as trespassing. The OPP had MNR attempt to serve a notice of trespass on the occupiers and themselves repeatedly advised the occupiers that they were trespassing.⁷⁶⁷

787. We submit that when the takeover occurred, the OPP, who were already involved, implemented their plans to bring about the end of the occupation. We submit that the 1993 plans were relevant to the OPP's response to the 1995 occupation of the park and the plans developed at the end of August and beginning of September were consistent with those 1993 plans. We note that, on the morning of September 5, 1995, Carson reminded Lacroix that Lacroix had intimate knowledge of the 1993 plans and expressly told him that they were "very appropriate".⁷⁶⁸

788. We submit that from the evening of September 4 to the evening of September 6, the OPP acted in accordance with their plans: i) they tried to maintain a security perimeter around the park to contain it though they could not prevent access from the camp; ii) they tried to speak to the occupiers; and iii) they asked the MNR to proceed with the injunction. We further submit that the OPP pursued all these courses of action concurrently.⁷⁶⁹

789. There had been a plan to cohabitate with the occupiers while securing the park and waiting for an injunction; however, the violent actions of some of the occupiers and

⁷⁶⁶ P-444A, tab 3; Part V, para. 484-490

⁷⁶⁷ P-444A, tab 3; Part V, para. 451-452, 456, 460-463, 465, 483, 495, 500, 502-505, 518, 521, 626-627

⁷⁶⁸ P-555; P-1466; P-426; P-444A, tab 4; Part IV, para. 375-392; Part V, para. 492-493

⁷⁶⁹ Part IV, para. 375-392; Part V, para. 450-457, 460-465, 482, 492-493, 507, 513-516, 519-520, 526, 616-617, 618-621, 623-628, 641-650, 663-666, 762-768, 771-774

the OPP's concerns of further violence caused them to withdraw. Otherwise, the OPP proceeded to implement their operational plans.⁷⁷⁰

790. We submit that the OPP proceeded to obtain all the necessary resources. We submit that it was members of the OPP who decided on their own what resources were necessary to deal with various possible contingencies and members of the OPP who sought to obtain those resources. We submit that the OPP had taken steps to obtain various resources even before the IMC meeting on the morning of September 5, 1995 including: four ERT teams or approximately 60 officers working two alternating shifts of 30 officers each, a TRU team for back-up, a helicopter, night vision goggles and a light armoured vehicle.⁷⁷¹
791. We submit that there is no evidence that the actions of the OPP in implementing their plans on September 4 and the morning of September 5 were in any way determined or influenced by ministers, including the Premier, or their political staff. We further submit that the evidence is clear that the ministers and their political staff had no knowledge in advance of the actions taken by the OPP in response to the takeover.⁷⁷²
792. We submit the evidence is clear that there were a series of incidents involving some violence between the OPP and the occupiers on September 4, 5 and 6, 1995, followed by quiet periods. We submit that the OPP continued to be concerned about weapons and the inability to prevent access by additional people and weapons from the camp and discussed those concerns from the evening of September 4 through to that of September 6. We further submit that the OPP perceived that the situation was more serious on the morning of September 6 than it had been on September 5 because of actions by the occupiers overnight.⁷⁷³

⁷⁷⁰ P-421; Part IV, para. 386, 387; Part V, para. 438-448

⁷⁷¹ Testimony of Carson on June 2, 2005 at pp. 158-160; Part IV, para. 404; Part V, para. 444, 454, 516, 521, 524-525

⁷⁷² Testimony of Carson on June 2, 2005 at pp. 160; Part V, para. 450-457, 460-465, 482, 492, 493, 501, 503, 506, 512-525, 529, 530, 533

⁷⁷³ Part V, para. 438-441, 445-447, 464, 482, 519-520, 526, 618, 637, 645, 646, 655-656, 658-661, 746, 748-750, 762, 765

793. We submit that the evidence is clear that the OPP wanted MNR to seek an injunction quickly and sought to have them do so. We note that, despite the violence on September 4 and the decision to withdraw, the OPP had MNR attend (with the OPP) to serve the notice of trespass in order to move ahead with the injunction. We submit that Carson's many comments regarding an injunction on September 5, 1995 and his action in allowing news of the injunction to be released to the media reflect his expectation that MNR would seek one and obtain one within a day or so.⁷⁷⁴
794. We note that Carson took the time to contact Fox on September 4, 1995 at 10 o'clock at night to advise him of the takeover. We submit that this is additional evidence that Carson clearly wanted the government to quickly proceed with an injunction and note that Carson referred to Fox as the "go to guy" who could assist in providing the government with the necessary information to move on the injunction.⁷⁷⁵
795. We submit that Carson's actions and comments regarding the injunction are consistent with all of his other actions in seeking to obtain all the resources which he, as prudent and experienced Incident Commander, regarded as necessary. We submit that he wanted to ensure that he had in place whatever he needed to use, as and when he decided. We submit that the conversation between Parkin and Linton on the night of September 5, 1995 shows that the OPP had not yet made a decision as to precisely how they would enforce the injunction.⁷⁷⁶

iii) Position and Actions of the Provincial Government

796. We submit that, as in the threatened occupation of the park in 1993, the provincial government had the authority and responsibility to determine and communicate its position when it was confronted with the actual takeover in September 1995. We submit that prior to the occupation, the provincial government had reviewed its position and MNR and the IMC participants at the meeting on August 2, 1995 were

⁷⁷⁴ Part V, para. 445-447, 451, 455-457, 460-461, 463, 486, 499, 511, 513, 518, 520, 523, 598, 617, 621, 628, 637, 640, 642

⁷⁷⁵ Part V, para. 454

⁷⁷⁶ Part V, para. 654

comfortable that the province had good title. We submit that the legal advice that the province had valid ownership of the park was simply reaffirmed at the IMC meeting on September 5, 1995.⁷⁷⁷

797. We submit that the IMC sought to understand why the occupiers had taken over the park but, in the absence of any communication from the occupiers, all they could assess were the actions of the occupiers: taking over the park, denying access to anyone else, engaging in sporadic violence against the police, and refusing to communicate any demands.⁷⁷⁸
798. We submit that colour of right may have been mentioned at one of the IMC meetings but there is no evidence that it was discussed in any detail. We submit that whether the occupiers have “colour of right” would not in fact affect the government’s valid title. By definition, “colour of right” refers to an honest but *mistaken* belief that a right exists.⁷⁷⁹
799. We submit that there was no issue that the occupiers might actually have any ownership rights to the park as the legal advice provided by civil servants was clear that the provincial government had valid ownership. We further submit that the evidence is clear that the legal advice of the civil servants was that, even if it turned out that there were any burial grounds at the park, that would not affect the provincial government’s valid title.⁷⁸⁰
800. We submit that where one believes that someone has occupied property in an honest but mistaken belief that property belongs to them, it would be sensible to advise them that they are mistaken. We submit that this is precisely what the provincial government did in 1993 by letter and, in part, what MNR and the OPP were doing in attempting to serve the occupiers with a notice of trespass on the night of September

⁷⁷⁷ Part IV, para. 317-319, 326, 337, 340, 344, 395; Part V, para. 500, 547-549

⁷⁷⁸ Part V, para. 553, 554, 555-558, 580, 696, 699, 701, 711, 712, 721

⁷⁷⁹ Part IV, para. 417-418

⁷⁸⁰ Part V, para. 548-549, 552, 719

- 4, 1995. We further submit that this is a policy position which the provincial government as the landowner had the authority to take.⁷⁸¹
801. In any event, we submit that the evidence is overwhelmingly clear that MNR on the ground and the OPP were already treating the takeover as a trespass and a matter for the police before the IMC meeting on September 5, 1995. We further submit that the occupation of the park was presented to the IMC participants on September 5, 1995 as a trespass and as a matter in which the police were involved. We note that MNR and the OPP had already advised the occupiers that they were trespassing before the IMC even met in September 1995.⁷⁸²
802. We submit that just as in 1993 and in August 1995, the takeover of the park was a matter which affected various ministries, which is why the IMC held a meeting. We further submit that while this was a matter which now had the police actively involved in operations on the ground, the provincial government still had roles and responsibilities which were distinct from those of the OPP: to consider its policy position and its communications. We submit that the provincial government confirmed the policy position previously taken by MNR.⁷⁸³
803. We submit that the goal of the IMC was to end the occupation as safely and quickly as possible in accordance with its pre-existing guidelines and that the participants at the meeting referred to the removal of the occupiers as a goal.⁷⁸⁴
804. We submit that at the IMC meetings on September 5 and 6, 1995, MNR representatives on the ground who participated by telephone were upset and raised concerns about safety of people and destruction of provincial property. Baldwin, a civil servant, asked why charges could not be laid against the occupiers. There has been no suggestion that Baldwin or any other MNR civil servants attempted to direct

⁷⁸¹ Part III, para. 127-129, 131-132; Part V, para. 452, 460-461

⁷⁸² Part V, para. 460-461, 465, 554-556

⁷⁸³ Part IV, para. 280-281, 395, 398-399, 401-402, 495-501, 583, 587

⁷⁸⁴ Part III, para. 119; Part V, 584

or influence the OPP and we submit that the evidence indicates that MNR representatives were simply communicating their concerns and asking what could be done.⁷⁸⁵

805. We submit that civil servants, lawyers within the MAG, regarded the occupation as a matter involving potential breaches of the *Trespass to Property Act*, mischief under the *Criminal Code* and other provincial statutes in advance of the IMC meeting of September 5, 1995. We submit that those civil servants also considered the different types of injunction in advance of the meeting.⁷⁸⁶
806. We submit that the fact that the occupiers' actions might constitute breaches of various statutes was relevant in understanding the nature of the situation. We further submit that MAG lawyers considered this in preparing some of the provincial government's legal grounds for seeking an injunction.⁷⁸⁷
807. We submit that the concerns raised during the IMC meetings on September 5 and 6 such as public safety, access to the park, outsiders joining or the possibility of weapons were all issues that had been raised in 1993 and subsequently both by MNR on the ground and more senior civil servants. We further submit that the OPP was conscious of these issues and had considered them when making plans prior to the September 4, 1995 takeover.⁷⁸⁸
808. We submit that one of the roles of the IMC was to consider communications to the public and that they did so on September 5. We submit that, other than reaffirming the government position regarding ownership, the only action taken by the provincial government on September 5 was to communicate its position to the public.⁷⁸⁹

⁷⁸⁵ P-444A, tab 16; Testimony of Christie on September 27, 2005 at pp. 22-23; Testimony of Jai on September 13, 2005 at p. 110

⁷⁸⁶ Part V, para. 575

⁷⁸⁷ P-736; P-551; Testimony of Christie on September 27, 2005 at pp. 34-35

⁷⁸⁸ P-712; Part III, para. 125, 170-171; Part IV, 274-276, 284-287, 320, 323-324, 327, 330, 372, 381-385

⁷⁸⁹ P-303; Testimony of Jai on September 12, 2005 at p. 234; Part V, para. 583, 609

809. We submit that the actions of the occupiers in 1995 made a public statement advisable. We submit that there is an expectation that the government will take a position on issues within its authority and responsibility and will communicate them clearly to the people through the media. We note that Hodgson Minister of Natural Resources was in fact scammed by the media who asked him to comment on the “Reign of Terror Continues” press release by the Bosanquet Mayor. In any event, we submit that the provincial government certainly had the authority to make decisions regarding whether, when and what to communicate to the public regarding its policy position.⁷⁹⁰
810. We submit that the position of the provincial government that was expressed publicly by Chris Hodgson that this was illegal, was consistent with the advice of MNR civil servants and MNR communication materials prepared in advance of the occupation. We note that the Deputy Minister testified that he believed that he knew that this was MNR’s corporate position prior to September 5, 1995.⁷⁹¹
811. The provincial government publicly expressed its position that the provincial government was reviewing its legal options to rectify the situation through Chris Hodgson on the afternoon of September 5, 1995. We submit that this position was accurate and consistent with the expectations of the civil servants within MAG in advance of the September 5, 1995 IMC meeting. We note that the media asked Hodgson whether the injunction would be brought in a day or two, but he would not give a time frame and only indicated that the government intended to act quickly.⁷⁹²
812. We submit that the IMC deferred any action other than public communication until September 6, 1995 pending receipt of further legal advice regarding the government’s legal options.⁷⁹³

