

**THE IPPERWASH INQUIRY**

**WRITTEN SUBMISSIONS OF  
THE HONOURABLE  
MICHAEL D. HARRIS**

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# CHAPTER 1

## OVERVIEW AND INTRODUCTION

### 1.01 OVERVIEW

*Allegation in statement of claim in George et al. v. Harris et al., Ontario Superior Court of Justice action number 96-CU-99569:*

...Defendant Harris ordered the O.P.P. to utilize its Tactical Response Unit, with the express purpose and intent of taking severe action against the Protesters at Ipperwash Provincial Park...

*Gerry Phillips, Liberal MPP in the Ontario Legislature, May 13, 1997:*

We now have a transcript between the commanding officer, Mr. Linton, and his superior officer, the transcript taken an hour and a half before the fatal shooting. It shows that the government, for whatever reason, decided to overrule the OPP wishes and to direct them on action.

*From a lead editorial in The Toronto Star, January 2002:*

Yet Deane's dismissal, while welcome, doesn't cast any more light on the truth of what really happened in Ipperwash. Who, for example, demanded that the cops muscle their way into the Park against the advice of OPP commanders who were pushing for a peaceful resolution to the Indian occupation? The damning memos and briefing notes that trace a path right to the Premier's door hint at the answer.

*Premier Dalton McGuinty in the Ontario Legislature, June 6, 2006:*

The party opposite would prefer that we direct a police action. Let's be honest