⁷⁹⁰ P-460; Part V, para. 601, 609-610

⁷⁹¹ Part V, para. 280, 281, 284, 371, 395, 401-402, 498, 500, 609

⁷⁹² Part V, para. 555, 575, 609-610

⁷⁹³ P-509; Part V, para. 589; Testimony of Spiegel on September 21, 2005 at pp. 151-152

813. We submit that the situation on the ground escalated somewhat between the IMC meeting on September 5 and that of September 6, 1995 and that IMC participants were so advised on September 6, 1995. We submit that the evidence is clear that the recommendation of the IMC was to seek an injunction as soon as possible; the consensus of the ministers of the affected ministries was to do so and lawyers within the provincial government in fact prepared to bring an injunction on September 7, 1995.⁷⁹⁴
814. Under the law in 1995 and in 2006, anyone may bring an application to court for an injunction on notice or without notice (on an *ex parte* basis), like any other application or motion for relief. We note that both the Kettle and Stony Point First Nation and some of the locatees had previously initiated injunction proceedings unrelated to the park. It is the court that decides if it will grant any order for an injunction pursuant to its authority under the law.⁷⁹⁵
815. Under the law in 1995, an order for an injunction sought without notice was subject to a higher legal test. Under the law in 1995, if the court decided to grant such an injunction, the injunction was limited under the rules to a period of 10 days. A party could return to court and seek an extension of the order for an injunction. Under the law in 1995, the motion for an extension was usually done on notice to all affected parties. A party could bring the motion without notice and the court had the authority to extend such an order for an injunction where the affected party had been evading service or there were other exceptional circumstances.⁷⁹⁶
816. We submit that the provincial government had the authority and legal option to seek an injunction. Previous provincial governments had sought injunctions in dealing with occupations and blockades by First Nation peoples seeking similar relief from the courts to that sought in the Ipperwash case. We submit that the provincial government's consideration of the injunction option required up-to-date information

⁷⁹⁴ Part V, para. 686, 696, 699-700, 718, 725, 735, 738, 746-751

⁷⁹⁵ Rules 40.01, 40.02; *Courts of Justice Act*, R.S.O. 1990 c. C. 43, s. 101; Part IV para 246

⁷⁹⁶ Rule 40.02; *Courts of Justice Act*, R.S.O. 1990 c. C. 43, s. 101

of the situation on the ground. We further submit that the evidence is clear that the legal advice was that the provincial government would be successful in seeking an injunction.⁷⁹⁷

817. We submit that while there was legal advice that the provincial government might not be successful in seeking an injunction without notice, that advice was not based on the most recent and complete information regarding the situation on the ground. In any event, we note that when first Fox and later McCabe asked Carson on the afternoon of September 6, 1995 whether he thought that there were urgent circumstances, Carson indicated that he did based on the events which had occurred the previous night.⁷⁹⁸

818. We further submit that the evidence is clear that there was an option to proceed with a regular injunction on abridged notice and that the IMC did not expressly make a recommendation regarding the issue of notice. We further submit that the evidence overall suggests that ministers at the dining room meeting did not expressly address the issue of whether the lawyers for the provincial government should proceed on notice or not. We submit that it was never the intention that the occupiers would never be served. It was simply a question of when. We note that, following the meeting, the lawyers working on the injunction sought to give notice of the application for an injunction.⁷⁹⁹

819. In any event, we submit that the evidence of the witnesses with the necessary legal expertise on this issue, Larry Taman, the MAG Deputy Minister at the time, and Tim McCabe, the senior civil litigation specialist at MAG for matters involving First Nation peoples, was clear that the provincial government had the authority to proceed to seek an injunction without notice. Tim McCabe testified that there was nothing

⁷⁹⁷ Testimony of McCabe on September 28, 1995 at pp. 19-20, 24-25; Testimony of Carson on June 2, 2005 at pp. 147-148

⁷⁹⁸ Part V, para. 746, 748-750

⁷⁹⁹ P-747; P-750; P-752; P-426 at p. 72; Testimony of McCabe on September 28, 2005 at pp. 218-219; Part. V para. 725, 735, 738

wrong in proceeding under the without notice rule. Larry Taman testified that this entire issue was a “red herring”.⁸⁰⁰

820. In any event, we submit that the occupiers had effective notice that the provincial government was proceeding with an injunction as some of them had heard the premature media reports of an injunction and were so advised by members of the OPP. When Wright told Manning about their right to appear, he indicated that the occupiers were not interested in “white man’s court”. Those occupiers who testified before the Commission that they knew of injunction proceedings also indicated that they were not interested in the court proceedings.⁸⁰¹

821. We submit that, while considering the issue of the injunction, the provincial government still took steps to address any legal obligations that it might have if there were any burial grounds. We submit that on September 5 and 6, 1995, the IMC participants knew that OPP and MNR on the ground were trying to open lines of communication with the occupiers and were waiting for updates.⁸⁰²

822. We submit that although there were some differences in witnesses’ recollections of the dining room meeting, all witnesses recalled what was significant, namely the decision made to seek an injunction. We submit that Hutton recalled the substance of the meeting and, since she played no active role at that meeting, it is not surprising that she did not recall some of the comments. We further submit that many witnesses varied in their recall of some of the details and that Hutton’s credibility was unfairly attacked in this regard when she testified before the Commission.⁸⁰³

823. We submit that the individuals who participated in the various government meetings over the course of September 5 and 6, 1995 had different views of the situation. We

⁸⁰⁰ Part V, para. 690, 735

⁸⁰¹ Part V, para. 598-600, 626, 671

⁸⁰² Part V, para. 579, 581, 696, 719, 724

⁸⁰³ Part V, para. 736

submit that this reflects the fact that different people brought to the situation different experiences and had different responsibilities.⁸⁰⁴

824. We submit that the IMC's role as a clearing house of information was designed so that the participants and their superiors in the affected ministries had the same information. However, as people briefed their superiors who in turn briefed others there was an inevitable delay and filtering of information. As a result, at times some people within the provincial government had information that others did not. We submit that this was a more significant issue for the civil service than the political staff because of the larger size of the civil service and its more formal hierarchical structure of several reporting layers.⁸⁰⁵

825. We submit that when Jai, the Chair of the IMC, provided briefings to the Acting Director of ONAS, then the Deputy Attorney General and then the Attorney General on the morning of September 6, 1995, she did not include some of the information of violence that had been provided to her. The evidence is also clear that she did not have the most up-to-date information regarding the events of the night before. We submit that Jai's indication that there had been "no violence" was factually incorrect and misled the civil servants who received the briefings regarding the situation on the ground. We submit that, while MNR representatives on the ground and Fox knew that the police wanted the provincial government to seek an injunction quickly, it appears that some more senior civil servants within MNR and other ministries, such as the Deputy Attorney General, Larry Taman, and the Deputy Solicitor General, Elaine Todres, did not.⁸⁰⁶

826. We submit that the dining room meeting allowed the ministers, their political staff and their senior civil service advisors, the deputy ministers, to review the same information before making the decision to seek an injunction.

⁸⁰⁴ Part V, para. 555, 557, 560, 561, 704, 706, 715, 725

⁸⁰⁵ Part V, para. 397, 562, 563, 678-683, 685-687, 699-701, 711-712

⁸⁰⁶ Testimony of Todres on November 30, 2005 at p. 225; Part V, para. 397, 495-499, 561-563, 678-689, 735

iii) Involvement of Deb Hutton

827. We submit that the evidence is clear that Hutton's only involvement was in attending the IMC and dining room meetings. We submit that the evidence is clear that she did not participate in the dining room meeting. Fox did not even recall her attending the meeting.⁸⁰⁷
828. With respect to the IMC meetings, we submit that Hutton participated to a limited extent as part of a round table discussion as evidenced by the contemporaneous notes of the meetings. We submit that the contemporaneous notes are not a verbatim transcript; however, they do generally record the essence of what was said with varying degrees of completeness and accuracy. We further submit that some notes also include some references to a note taker's own unexpressed thoughts. We submit that the notes of Jai and Hipfner while not complete are the most detailed.⁸⁰⁸
829. The evidence is that Hutton did not participate in the IMC meeting on September 5, 1995 until briefings had been provided about the situation on the ground, legal advice had been given that the province had valid title and a question had been asked about the government's tolerance for allowing the situation to continue or perhaps escalate. We submit that Hutton, in her capacity as a representative of the Premier's Office, therefore responded to the question raised. We submit that the evidence is that political staff may share their minister's views if asked for them.⁸⁰⁹
830. We submit that our system of government is premised on ministerial responsibility and that it is ministers, including the Premier, and not civil servants, who are ultimately responsible for determining the government's policy on any issue. We note that the evidence was clear that the role of the civil servants is to provide advice and that this process typically involves some communication back and forth. We submit

⁸⁰⁷ Testimony of Vrancart on October 27, 2005, p. 67; Testimony of Fox on July 12, 2005 at p. 64; Testimony of Hodgson on January 12, 2006 at p. 179; Testimony of Bangs on November 3, 2005 at p. 288

⁸⁰⁸ P-510; P-536; P-636; P-637; P-742; Testimony of Hipfner on September 15, 2005 at pp. 54-55; Testimony of Jai on August 30, 2005 at pp. 231-232; Testimony of Christie on September 26, 2005 at pp. 76, 188-190

⁸⁰⁹ P-536; Testimony of Christie on September 27, 1995 at p. 22; Testimony of Todres on November 30, 2005 at pp. 225-226; Part V, para. 547-567

that while individual ministries must initially consider their own perspectives and interests, it is the role of the Premier, and his office on his behalf, to consider the position of the government as a whole before the government makes a decision.⁸¹⁰

831. In any event, we submit that no time did anyone suggest that the views of ministers, including those of the Premier, should not be mentioned at the IMC meetings and, in fact, the Chair of the IMC specifically asked participants to brief their ministers and report back with respect to their positions. Bangs advised as to his minister's views and the Chair herself reported on the direction of the Attorney General.⁸¹¹
832. We submit that Hutton asked questions in order to find out and understand the facts and the legal advice. We submit that this was appropriate, as confirmed by the evidence of deputy ministers and, in fact, that it was her responsibility to do so as she had to brief the Premier.⁸¹²
833. We submit that participants at the IMC meetings on September 5 and 6, 1995 had different perspectives and concerns and expressed them. We submit that this also occurred at the IMC meeting on August 2, 1995 and is not surprising given that people represented different ministries with different interests and responsibilities and that the individual representatives themselves had different areas of expertise and responsibility.⁸¹³
834. We submit that Deb Hutton had a broader perspective of the situation than that of some of the civil servants and that as a representative of the Premiers' Office it was prudent to consider that the government's policy position and communication, or lack thereof, might have repercussions. We submit that Hutton did regard it as important for the government to clearly communicate that it did not condone the actions of the occupiers and that it do so quickly in the circumstances. We submit that the

⁸¹⁰ Testimony of Hutchison on August 29, 2005 at pp. 28-31, 90-91; Part II, para. 29-31; Part V, para. 537-539

⁸¹¹ Part V, para. 589-590, 707; Testimony of Moran on November 1, 2005 at p. 111

⁸¹² Part II, para. 31; Testimony of Todres on November 30, 2005 at pp. 225-226; Part V, para. 537-539

⁸¹³ Testimony of Moran on November 1, 2005 at pp. 112-113; Part IV, para. 317-330; Part V, para. 547-590, 695-725

provincial government had the authority to take this position and note that the previous NDP government expressly stated it did not condone the 1993 actions.⁸¹⁴

835. We submit that there is no evidence that civil servants expressed any disagreement with the need to publicly express condemnation of the actions. In fact, the evidence is that there was a consensus by the IMC regarding the communication messages.⁸¹⁵

836. Some of the civil servants at Queen's Park, including the Chair of the IMC, disregarded or discounted information provided by the MNR representatives on the ground assuming that it was unreliable. We submit that the purpose of having civil servants on the ground participate at IMC meetings is to have the benefit of their knowledge directly. We submit that it is not advisable to ignore or discount such information out of hand. We further submit that if a person has any concerns or questions about the source or accuracy of any information, they should ask questions of those providing the information.⁸¹⁶

837. The evidence is clear that it was Hutton who asked for confirmation of the reports of automatic gunfire. We submit that such information was not "operational information" in the sense of what were police plans or activities, but information as to what had already occurred and what may have been heard by members of the general public. Such information was clearly relevant to a general understanding of the seriousness of the situation and to the consideration of an injunction. We submit that it was prudent for Hutton to request confirmation of such information.⁸¹⁷

838. We submit that Hutton did seek to find out what were the provincial government's legal options. We submit that this was appropriate and, in fact, that it was her responsibility to do so as she had to brief the Premier.⁸¹⁸

⁸¹⁴ Part III, para. 113, 125, 131, 133-134; Part V, para. 569-571

⁸¹⁵ P-536; Testimony of Jai on August 30, 2005 at p. 264; Part V, para. 583

⁸¹⁶ Part IV, para. 323, 716

⁸¹⁷ Part V, para. 701-703

⁸¹⁸ Testimony of Todres on November 30, 2005 at pp. 225-226; Part V, para. 537, 577, 590

839. We submit that it is advisable for a government to find out the options that may be legally available and to obtain advice regarding their advantages and disadvantages. We note that Jai testified that that was what the IMC did. We further submit that it is advisable to identify legal options quickly as it may take time to review their advantages and disadvantages or to prepare to proceed with a particular option. We submit that in dealing with occupations and blockades, circumstances may change quickly and that an option that was not advisable before may become so.⁸¹⁹
840. We submit that while civil servants are responsible for providing advice regarding particular options, ministers are responsible for making policy decisions and outlining the general position of the elected government. We submit that the evidence of an experienced deputy minister was that it is appropriate for political staff to express views or to remind bureaucrats that there is a policy backdrop within which a government is operating. We further submit that there is no evidence that Hutton told the IMC participants that they could not raise for consideration, or provide advice on, any particular legal option available to the government.⁸²⁰
841. We submit that Hutton did raise a concern that, when MNR and the OPP spoke with the occupiers, they not suggest on behalf of the provincial government that it would enter into substantive negotiations about any land claims during the occupation. We submit that this was consistent with a policy guideline of previous governments as referred to previously in paragraph 206 of Part III. We further submit that it was consistent with the previous government's policy of not rewarding people who physically take possession of land. We submit that the integrity of the provincial land claim system depends on encouraging people to file land claims and to not simply take land that they regard as theirs. We further submit that while the new provincial government had the authority to create its own policy guidelines, the evidence is that it did not do so.⁸²¹

⁸¹⁹ Testimony of Jai on September 13, 2005 at p. 100

⁸²⁰ Testimony of Todres on December 1, 2005 at pp. 109-110

⁸²¹ P-303; P-703; P-708; Testimony of Spiegel on September 21, 2005 at pp. 144-148; Testimony of Moran on November 1, 2005 at pp. 83-86

842. We submit that Hutton did not advocate any particular course of action at either meeting. We submit that this is evidenced by the testimony of civil servants who were present and reflected by the contemporaneous notes.⁸²²
843. We submit that it is clear that no one made the comment “Get the f**ing Indians out of the park even if you have to use guns” at the IMC meetings or words to that effect. All the witnesses who attended in person and who testified before the Commission confirmed this. We further submit that witnesses at the IMC meeting confirm that no one at the meetings said that weapons or physical force should be used. We submit that the repeated allegation that Hutton made the comment “Get the f**ing Indians out of the park even if you have to use guns” is without foundation; it simply did not occur.⁸²³
844. We submit that it is also clear that no one made such a comment regarding forceful removal at the dining room meeting. Hutton testified that she would have regarded an indication that the OPP was to be told that they were to remove the occupiers without an injunction as wholly inappropriate and such a comment would have stood out in her mind. Other witnesses testified to similar effect. We further submit that there is no evidence that Hutton said anything at the dining room meeting.⁸²⁴
845. The Inquiry went to considerable lengths to find the sources of this alleged comment. Leslie Kohsed-Currie, a civil servant at ONAS, who was not present at any 1995 government meetings regarding Ipperwash and whose job at ONAS had nothing to do with Ipperwash, testified that she heard this from someone else; however, she could

⁸²² P-510; P-536; P-636; P-637; P-742; Part V, para. 578,

⁸²³ Testimony of Jai on September 13, 2005 at p. 132; Testimony of Christie on September 26, 2005 at p. 144; Testimony of Hipfner on September 15, 2005 at p. 145, September 20, 2005 at p. 130; Testimony of Fox on July 14, 2005 at p. 50; Testimony of Patrick on October 17, 2005 at p. 96; Testimony of Hutchison on August 29, 2005 at pp. 93-94; Testimony of Hutton on November 21, 2005 at p. 241, November 23, 2005 at p. 409; Testimony of McCabe on September 28, 2005 at p. 221; Testimony of Prodanou on September 20, 2005 at p. 186; Testimony of Spiegel on September 21, 2005 at p. 115; Testimony of Moran on November 1, 2005 at p. 19; Testimony of Hunt on November 2, 2005 at p. 66; Testimony of Bangs on November 3, 2005 at pp. 54, 91

⁸²⁴ Testimony of Hutton on November 22, 2005 at pp. 192-193; Part V, para. 736, 872;

not recall who they were. We submit that the comment is and was nothing more than unsubstantiated rumour.⁸²⁵

846. Kohsed-Currie testified that she contacted Bob Watts, a former colleague who no longer worked in the provincial government, and told him this comment. On her own testimony, she had not heard any such comment herself; she had no knowledge that the IMC was recommending an injunction or that the ministers decided to proceed with one. There is no evidence that Kohsed-Currie made any attempt to speak with anyone who had attended the government meetings to confirm if the comment had been made, obtain any context or otherwise discuss the matter with any superior civil servant or anyone within ONAS, MAG or the provincial government generally. We submit that her conduct was totally irresponsible in the circumstances.⁸²⁶

847. We submit that the evidence is that Watts advised Chief Tom Bressette of the comment though Chief Tom Bressette understood that it was a comment made by the Premier. Chief Tom Bressette testified that he did not speak to the occupiers as he thought that they would not listen to him and would just tell him “Get out of here” or some such comment. Chief Tom Bressette further testified that he raised it with a reporter at a local radio station. The reporter taped a request from him to the occupiers to negotiate or find a way to move out of the park and that he heard it announced later that day. Chief Tom Bressette specifically testified that the radio station did not broadcast any reference to the “Get the f**ing Indians out of the park even if you have to use guns” comment because of concerns on the part of the reporter of broadcasting unsubstantiated stories which turn out not to be true.⁸²⁷

848. We submit that there is no evidence that the occupiers heard this false comment prior to the shooting of the Dudley George. We submit that while the false comment played a role in generating false myths and rumours following the shooting, it played

⁸²⁵ Testimony of Kohsed-Currie on October 17, 2005, at pp. 11, 15-23, 28, 49

⁸²⁶ Testimony of Kohsed-Currie on October 17, 2005 at pp. 15-23, 27-28, 37-39

⁸²⁷ Testimony of Watts on March 8, 2005 at pp. 41-43; Testimony of Tom Bressette on March 2, 2005 at pp. 107, 110-111, 273-274

no role in the events prior to the occupation other than perhaps causing the radio station to broadcast Chief Tom Bressette's request for the occupiers to leave the park.

849. We submit that Hutton was aware of the principle of police independence and sought to respect that principle. We submit that the evidence is clear that Hutton had no communication of any kind with police officers who had any operational responsibilities for the Ipperwash situation.⁸²⁸
850. We submit that Deb Hutton's assessment and indication that the Minister of Natural Resources should be the one to speak on behalf of the provincial government is objective evidence of her understanding that the issue before the IMC was that of the government's policy position and not that of the operations of the police.⁸²⁹
851. We submit that the evidence is clear that Hutton gave no direction as to what police officers should do in conducting their operations at Ipperwash. We submit that Fox did not perceive any of Hutton's comments as a direction to him and did not treat them as a direction. Patrick testified to similar effect. All the other witnesses who were present confirmed that Hutton gave no direction. We further submit that the evidence is clear that while the IMC participants received an overview of the situation on September 5 and 6, 1995 in order to fulfill their legitimate responsibilities, there was no discussion of what the OPP was going to do or of the numbers of police officers, the types of units or equipment involved.⁸³⁰

⁸²⁸ Testimony of Hutton on November 22, 2005 at pp. 36-37, November 23, 2005 at pp. 92-93; Testimony of Carson on May 16, 2005 at pp. 186-187; Testimony of Wright on February 22, 2006 at pp. 20-23; Testimony of Carson on May 31, 2005 at pp. 174-175; Testimony of Parkin on February 8, 2006 at p. 60; Testimony of Coles on August 17, 2005 at pp. 34-35; Testimony of O'Grady on August 22, 2005 at pp. 53-54, 97-98

⁸²⁹ Part V, para. 597

⁸³⁰ Testimony of Jai on September 13, 2005 at pp. 93, 124-125; Testimony of Fox on July 19, 2005 at pp. 112-113; Testimony of Patrick on October 17, 2005 at p. 125; Testimony of Spiegel on September 21, 2005 at pp. 114-115; Testimony of Hutchison on August 29, 2005 at pp. 92-93, 94-95; Testimony of Prodanou on September 20, 2005 at p. 131; Testimony of Hipfner on September 20, 2005 at pp. 49-50; Testimony of Hunt on November 2, 2005 at p. 66; Testimony of Moran on November 1, 2005 at pp. 156, 273-274; Testimony of Bangs on November 3, 2005 at pp. 190; Testimony of Hutton on November 22, 2005 pp. 173-174, 187-188. Sturdy who was participating by phone could not identify most speakers including Hutton; however, he recalled that the IMC recommended an injunction as soon as possible. Testimony of Sturdy on October 19, 2005 at pp. 40-42, p. 289

852. We submit that Hutton correctly referred to the limits of what the provincial government as landowner may ask of police at the September 6, 1995 meeting and that this was confirmed by Hutchison, an experienced lawyer from the Criminal Law Office of MAG. There is evidence that a question was raised as to whether MNR had formally asked the OPP for assistance and that MNR would look into this. We submit that the fact that this question was raised late in the September 6 meeting and had to be looked into further indicates that this issue had not been discussed previously at the IMC meetings.⁸³¹
853. We submit that Hutton raised the issue as she was considering what could be communicated to the public and that contemporaneous notes indicate that she expressed that. We submit that the evidence is clear that communication issues such as who should be the spokesperson for the provincial government were a significant part of the IMC meetings on September 5 and 6, 1995. Hutchison, who was very familiar with the concept of police independence from political interference, further testified that he did not recall anything inappropriate and that he would have recalled that. Hunt testified to similar effect. We note that there were no communications by the provincial government on September 6, 1995 in this regard.⁸³²
854. We submit that Hutton was forthright when she testified before the Commission as to what she did, what her thinking was and what were her intentions. We submit that her testimony was clear, precise and entirely credible. We further submit that her testimony of what she said and did is supported by the evidence of other witnesses and contemporaneous documents. We further submit that her evidence as to her thinking and intentions is logically consistent with her comments and actions.
855. We note that Hutton answered over 1,800 questions over three days of testimony. We submit that many questions that were put to her were repetitive or reflected a complete failure to acknowledge how people normally communicate. We note that

⁸³¹ P-536; Part V, para. 720

⁸³² Testimony of Hutchison on August 29, 2005 pp. 54-56, 290-291; Testimony of Hunt on November 2, 2005 at pp. 125-126, 176

Hutton worked for Michael Harris for a number of years, regularly spoke to him and would have had thousands of conversations with him. We submit that the conversations between September 4 and 6, 1995 concerned provincial government issues and, while serious, were not regarded at the time as a crisis and no one anticipated what would occur. Therefore, we submit that at the time the conversations did not have the significance that some have sought to give them since.⁸³³

856. We submit that the Inquiry has heard a great deal of evidence regarding people's recollections of their impressions, feelings and opinions of what occurred at various government meetings. We noted that some witnesses testified that it was difficult to know what they recalled independently. We submit that with the passage of time, people's recollections are less reliable. In any event, we note that the evidence reflects that different individuals formed different impressions and submit that while such evidence may reveal the state of mind of those individuals at the time, it is not a reliable basis for determining what actually occurred. We further submit that the evidence of what witnesses now recall they may have thought about another person's thoughts or intentions at the time has no value in determining what that other person actually thought or intended.⁸³⁴

857. We submit that, while civil servants are expected to be politically neutral and serve whichever government has been elected, civil servants can and do have personal political views. We note that there is evidence that some of the civil servants had personal opinions regarding the Progressive Conservative's policies during the election campaign and had discussed their political views amongst themselves when the Progressive Conservative Government was elected. We submit that, since Hutton was a representative of the Premier's Office, some of the civil servants saw her as a proxy for a new government whose political platform they personally did not support. We note that the civil servants did not know Hutton, her experience, or her

⁸³³ Part V, para. 537, 532

⁸³⁴ Testimony of Hipfner on September 15, 2005 at pp. 54-55; Part V para 833; Testimony of McCabe on September 28, 2005 pp. 222-223; Testimony of Bangs on November 3, 2005 p. 54; Testimony of Hipfner on September 19, 2005 pp. 131-132; 157-158

responsibilities and most had never met her before; however, some formed opinions about her and her intentions based on very limited knowledge.⁸³⁵

858. We note that witnesses testified that they were naturally upset by the tragic death on September 6, 1995 and discussed the circumstances. We further note that for years false allegations have been made about Hutton, the Premier and the Harris Government generally with respect to this matter. We further note that some of the civil servants have had to revisit these issues repeatedly as a result of the litigation, internal governmental reviews, and requests for information by the media.⁸³⁶

859. We submit that it is impossible to know to what extent any or all of these factors may have subconsciously affected witnesses' perceptions at the time and their recollection today of what their perceptions were. We submit that in view of all of the foregoing, findings should be based on the evidence as to what was actually said and done and not on witnesses' subjective impressions and characterizations.

iv) Police Independence

860. We submit that the evidence is clear that Fox was seconded to the provincial government and attended the IMC meetings in his capacity as advisor to the Deputy Minister of the MSG. He reported only to the Deputy Minister of the MSG. We further submit that the evidence is clear that Fox had no responsibilities for any police operations let alone those at Ipperwash.⁸³⁷

861. We submit that Fox, who was aware of the principle of police independence, was aware that political staff, including those of the Premier's Office, were entitled to attend IMC meetings. We note that Fox had previously attended a meeting on August

⁸³⁵ Testimony of Jai on August 30, 2005 at pp. 78-80, September 12, 2005 at pp. 124-125; Testimony of Hipfner on September 19, 2005 at pp. 89-90, 131-132; Testimony of Fox on July 12, 2005 at pp. 52-53; Testimony of Prodanou on September 20, 2005 at pp. 168, 237

⁸³⁶ Testimony of Hipfner on September 19, 2005 at pp. 80-84

⁸³⁷ Testimony of Todres on November 30, 2005 at 122-123; Part V, para. 300-301

2, 1995 with political staff including a representative of the Premier's Office, Hutton's assistant, Brett Laschinger.⁸³⁸

862. We submit that the purpose of the IMC meetings in September was to consider the provincial government's policy position and communications in regard to the situation. We note that ministers' views were discussed at the IMC meetings and, in fact, Jai, the Chair of the IMC, asked on September 5, 1995 that participants brief their ministers and report back their views and made it an agenda item for the following day. We submit that there is no evidence that Fox ever indicated that he should not hear such information. We note that he re-attended on September 6, 1995 knowing that participants would report back ministers' views. We submit that the actions of Fox reflected the fact that he was on secondment to the provincial government.⁸³⁹

863. In any event, several witnesses testified that they did not know that Fox was a police officer, including Hutton. We note that this was to be an interministerial meeting and there was no indication that anyone outside of government would be in attendance. We submit that accordingly it would be reasonable to expect that it would be attended only by ministry representatives. We note that the IMC meetings were large meetings with over 20 people in attendance. We further note that Fox testified that he was dressed in business clothes and identified himself at the IMC meetings by his position as an adviser at the ministry without mentioning his secondment.⁸⁴⁰

864. We submit that, while Fox provided a briefing of the situation on the ground, the evidence is clear that the Ministry of the Solicitor General generally receives reports from the OPP which may be shared with other ministries and that, in this instance, MNR representatives also provided information which originated from the OPP. Therefore, the information Fox provided would not have identified him as a member

⁸³⁸ P-506; Testimony of Fox on July 12, 2005 at pp. 224, 226-227

⁸³⁹ P-510; P-536; P-636; Part V, para. 589, 704

⁸⁴⁰ Testimony of Harris on February 14, 2006 at pp. 100-111; Testimony of Fox on July 13, 2005 at pp. 222-224; Testimony of Hutton on November 23, 2005 at p. 331

- of the OPP on secondment. We note that Jai who knew Fox quite well testified that he was “relatively knowledgeable about aboriginal issues for someone from the OPP” and submit that Fox would have sounded like someone who was an adviser to the Ministry of the Solicitor General on matters involving First Nations.⁸⁴¹
865. We note that the Deputy Minister Todres to whom Fox reported testified before the Commission that Fox was “fully seconded” and reported to her alone and in that sense was not considered to be an OPP officer. He was always “Mr. Fox” to her. We submit that his Deputy Minister with whom he had regular contact, regarded Fox as a civil servant.⁸⁴²
866. We submit that Hutton’s conduct and comments at the time were consistent with her understanding. She did not ask Fox to confirm the reports of gunfire but indicated to the meeting: “Can we confirm that”? Sturdy, an MNR representative, in fact sought and confirmed the information before Fox went to do so. When Hutton asked if MNR had asked for assistance from the OPP toward the end of the meeting on September 6, 1995, she communicated with Hutchison, not Fox.⁸⁴³
867. We submit that nothing Hutton said at the IMC meeting constituted direction or instruction to the OPP regarding police operations. We further submit that Hutton testified that no one ever asked her to direct or influence police operations at Ipperwash Provincial Park. She would have regarded such a request as highly inappropriate and would not have done it. She further testified that she never intended any comments to be some kind of direction and Fox and Patrick did not perceive her comments as such.⁸⁴⁴
868. We submit that since Hutton did not know that Fox was a police officer in any sense, she could not have intended to direct him or to influence him. In any event, since Fox

⁸⁴¹ Part V, para. 306, 554, 556, 696, 699, 701, 721

⁸⁴² Testimony of Todres on November 29, 2005 at p. 278, November 30, 2005 at p. 34

⁸⁴³ Part V, para. 701, 711, 712, 720

⁸⁴⁴ Part V, para. 851; Testimony of Fox on July 19, 2005 at pp. 112-113; Testimony of Patrick on October 17, 2005 at p. 125; Testimony of Hutton on November 23, 2005 at pp. 413-414

had no operational responsibilities, we submit that having policy discussions in his presence could not constitute, in and of itself, any interference with the police operations at Ipperwash. We further submit that contact between Fox and political staff or ministers does not raise even the perception of political interference given the fact that Fox was not an operational officer and was fully seconded as a civil servant.⁸⁴⁵

869. The evidence is that Fox knew the OPP Incident Commander personally and decided to make comments to him of his perceptions of discussions regarding government policy and communications. We note that Fox testified that he did not intend to convey any direction or to influence police operations on the ground.⁸⁴⁶

870. We submit that Fox only made specific references to Hutton in his call to Carson on September 5 and even then made very few references to her. We submit that nearly the entire phone call on September 5, 1995 to Carson referred to Fox's perceptions of discussions with MNR civil servants. We also note that he did not refer to Hutton or any policy discussions at the IMC meeting in his phone call with Wright on September 6, 1995 immediately following the IMC meeting.⁸⁴⁷

871. We submit that Fox's first observation to Carson on September 5, 1995 with respect to Hutton was a comment on her personal physical appearance which was gratuitous and demeaning. We note that Fox made no comment regarding the physical appearance of any male participants at any meeting and submit that the fact that Fox did not perceive that his remark was sexist does not change the fact that it was on its face a sexist comment. We note that Fox also made comments regarding the age of the Minister of Natural Resources. We submit that the fact of these observations speaks to how Fox's personal impressions were based at least in part on age and gender. In any event, we submit that the remarks reflect the nature of Fox's comments to Carson regarding the government discussions: they were personal and

⁸⁴⁵ Testimony of Hutton on November 23, 2005 at p. 328

⁸⁴⁶ Testimony of Fox on July 19, 2005 at p. 112-113

⁸⁴⁷ P-444A, Tab 16; P-444A, Tab 34; Part V, para. 630-634, 636-637, 726

superfluous comments to a former colleague. We further submit that they were totally inappropriate.⁸⁴⁸

872. We submit that Fox's comments do not accurately reflect the meetings that he attended as he took things out of context and made grossly misleading characterizations.⁸⁴⁹

873. In any event, the evidence is clear that no one asked Fox to communicate to operational OPP officers on the ground comments regarding policy discussions. We submit that the existing protocols and practices were that internal government meetings are confidential and that once the government has made a decision which needs to be communicated to the OPP, such as the decision to seek an injunction, the decision would be communicated through the Deputy Minister.⁸⁵⁰

874. Todres, the Deputy Solicitor General and the person to whom Fox reported, testified that she regarded Fox's call to Carson on September 6, 1995 to be a lapse of judgment on his part. We submit that the call on September 5, 1995 reflected equally poor judgment. Fox himself acknowledged that he was venting and that Carson did not need to know Fox's views of the IMC. He also agreed that it was "possible" that it was not appropriate for him to tell Carson about views of the IMC and that not having such communications would be part of the separation of government and police.⁸⁵¹

875. We submit that there was proper separation between government and police during the occupation of Ipperwash Provincial Park but for Fox's spontaneous decision to volunteer his personal perceptions of the government's policy discussions to Carson,

⁸⁴⁸ P-444A, Tab 16, Tab 37; Testimony of Fox on July 13, 2005 at pp. 269-270, 272, 276

⁸⁴⁹ Testimony of Moran on November 1, 2005 at pp. 53, 64; Testimony of Bangs on November 3, 2005 at p. 136; Testimony of Hutton on November 22, 2005 at pp. 160, 162-163; Testimony of Hunt on November 2, 2005 at pp. 114-116

⁸⁵⁰ Testimony of Todres on November 30, 2005 pp. 39-40, 228-229, December 1, 2005 at pp. 184-185; Testimony of Patrick on October 17, 2005 at pp. 149-150; Testimony of Fox on July 14, 2005 at pp. 50-51

⁸⁵¹ Testimony of Fox on July 13, 2005 at pp. 47-51, 58-59, 265-266, July 14, 2005 at pp. 44-49; Testimony of Todres on Nov 30, 2005 at pp. 213-219

a former colleague. We further submit that since the making of any comments regarding such discussions to operational OPP officers was inconsistent with existing protocols and practices, no one in government could reasonably have expected that any commentary regarding those discussions would be communicated to operational officers on the ground. Hutton testified that she was surprised that Fox would communicate the comments that he did.⁸⁵²

876. We submit that the common law principle of police independence as laid out in *Ex Parte Blackburn* does not require a complete disconnect between politics and the police officers. We submit that police officers remain citizens with the right to follow current events in the media, the right to hold political views and to vote for whomsoever they may choose. We further submit that the principle of police independence is similar to that of judicial independence: police officers have the same freedoms as other members of Canadian society; however, they are required to be guided by the law alone in fulfilling their duties in operational matters. We submit that the principle of police independence prohibits overt, intentional acts of political interference in the conduct of specific police operations.

877. We further submit that recent decisions which address the principle of police independence continue to consider the notion of “political interference” in terms of overt and intentional actions aimed at directing police in their operations so that they proceed differently with their operations than they otherwise would. We submit that the evidence overall does not indicate that there was any political interference of police operations at Ipperwash or that there was any attempt to do so.⁸⁵³

878. We further submit that Fox did not intend to influence Carson and in fact, his inappropriate decision to communicate his perceptions of political views did not have any influence. Carson’s reaction to what Fox told him on September 5 is reflected in his report to Parkin later that afternoon that the provincial government appeared to be

⁸⁵² Testimony of Hutton on November 22, 2005 at pp. 171-172

⁸⁵³ APEC Report, pp. 82-83

“waffling”. We submit that Carson clearly wanted the provincial government as landowner to make a decision about the injunction. Wright expressed a similar frustration the next morning and expressed the hope that the premature media reports that the provincial government was seeking an injunction would pressure the government to proceed to do so.⁸⁵⁴

879. We submit that the only substantive information that Fox communicated to Carson on September 6, 1995 was that the government was proceeding to seek an emergency injunction. We submit that this is what the OPP wanted and so could hardly be said to have caused them to change any plans. We further submit that the evidence is clear that the OPP had not decided what precise steps they would take once an injunction was obtained.⁸⁵⁵

880. We submit that the steps taken throughout the day on September 5 through to the evening of September 6 when Carson when off-duty were entirely consistent with their plans and the actions taken by the OPP by the morning of September 5, 1995. We submit that the evidence is clear that the OPP expected to continue proceeding in accordance with their plans on the evening of September 6, 1995. We further submit that this is amply supported not only by the testimony of various OPP officers but also by their conduct such as the fact that Carson, the OPP’s Incident Commander with overall responsibility for the OPP’s response to the takeover, went off duty at approximately 19:30 to have dinner with friends.⁸⁵⁶

⁸⁵⁴ Testimony of Carson on May 31, 2005 at pp. 177-178; Testimony of Parkin on February 8, 2006 at pp. 58-61; Part V, para. 643-644, 672-676

⁸⁵⁵ Part V, para. 654

⁸⁵⁶ Testimony of Carson on May 31, 2005 at pp. 175-176; Part V, para. 616-617, 619-621, 623-629, 641-656, 663-666

PART VI – EVENING OF SEPTEMBER 6, 1995

A. SUMMARY OF FACTUAL EVIDENCE

i) Residents Meeting in the MNR Parking Lot

881. At 18:00, Wright and Hebblethwaite attended a rally held in the MNR parking lot. At this meeting there were twenty to forty local residents, some of whom carried signs, and Mayor Fred Thomas. The residents were frustrated and anxious. Hebblethwaite testified before the Commission that he felt that the residents wanted the OPP to do something to get the situation under control. The residents informed Wright of their intention to march to the park.⁸⁵⁷

882. To calm down the crowd, Wright explained that the OPP was managing the situation at the park and provided assurances that the OPP would not leave the area. Wright further explained that a march to the park would be dangerous and that he could not guarantee their safety if they proceeded. Hebblethwaite informed one woman that a court injunction was being sought. In speaking to the residents, Wright and Hebblethwaite persuaded them to go home and stayed in the MNR parking lot until the last resident left the area. Wright testified that this public meeting caused him concern and felt Carson should be made aware the meeting.⁸⁵⁸

ii) Wright encounter with Occupiers at the Sandy Parking Lot

883. Following the end of the residents' meeting, Wright left the MNR parking lot by car. Wright, who was dressed in civilian clothes, encountered several male occupiers at the sandy parking lot. Wright testified that they held bats or axes and prevented him from accessing the parking lot. While some details of the encounter are in dispute, the

⁸⁵⁷ Testimony of Wright on February 22, 2006 at pp. 256-262; Testimony of Hebblethwaite on May 11, 2006 at pp. 108, 111-113

⁸⁵⁸ Testimony of Wright on February 22, 2006 at pp. 256-262; Testimony of Hebblethwaite on May 11, 2006 at pp. 108, 111-113; P-426, p. 76

occupiers confirmed that they prevented a man in civilian clothing from driving towards the sandy parking lot and one of them carried a stick at the time.⁸⁵⁹

884. Wright perceived their behaviour as threatening and advised police at the officers at checkpoints C and D that things appeared to be escalating. From checkpoint D, Wright returned to the command post.⁸⁶⁰

iii) Gerald George Encounter at the Sandy Parking Lot and Police Report

885. Shortly before 20:00, there was a confrontation between Gerald George and some of the occupiers in the sandy parking lot. The occupiers were upset with Gerald George for the letters to the editor that he had written criticizing the Stoney Point Group. One of the occupiers, Stewart “Worm” George, hit Gerald and threw a rock at his car as he drove away.⁸⁶¹

886. After leaving the scene of the confrontation, Gerald reported the incident to OPP officers at checkpoint C, who took a statement.⁸⁶² OPP officers testified that Gerald further advised them on an anonymous basis that occupiers had weapons and certain plans.⁸⁶³ In his notebook Constable Mark Dew noted the following:

Receive info from anonymous source as to weapons. They have 4 SKS Russian semi autos w 30 round detachable mags – 1 or 2 have fixed 10 round mags, 2 Ruger Mini 14 with 30 round mags, several hunting rifles with scopes – believes they may be making gas bombs – believes they will burn some buildings on the base tonight.⁸⁶⁴

887. Gerald George testified at this Inquiry that he advised the police of weapons he possessed and indicated that he assumed the occupiers had similar weapons. He

⁸⁵⁹ Testimony of Wright on February 23, 2006 at pp. 18-29; Glenn Bressette on November 9, 2004 at pp. 217-218; Testimony of Clayton George on November 8, 2006 at p. 92

⁸⁶⁰ Testimony of Wright on February 23, 2006 at pp. 32-33

⁸⁶¹ Testimony of Gerald George on January 13, 2005 at pp. 82-92; Testimony of Stewart George on November 2, 2005 at pp. 75-79

⁸⁶² Testimony of Poole on May 16, 2006 at pp. 59-64; P-1114; P-123, p. 1

⁸⁶³ Testimony of Poole on May 16, 2006 at pp. 73-77; Testimony of Dew on April 3, 2006 at pp. 85-86

⁸⁶⁴ P-1272, pp. 33-34

denied passing along any information regarding occupiers' threats to burn buildings.⁸⁶⁵

888. At 20:41, Dew called the command post and reported information from a source that the occupiers had four SKF's (Russian semiautomatics) with thirty round detachable clips, and a couple with six ten round clips, as well as two Ruger Mini Fourteen's with thirty round mags and hunting rifles with scopes. He reported that the occupiers might be making gas bombs.⁸⁶⁶

889. During the evening, police officers at the checkpoints also observed that women and children were leaving Camp Ipperwash in anticipation of something occurring.⁸⁶⁷

iv) Evacuation of Women and Children

890. Ron French, an assistant to federal Minister of Indian Affairs Ron Irwin, attended CFB Ipperwash at the federal Minister's request in the early evening of September 6, 1995 and met with some of the occupiers. He testified that he was concerned by the police presence in the area and advised the occupiers to get the women, children and teens out of the area without having knowledge of the OPP's plans or operation.⁸⁶⁸

891. Rose Manning testified that French told them to return to the Kettle and Stony Point reserve because at Camp Ipperwash they were surrounded by police and certain people were being targeted. French's comments upset the group. The occupiers who evacuated the women and children testified that this was done because they thought something was going to happen.⁸⁶⁹

892. At the OPP checkpoint at the main gate of Camp Ipperwash, Dew spoke with the ERT members on duty. They informed him that women and children were leaving in

⁸⁶⁵ Testimony of Gerald George on January 13, 2005 at pp. 101-109

⁸⁶⁶ P-1137 pp. 160-162

⁸⁶⁷ P-1137 pp. 160-162; Testimony of Graham on April 21, 2006 at pp. 96-97, 161

⁸⁶⁸ Testimony of French on June 28, 2006 at pp. 45-54, 104

⁸⁶⁹ Testimony of Rose Manning on April 7, 2005 at pp. 91-95; Testimony of Mike Cloud on November 8, 2004 at pp. 91, 137-141

anticipation of some trouble expected that evening. At 20:27, Dew telephoned Linton in the command post and advised him of this information.⁸⁷⁰

v) Actions of the Occupiers

893. Some occupiers testified that they thought that there was a build up of police on the evening of September 6th, but there is variation in their accounts about the timing of any such build-up. Regardless, as of the time that Carson went off-duty at approximately 19:30, there is no evidence from police that they increased their presence or changed their operations around Ipperwash, although the location of checkpoints moved and the distribution of officers at the checkpoints changed.⁸⁷¹
894. The TRU team had arrived the day before and as of 19:30 on September 6, they were still on stand-by at Pinery Provincial Park. Additional ERT teams arrived on the morning of September 5, but they had been called out to Ipperwash shortly after the beginning of the occupation on September 4. A police helicopter had flown over the park on both September 5 and the morning of September 6.⁸⁷²
895. Stacey George testified that he noticed the build-up when he returned to the park in the afternoon of September 6, 1995. Although the same number of police had been manning checkpoints around the park since September 4, Stacey said that there were reports from people coming and going from Kettle Point that there was a large build-up of police. Stacey said that there were also reports coming in of military vehicles, like jeeps, spotted in the countryside; however, there is no evidence that the OPP brought in any military jeeps on September 6 and Carson testified that no LAVs were brought to the area while he was the Incident Commander.⁸⁷³

⁸⁷⁰ Testimony of Dew on April 4, 2006 at pp. 75-83; P-1136

⁸⁷¹ P-1228, P-1284

⁸⁷² P-426, p. 1, 18, 34 and 59; Testimony of George Speck on March 22, 2006 at pp. 235-236

⁸⁷³ Testimony of Stacey George on November 22, 2004 at pp. 72-73; Testimony of David George, October 20, 2004, pp. 75-78; P-426, p. 13; Testimony of John Carson on May 17, 2005 at pp. 313-314

896. Glen Bressette testified that he had a feeling the OPP might do something because he thought that the OPP had stopped all traffic on the roads surrounding Ipperwash, evacuated a cottager and moved the nearest checkpoint back. While the OPP had stopped all traffic on the roads surrounding Ipperwash, they had begun doing so from the time that the checkpoints were established. With respect to the OPP's actions in evacuating and moving checkpoints back, those actions occurred later in the evening.⁸⁷⁴
897. Some of the occupiers point to a build-up following the incident between Stewart and Gerald George around 20:00. Stewart George testified that after the encounter with Gerald George, he began to notice an increase of police presence near Camp Ipperwash and the park.⁸⁷⁵
898. Glenn George testified that when he saw Gerald George, who Glenn knew as hostile to the Stoney Point Group, talking to the police at a checkpoint, he got an eerie feeling. He drove around Camp Ipperwash in a dump truck and built a large fire on the road parallel to Army Camp Road north of the built up area.⁸⁷⁶
899. Marlin Simon testified that when he heard about the Gerald George-Stewart George confrontation and a call to the TRU team on a police scanner, Marlin drove around the park and the base quickly searching for people to warn around the park and the barracks. He also saw the bus and the dump truck go to the park after driving around the Ipperwash area. Marlin said that he and others had started stockpiling bricks from the park store patio for the purpose of self-defence.⁸⁷⁷
900. Whatever the occupiers' perception may have been, people were reacting to the escalation of events that had begun with Mark Wright's encounter with the occupiers in the sandy parking lot. Up to that point, there had been no change in the police

⁸⁷⁴ Testimony of Glen Bressette November 9, 2004, pp. 224-227

⁸⁷⁵ Testimony of Stewart George on November 2, 2004 at pp. 81-82

⁸⁷⁶ Testimony of Glenn George on February 1, 2005 at pp. 228-235

⁸⁷⁷ Testimony of Marlin Simon on September 29, 2004, pp. 43-44, September 30, 2004, pp. 24-28, pp. 205-207

operation. Shortly after Wright left the parking lot, he received a report about what had occurred between Gerald and Stewart George. At 19:54, while on his way back to the command post, he reported via radio and said: “I think we should be moving some people down that way.” This was the first suggestion on the evening of September 6 that the OPP should deploy additional resources to contain the occupation to the park.⁸⁷⁸

vi) The OPP’s Perceptions and Response

901. As various reports from police on the ground came in, the officers at the command post discussed how to address the situation. Wright asked Korosec to hold back the day shift. He further reported that there were ten individuals on the road, a number of whom had bats or axe handles, and that there had been damage to a vehicle. Wright also related his encounter with the occupiers in the sandy parking lot in which he was denied access.⁸⁷⁹
902. Linton, Wright, Graham and Korosec then discussed the OPP’s response to the activity in the parking lot area. In the course of this discussion at 20:02, they also received reports that the bus and the dump truck were en route to the kiosk area. Linton suggested that they use a “B team with helmets and canine”, but Wright disagreed. He suggested that they tell the males to “back off into park.”⁸⁸⁰
903. As Linton considered the response, Wright telephoned Carson at 20:05 and reported on the activity in the parking lot and advised of his concerns. While Wright was speaking to Carson, Linton decided that they should call in TRU to make arrests. Wright, who was surprised by the decision, advised Carson.⁸⁸¹

⁸⁷⁸ Testimony of Mark Wright on February 23, 2006 at pp. 53-57; P-1115

⁸⁷⁹ Testimony of Wright on February 23, 2006 at pp. 54-56; Testimony of Korosec on April 6, 2006 at pp. 219-222; P-426, p. 73; P-1115

⁸⁸⁰ P-426, p. 73; P-427, p. 474; P-1113

⁸⁸¹ Testimony of Wright on February 23, 2006 at pp. 101-104, 111-112; Testimony of Carson, May 19, 2005, pp. 132-135; P-444B, tabs 48 and 49

904. At Carson's request, at 20:15 Linton called Carson and advised him of his concerns. Carson testified that he was concerned about sending the TRU team out to effect arrests as it would leave the police with no tactical officers in reserve if required. Carson persuaded Linton to have TRU stay suited up at Pinery. Carson then decided to return to the command post because he was concerned about what appeared to be an escalation of activities.⁸⁸²
905. Following his telephone call with Carson, Linton and the command staff discussed using ERT in a large formation.⁸⁸³
906. Through this period, there were continuing reports from the ground about the activity at the park and the camp. At 20:11, they learned that the dump truck was headed towards the main camp. At around the same time, at approximately 20:12, Chris Martin, who was monitoring the video, reported that a native in the kiosk had closed the blinds and was periodically peeking through them. Martin did not know if the occupant of the kiosk had a weapon. At 20:27, Mark Dew reported that women and children were moving out because "something is going to happen."⁸⁸⁴

vii) Carson Returns to the Command Post

907. Carson testified that when he returned to the command post, he had a discussion with Linton to decide how to handle the situation. Linton was concerned about the potential of sniper fire from the kiosk and about a potential threat to the citizens in the cottages located near the park, as he was mindful that there had been previous suggestions that the cottages were next.⁸⁸⁵
908. The consensus was to mobilize the CMU to clear the sandy parking lot. Hebblethwaite, who served as a CMU instructor from 1994 to 2002, testified that the

⁸⁸² P-426, p. 73; P-444B, tab 51, p. 327-328; P-444B, tab 52, pp. 332-335; Testimony of Carson on May 19, 2005 at p. 149

⁸⁸³ Testimony of Wright on February 23, 2006 at pp. 139-141; P-426, p. 74

⁸⁸⁴ P-1134; P-1319; P-1136; P-426, p. 74

⁸⁸⁵ Testimony of Carson on May 19, 2005 at pp. 159-161; P-1155; P-426, p. 75

- objective of the CMU is to restore order. Carson testified that the CMU can be used to prevent situations from becoming violent by demonstrating a presence at the scene. The mere presence is intended to deter violence.⁸⁸⁶
909. At 20:49, Carson explicitly informed Skinner that TRU members were to support the CMU and perform observations only and was not going tactical. They were just to support the CMU, which, if necessary, would be addressing the threat. He said: “We are using T.R.U. to go in and get an eye, if they are just having a campfire let’s leave them.”⁸⁸⁷
910. In the meantime, the OPP had received further reports about the increased activity at the scene. At 20:41, Dew called in and informed Graham about the weapons reported by Gerald George, that women and children were leaving the Ipperwash area and that the occupiers threatened to burn building if anymore of the Kettle Point council arrived. Graham passed this information on to the rest of the command staff.⁸⁸⁸
911. At 20:42, Richardson reported lots of native traffic on the beach. Five minutes later, Jacklin reported eight or nine vehicles going to the beach from the camp.⁸⁸⁹
912. Carson went to the Tactical Operation Centre (TOC) with TRU team commander Skinner to deploy the CMU and monitor the TRU team. He directed Linton and Wright to stay at the command post in Forest.⁸⁹⁰
913. Meanwhile at the command post, Linton called Parkin to advise him about the deployment of CMU and TRU in response to the following:

⁸⁸⁶ Testimony of Carson on May 19, 2005 at pp. 161-162, June 2, 2005 at pp. 162-165; Testimony of Hebblethwaite on May 11, 2006 at pp. 51-52

⁸⁸⁷ Testimony of Carson on May 19, 2005 at pp. 170-171; 188-191; P-426, pp. 75-76

⁸⁸⁸ P-1137; P-426, p. 75

⁸⁸⁹ P-426, pp. 75-76; P-1404

⁸⁹⁰ P-427, p. 77; Testimony of Carson on May 19, 2006 at pp. 203-204

- a. A woman who had attended a meeting of concerned residents drove to the corner. She was confronted by eight native males, four with bats. They started banging on her car and damaged the vehicle;
 - b. Wright had driven down there and been told to get off the road;
 - c. The occupiers moved their bus and dump truck to the area;
 - d. The occupiers were in the kiosk, pulling down the blinds;
 - e. All the women and children at the base were being evacuated because there was going to be trouble;
 - f. There were large bonfires with people congregating around them at the corner and at the gate of the camp; and
 - g. They had a list of automatic weapons that were supposed to be down there.⁸⁹¹
914. Parkin confirmed with Linton that the plan was to take “whatever action is reasonable” if something happened “on the road or off of the Park” “but if it stays inside the Park... we’re not planning on going in.”⁸⁹²
915. Carson informed Lacroix, who was called up from home to lead the CMU, that he was to move the occupiers back into Ipperwash Provincial Park. Occupiers from the park had had moved into the sandy parking lot with sticks and a bonfire.⁸⁹³
916. Skinner recalled Carson instructing the CMU and TRU members not to enter the park. Skinner relayed this message over the radio. OPP officers who served in the CMU on the evening of September 6, 1995 testified that their instructions before marching towards Ipperwash Provincial Park were to clear the occupiers from the sandy parking lot. All testified that they understood that they were not to enter the park.⁸⁹⁴

⁸⁹¹ P-469

⁸⁹² P-469

⁸⁹³ Testimony of Lacroix on May 8, 2006 at pp. 194-198; Testimony of Wright on February 23, 2006 at pp. 206-207

⁸⁹⁴ Testimony of Skinner on April 19, 2006 at pp. 198, 283; Testimony of Poole on May 16, 2006 at pp. 170, 201-202, 285-286; Testimony of Root on May 16, 2006 at pp. 353-362, May 17, 2006, pp. 84-88, 114-115; Testimony of Bittner on May 17, 2006 at pp. 196, 212-213, 246-248; Testimony of York on May 18, 2006 at pp. 40-41, 113-116; Testimony of Jacklin on April 25, 2006 at pp. 247-248; Testimony of Huntley on April 27, 2006 at pp. 96-97, 104-105; Testimony of Hebblethwaite on May 11, 2004 at p. 127; Testimony of Cossitt on May 24, 2006 at p. 15

917. Some of the CMU members testified that they knew of the possibility of guns being at Camp Ipperwash.⁸⁹⁵

viii) The Confrontation

918. At approximately 10:30 pm, the CMU began marching down East Parkway Drive in formation towards the sandy parking lot.⁸⁹⁶
919. Cecil Bernard George testified that the police showed up in the sandy parking lot, came up to the fence but never entered the park and then returned back. According to him, at this point occupiers hurled burning sticks and stones at the officers and Cecil attempted to speak to them. The OPP began shield chatter. Cecil testified that he then became angry. He heard “Mayflower” yelled at the OPP and saw the officers coming forward. When he heard “punch out”, he assumed it meant for the officers to begin punching, so he dropped his stick, picked up a pipe or pole, swung it at an officer and hit the officer’s shield and heard the sound of the shield breaking on impact.⁸⁹⁷
920. A physical confrontation began with occupiers and police officers fighting outside the park in the sandy parking lot. During the confrontation, a school bus and a car drove out of the park towards the CMU. CMU members testified that they felt their lives were at risk. The car hit some officers. At some point, the TRU team and certain armed CMU members began firing at the bus and the car. Some officers claimed to have seen muzzle flashes emanating from the area of the occupiers and the car. Ken Deane fired at an occupier he claimed he saw armed with a long gun. The

⁸⁹⁵ Testimony of Root on May 16, 2006 at pp. 353-364; Testimony of Jacklin on April 25, 2006 at pp. 253-255; Testimony of Huntley on April 27, 2006 at pp. 102-104; Testimony of Lacroix on May 8, 2006 at pp. 209-210

⁸⁹⁶ Testimony of Lacroix on May 8, 2006 at pp. 211-217; Testimony of Jacklin on April 25, 2006 at pp. 253-255; Testimony of Beauchesne on May 25, 2006, p. 37; Testimony of Huntley on April 27, 2006 at p. 108

⁸⁹⁷ Testimony of Cecil Bernard George on December 7, 2004 at pp. 49-50, 59-65, 115-116

confrontation ended when Lacroix ordered a cease fire and conducted a head count behind the prisoner van. At that point, Carson ordered the CMU back to the TOC.⁸⁹⁸

B. ANALYSIS AND SUBMISSIONS

i) Position and Actions of the Occupiers

921. We submit that, having taken physical control of the park, the occupiers were not prepared to leave the park. We submit that some occupiers felt that they were entitled to lands beyond the park and some placed picnic tables outside the sandy parking lot to assert that entitlement; however, it is not clear that this was the position of most of the occupiers.⁸⁹⁹

922. We submit that some occupiers made preparations to hold the park and there is some evidence that they did this from the outset. In any event, by the evening of September 6, 1995, some occupiers were preparing to fight to retain physical possession of the park. We do not address precisely how the confrontation began as that will no doubt be addressed by other counsel representing parties who were involved. However, we submit that the evidence is clear that many of the occupiers did fight with the OPP and that the fighting took place outside of the park.⁹⁰⁰

923. We make no submissions as to the actual presence or absence of firearms though it is clear that the OPP were concerned about that possibility. We further submit that the evidence is clear that they occupiers did use various weapons such as clubs, pipes and rocks when fighting with police.⁹⁰¹

924. While there have been allegations about a police “build-up” instigated by politicians, we submit that there was none. We submit that there was absolutely no involvement

⁸⁹⁸ Testimony of Bittner on May 17, 2006 at pp. 213-214; Testimony of York on May 18, 2006 at pp. 59-66, 70-75, 159; Testimony of Jacklin on April 25, 2006 at pp. 280-293; Testimony of Huntley on April 27, 2006 at pp. 124-137; Testimony of Lacroix on May 8, 2006 at pp. 223-247; P-1767; P-1768

⁸⁹⁹ Part V, para. 466-481, 655-659

⁹⁰⁰ Part V, para. 528; Part VI, para. 895-899, 906, 919-920

⁹⁰¹ Part IV, para. 352, 355-357; Part V, para. 559, 646, 663, 653-655, 762; Part VI, para. 886-888, 906, 909-910, 917-921

whatsoever by ministers or political staff. We submit that the OPP took steps entirely of their own accord beginning on September 4, 1995 to bring in all the various resources Carson felt might be necessary. We submit that those resources arrived at various times over the course of the occupation; however, before Carson's departure at 19:30 on September 6, 1995, there had in fact been no significant change in the resources deployed since September 5 to police the occupation.⁹⁰²

925. Some of the occupiers testified that they obtained information as to what was going on outside the park from others who travelled back and forth. We submit that, if some of the occupiers perceived an increase in the OPP's presence on September 6, 1995 prior to Carson going off-duty, their perceptions were wrong and may simply reflect that information they received was inaccurate or delayed. Some of the testimony of the occupiers was vague on times of timing and submit that some may be referring to their perceptions later that evening after the police responded to what they saw as an escalation of the occupation.⁹⁰³

ii) Position and Actions of the OPP

926. We submit that the OPP had intended to sit tight the night of September 6, 1995 and wait for the injunction the next day. We submit that the evidence is overwhelmingly clear that the OPP reacted that night to what they perceived was occurring on the ground. We submit that the OPP actions in response were consistent with their operational plan to contain the occupiers to the park.⁹⁰⁴

927. We submit that the OPP response was a reaction to a perceived escalation of events on the ground, starting with Mark Wright's encounter in the sandy parking lot, and encompassing the increased activity of the occupiers, the women and children leaving and the incident involving Gerald George.⁹⁰⁵

⁹⁰² Part IV, para. 404, 424, 432; Part V, para. 616, 771-774, 790-792; Part VI, para. 893-900

⁹⁰³ Part VI, para. 893-900

⁹⁰⁴ Part IV, para. 378-386; Part V, 788; Part VI, para. 881-917

⁹⁰⁵ Part VI, para. 881-917

928. We submit that the intent of the deployment of the CMU was clearly to move the occupiers from the sandy parking back into the park, not remove the occupiers from the park. We submit that this is supported by the actions of the OPP as recalled by both OPP and First Nation witnesses who were present. There is no evidence that any police officer entered the park that night.⁹⁰⁶

929. We submit that the OPP's response to events on the ground was totally independent of the provincial government who were seeking an injunction.⁹⁰⁷

iii) Positions and Actions of the Provincial Government

930. On the afternoon of September 6, the only action by the provincial government in relation to the occupation was preparation for the injunction application the next day. There was no communication between the OPP and members of the provincial government in Toronto, apart from telephone calls from McCabe to Carson, Wright and Linton about service of the injunction materials or the evidence for the application the following day.⁹⁰⁸

931. We submit that ministers and their political staff expected that lawyers on behalf of the provincial government would go to court to seek an order for an injunction the following day. We further submit that the lawyers did so.⁹⁰⁹

932. We submit that there is no evidence that ministers, including the Premier, or their political staff communicated directly or indirectly with the OPP officers on the ground on the night of September 6, 1995 prior to the shooting of Dudley George. There is no evidence that ministers, including the Premier, and their political staff knew on September 6, 1995 about the escalation of the situation that night or the OPP's decision to send CMU down the road to get the occupiers to return to the park.

⁹⁰⁶ Part VI, para. 908-909, 914-916

⁹⁰⁷ Part V, para. 738-761; Part VI, 881-917

⁹⁰⁸ Part V, para. 738-761

⁹⁰⁹ Part V, para. 735-761

PART VII – CONCLUDING SUBMISSIONS

933. We submit that the totality of the evidence clearly shows that there was no political interference by ministers, including the Premier, or their political staff, in the OPP's operations in responding to the takeover of Ipperwash Provincial Park. The allegations made in the legislature and elsewhere that the Premier, ministers, or their political staff directed the OPP in their operations are false.
934. We submit that the totality of the evidence clearly shows that the takeover of a popular park owned by the provincial Crown in trust for the people of Ontario raised issues which were within the provincial government's areas of constitutional jurisdiction and responsibility. We submit that all levels of government share a general and legitimate interest in, and a responsibility for, maintaining respect for the rule of law. We further submit that the provincial government had fiduciary obligations to the people of Ontario with respect to its ownership and maintenance of the park. Finally, we submit that the takeover of the park was an important issue for the local community and other people in Ontario.
935. We submit that the provincial government had the authority to take a policy position in this regard and, in fact, had the responsibility to do so. We further submit that in a democracy the people would reasonably expect their government to take positions on issues which are within the government's jurisdiction and responsibility and would also reasonably expect the government to communicate to the public what policy position it was taking.
936. We submit that the evidence is that the legal advice provided to ministers and their political staff in 1995 was that the provincial Crown lawfully owned the park. We further submit that in 1993 the NDP government reviewed the few grounds asserted then for a limited occupation and found that they had no legal merit.

937. We submit that the one or two comments made by the occupiers in advance of the occupation and their actions on September 4, 1995 were not indicative of a peaceful protest to raise attention to some issue, but rather an intent to take possession and control of land. We submit that there was nothing occurring at, or planned for, the park prior to the occupation which in any way could justify the actions taken in September 1995.
938. We submit that filing a land claim with respect to the park was not a mere formality but the primary legitimate means of raising and resolving any such issue. The filing of the land claim would have initiated the provincial land claim process. We submit that the evidence overall is clear that, while there may have been frustrations in the delays in bringing about resolution of issues surrounding the camp, there was no evidence of attempts to raise issues regarding Ipperwash Provincial Park through legitimate means.
939. We submit that the provincial government and the OPP were repeatedly advised by the democratic and legally recognized representatives of the Kettle and Stony Point First Nation that the occupiers were a splinter group and that the First Nation had no claim to the park and was unaware of any burial grounds.
940. We submit that it was prudent for the provincial government to be concerned about the actions of the occupiers in taking over the park especially given the takeover of Camp Ipperwash a few weeks earlier. We note that there was some violence in both instances which caused the military to withdraw in late July 1995 from the camp and the MNR and the OPP to withdraw from the park in September of 1995. We note that in addition to the concerns about the nature of the actions taken, there were concerns about the potential inability to prevent access by other people and weapons, about the reports of gunfire, and about the potential safety issues. We submit that these issues are not merely relevant to the OPP in fulfilling their role but are also relevant to the provincial government in understanding the overall situation and considering its policy position. We further submit that the previous government had considered such

concerns in 1993, though the actual actions taken by the Stoney Pointers at that time were much more limited than those taken in 1995.

941. We submit that it was reasonable for the provincial government to take into account all of the foregoing in considering the legitimacy of the actions or lack thereof and in assessing its policy position at the outset of the occupation. We further submit that it is clear that the government did so.
942. We submit that the type of actions taken by the occupiers created a situation which was inherently unstable and potentially dangerous. We submit that it is precisely because this type of action can create an inherently unstable and dangerous situation that it is preferable that people use other legitimate means to get government to do something. We submit that it is prudent for a provincial government to consider the consequences of encouraging actions which can create public safety issues. We further submit that it is prudent to consider in these sorts of circumstances the potential effect of rewarding the taking of land on the integrity of the government land claims system.
943. We submit that the evidence overall makes clear that the policy position of MNR in 1995 with respect to the occupation of Ipperwash Provincial Park was firmly rooted in the position taken by the previous government in 1993. We submit that, in both instances, the provincial government made clear that it did not condone the actions and did not engage in any substantive negotiations which would reward the actions and might encourage others to use similar means.
944. We submit that the actions taken by the occupiers regarding the camp in July and then with respect to the park in September 1995 were different in nature and degree than those limited steps taken with respect to the park in 1993. We further submit that in 1995, unlike 1993, the occupiers did not communicate with anyone as they did in 1993 in order to alleviate concerns about violence and escalation. We submit that the evidence is clear that the 1995 actions raised considerable concerns in the local

- community. We further submit that when confronted with this issue in September 1995, the provincial government was aware of the concerns and sought to manage them in a responsible manner through its public communications without conceding the rights it held in trust. We submit that the provincial government made clear that it was considering its legal options, including an injunction.
945. We submit that evidence is overwhelmingly clear that the provincial government, when faced with the actions of the occupiers, considered its position and took steps to have the matter addressed through legal means. We submit that the provincial government had the authority and the responsibility to decide to seek an injunction.
946. We submit that the evidence overall indicates that the approach and operational plans of the OPP to the 1995 occupation were based on the OPP's approach in 1993 and plans they created in 1993. We further submit that the OPP implemented and acted throughout in accordance with those plans.
947. We submit that between September 4 and 6, 1995, it appears that the OPP and the occupiers acted and reacted to their perceptions of each other's actions and there were sporadic increases in tensions and episodes of confrontation. We submit that the chain of action and reaction suddenly spiralled on the night of September 6, 1995 and that when the OPP sought to contain the occupiers within the park, there was an altercation between the OPP and the occupiers outside the park during which Mr. George was killed.
948. We submit that the evidence overall does not support the assumption that the policy position and actions of the provincial government were causally related to the events on the ground on the night of September 6, 1995. On the contrary, we submit that the evidence overall indicates that the events on the ground simply overtook the situation before the provincial government could appear before the court to seek an injunction.

949. We submit that the evidence overall reveals that the occupation and takeover of Ipperwash Provincial Park had many root causes, most notably the federal government's failure to resolve the issues concerning Camp Ipperwash and the divisions within the Kettle and Stony Point First Nation which exacerbated the difficulty in resolving those issues.
950. We submit that historical land claims require thorough research and review if they are to be resolved on their merits. We submit that resolution without such research and review may be accomplished in a more timely manner but then such resolution would be based on considerations other than the merits of the particular claim and would require compromise. We submit that the decision to proceed without such research and review is clearly a policy matter which all affected parties must agree upon. We further submit that this was not the policy of previous governments up to and including 1995.
951. We submit that in order to achieve a lasting settlement, any resolution to a negotiation with or without prior research must be binding on all those affected and that, therefore, any issues regarding the authority of representatives of any affected party to bind others are a serious obstacle to the resolution of land claims. We submit that issues with respect to the legitimacy of bands (which were created by federal legislation) to represent First Nation people affect the ability to resolve land claims in a timely manner and should be addressed separately from any particular land claims.
952. We submit that although some of the occupiers may not have been aware of the different constitutional responsibilities and powers of federal and provincial governments, those differences exist. We submit that any resolution of any land claims concerning the park required the involvement of the federal government.
953. We submit that to the extent that some of the occupiers wanted to get the federal or provincial governments to address any particular issue, the actions taken were poorly conceived to achieve any such end. We submit that actions speak louder than words

and that, in this instance, the occupiers made no attempt to communicate their intentions, objectives and plans between September 4 and 6, 1995 and therefore their actions spoke for them.

954. We submit that, as of 1995, though the Stoney Point Group had occupied Camp Ipperwash for two years, the federal government failed to accurately assess the situation concerning the park. We note in that regard the evidence of Ron French, the executive assistant to the federal Minister of Indian Affairs that, as he prepared to leave the occupiers on the night of September 6, 1995, he intended to advise his minister of his opinion that as the weather worsened the occupiers would eventually just leave the park.⁹¹⁰
955. We understand that since taking over the park in 1995, the occupiers have never ceded physical control of the park. We note that, in 1996, the Kettle and Stony Point First Nation did make a claim regarding ownership of the park when they brought a cross-claim at the same time they defended legal proceedings brought against them by the local township.⁹¹¹ We understand that the issues relating to the park as well as the camp are the subject of negotiation among the federal government, provincial government and the First Nation people.
956. We submit that the evidence is clear that the members of the provincial government, the OPP and the members of the Kettle and Stony Point First Nation involved in the events between September 4 and 6, 1995 were concerned about the safety of all persons and sought to safeguard it. Finally, we submit that despite the good intentions and efforts of those involved, they were unable to avoid the tragedy that occurred.

⁹¹⁰ Testimony of French on June 28, 2006 at p. 60

⁹¹¹ *Bosanquet (Town) v. Canada (Attorney General) and the Chippewas of Kettle and Stony Point*, Court File No. 24085 (Ont. Ct. Gen. Div.) (Statement of Defence and Cross claim of the Chippewas of Kettle and Stony Point)

**ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 28TH DAY OF
JULY, 2006**

“Signed Anna Perschy”

A handwritten signature in cursive script, appearing to read 'A. Perschy', written in black ink.

Anna Perschy
Heenan Blaikie LLP
Counsel for Deb Hutton

LIST OF NAMES

Allen, Peter	Executive Assistant to the Deputy Minister of Natural Resources, Ron Vrancart
Antone, Bob	Member of Oneida on the Thames and Oneida longhouse
Austin, Elgin	Deputy Chief of London Police Service
Babbitt, Doug	OPP Communications Officer
Baldwin, Ron	District Manager of Ipperwash area for the Ministry of Natural Resources
Bangs, Jeff	Executive Assistant to Minister of Natural Resources, Chris Hodgson
Beacock, E.B.	Local area OPP Acting Sergeant in 1993
Beaubien, Marcel	Conservative MPP for Ipperwash area in 1995
Beauchesne, Mark	OPP Provincial Constable, TRU Alpha team
Bell, Don	OPP Detective Sergeant, Intelligence Officer
Bittner, Bill	OPP Provincial Constable, ERT member
Bouwman, Charlie	OPP Staff Sergeant, Grand Bend detachment commander
Brennan, Glenn	Official for Indian Affairs and Northern Canada
Bressette, Earl	Member of Kettle and Stony Point Band
Bressette, Glen	“J.R.”, occupier of Ipperwash Provincial Park
Bressette, Tom	Chief of Kettle and Stony Point Band

Buhagier, Christian	Parliamentary Assistant to Dan Newman
Carson, David	Counsel, Ontario Native Affairs Secretariat
Carson, John	OPP Inspector, Incident Commander
Christie, Elizabeth	Counsel, Ontario Native Affairs Secretariat
Cloud, Janet	Occupier of the Camp Ipperwash and Ipperwash Provincial Park
Cloud, Mike	Occupier of the Camp Ipperwash and Ipperwash Provincial Park
Coles, Christopher	OPP Chief Superintendent
Cossitt, Chris	OPP Provincial Constable, ERT member
Cottrelle, Nicholas	Occupier of Ipperwash Provincial Park
Cousins, John Thomas	Occupier of Ipperwash Provincial Park
Crabe, Terry	Ministry of Natural Resources employee at Ipperwash Provincial Park
Crate, Bill	Special Advisor on First Nations Policing to the Deputy Solicitor General and the Deputy of Correctional Services in 1993
Daudlin, Robert	Superior Court Judge in Sarnia, Ontario
Deane, Ken	OPP Staff Sergeant, TRU member
Dew, Mark	OPP Detective Constable, Intelligence Officer
Dodson, R.G.	Captain, Canadian Armed Forces, CFB London in 1993
Dougan, Mike	OPP Provincial Constable, ERT member

Doxtator, Isaac	“Buck”, member of Oneida on the Thames and Oneida Warrior Society
Duffield, Phil	OPP Executive Officer, Officer of the Commissioner
Elijah, Bruce	Member of Oneida on the Thames and Oneida longhouse
Elliott, Dan	Ministry of Natural Resources Native Liaison in 1995
Eve, Marg	OPP Sergeant, negotiator
Foster, Diane	Local Crown Attorney
Fox, Ron	Special Advisor on First Nations Issues to Deputy Solicitor General
French, Ron	Department of National Defence
Frew, Herb	Inspector, GM Diesel
George, Abraham	Occupier of Camp Ipperwash and Ipperwash Provincial Park
George, Anthony O’Brien (Dudley)	Occupier of Camp Ipperwash and Ipperwash Provincial Park
George, Carl	Occupier of Camp Ipperwash
George, Carolyn	Sister of Dudley George
George, Cecil	Councillor for Kettle and Stony Point First Nation
George, Clayton	Occupier of Camp Ipperwash and Ipperwash Provincial Park
George, Dan	Stony Point descendant buried at Camp Ipperwash
George, David	Occupier of Camp Ipperwash and Ipperwash Provincial Park

George, Elwood	Occupier of Ipperwash Provincial Park
George, Gerald	Councillor of Kettle and Stony Point First Nation
George, Glenn	Occupier of Camp Ipperwash and Ipperwash Provincial Park
George, Harley	Occupier of Camp Ipperwash
George, Maynard T.	Occupier of Camp Ipperwash
George, Robert	Grandfather of Dudley George
George, Roderick	“Judas”, occupier of Camp Ipperwash (as of August 1995) and Ipperwash Provincial Park
George, Ron	Member of Kettle and Stony Point First Nation, counsel to Stony Point occupiers to August 1994
George, Stacey	Occupier of Camp Ipperwash and Ipperwash Provincial Park
George, Stewart	“Worm”, Occupier of Ipperwash Provincial Park
George, Tina	Occupier of Ipperwash Provincial Park
George, Vince	OPP Provincial Constable, member of Kettle and Stony Point First Nation
George, Warren	Occupier of Camp Ipperwash and Ipperwash Provincial Park
George, Wesley	Occupier of Ipperwash Provincial Park
Graham, Rob	OPP Sergeant, ERT leader
Gransden, Mark	OPP Provincial Constable, ERT member
Hampton, Howard	NDP Minister of Natural Resources in 1993

Harnick, Charles	Attorney General of Ontario
Harris, Mike	Premier of Ontario
Hebblethwaite, George	OPP Sergeant, ERT second in command
Hipfner, Eileen	Counsel, Ontario Natives Affair Secretariat
Hodgson, Chris	Minister of Natural Resources of Ontario
Howell, Bob	Major, Canadian Armed Forces
Howse, Allan	Commanding Officer, Camp Ipperwash, July 1994 to June 1995
Humberstone, Terry	Ministry of Natural Resources Native Liaison in 1993
Hunt, Kathryn	Executive Assistant to Solicitor General, Robert Runciman
Huntley, Rob	OPP Detective Sergeant, ERT leader
Hutchinson, Jim	OPP Detective Inspector, present at Gustafsen Lake
Hutchison, Scott	Counsel, Ministry of Attorney General, Criminal Branch
Hutton, Deb	Executive Assistant, Issue Management to Premier Mike Harris
Irvine, James	OPP Provincial Constable, TRU Sierra team
Irwin, Ron	Federal Minister of Indian Affairs
Jacklin, Wayne	OPP Provincial Constable, ERT member
Jackson, Lincoln	Occupier of Camp Ipperwash

Jai, Julie	Acting Director of Legal Services, Ontario Native Affairs Secretariat, Chair of IMC
Jewell, Les	Occupier of Camp Ipperwash and Ipperwash Provincial Park
Jewell, Russ	Occupier of Camp Ipperwash and Ipperwash Provincial Park
Jones, Barry	Ministry of Natural Resources Legal Director
King, Bill	Caucus Liaison for Premier Mike Harris
Kobayashi, Les	Superintendent of Ipperwash and Pinery Provincial Parks, employee of MNR
Koshed-Currie, Leslie	Ontario Native Affairs Secretariat employee
Korosec, Stan	OPP Sergeant, leader of the No. 1 District ERT team
Lacroix, Wade	OPP Petrolia Detachment Commander
Laschinger, Brett	Political staff in the Premier's Office
Lazor, Yan	Acting Secretary of Ontario Native Affairs Secretariat
Linton, Dale	OPP Inspector, Ipperwash Night Shift Incident Commander
Manning, Bert	Occupier of Ipperwash Provincial Park
Manning, Rose	Occupier of Ipperwash Provincial Park
Mansell, Nancy	OPP staff with the OPP Commissioner
Martin, Chris	OPP Provincial Constable, Western Region Crime Unit
Matheson, Don	Assistant superintendent of Ipperwash Provincial Park, son of original superintendent

Matthews, Garnett	OPP Detective Staff sergeant
McCabe, Tim	Lawyer, Ministry of the Attorney General
Mercredi, Ovide	National Chief, Assembly of First Nations
Moran, David	Executive Assistant to the Attorney General
Myers, David	OPP Provincial Constable
O'Grady, Thomas	OPP Commissioner
Parkin, Anthony	OPP Superintendent
Parks, Larry	OPP Constable, ERT member
Patrick, Scott	OPP Staff Sergeant, seconded to Ministry of Solicitor General as First Nations Policing Advisor
Peters, Gord	Regional Chief for Ontario, Chiefs of Ontario
Poole, Sam	OPP Provincial Constable, ERT member
Prodanou, Anna	Acting Manager, Ontario Native Affairs Secretariat
Rae, Bob	Former Premier of Ontario, former leader of the Ontario NDP
Rhodes, Paul	Media adviser, Premier's Office
Richards, Norm	Director, Ontario Parks for Ministry of Natural Resources
Richardson, Trevor	OPP Detective Sergeant, Kent County Crime Unit
Robertson, Ed	OPP Inspector, Executive Duty Officer

Root, James	OPP Provincial Constable, ERT member
Runciman, Robert	Solicitor General of Ontario
Scott, Doug	OPP Inspector, seconded to Ministry of Solicitor General as Special Advisor on First Nations Policing in 1993
Seltzer, Brad	OPP Sergeant, Crisis Negotiator
Shimmin, Leslie	Executive Assistant to the Minister of Natural Resources
Simon, Kevin	Occupier of Ipperwash Provincial Park
Simon, Marlin	Occupier of Ipperwash Provincial Park
Skinner, Kent	OPP Acting Staff Sergeant, London TRU team leader
Smith, Daryl	Communications staff for Ministry of Natural Resources
Smith, Lorne	OPP Sergeant, retired
Smith, W.D.	Captain, Canadian Armed Forces, commander of CFB Ipperwash in 1995
Speck, George	OPP Detective Constable, Lambton County Crime Unit
Spiegel, Shelly	Executive Coordinator, Cabinet Office, former political staff to former Attorney General Ian Scott (Liberal)
Sturdy, Peter	Zone Manager in London, Ontario for Ministry of Natural Resources
Taman, Larry	Deputy Attorney General and Deputy Minister for Native Affairs
Taylor, Barb	OPP officer, seconded to Ministry of Solicitor General as liaison between the Deputy Solicitor General and the OPP
Thomas, Fred	Mayor, Bosanquet Township

Thunder, Elizabeth	Band Administrator, Kettle and Stony Point First Nation
Todres, Elaine	Deputy Solicitor General
Ur, Rosemarie	Federal MP for Lambton (Liberal)
Vale Don	Crown Attorney, Sarnia
Vernon, W.B.	Major General, Canadian Armed Forces, CFB Toronto
Vervoort, Ed	Compliance Specialist, Aylmer, Ministry of Natural Resources
Vrancart, Ron	Deputy Minister of Natural Resources
Wall, Tom	OPP Detective Superintendent in 1993
Watts, Bob	Watts and Associates, former employee of the Union of Ontario Indians
Whelan, Neil	OPP Provincial Constable, Chatham Detachment
Wildman, C.J.	Former NDP MPP, former Minister of Native Affairs
Williams, Ken	Administrator, Bosanquet Township
Wright, Mark	OPP Staff Sergeant
York, Kevin	OPP Provincial Constable, ERT member
Zacher, Larry	OPP Provincial Constable, ERT member
Zupancic, Rick	OPP Provincial Constable, TRU team element leader

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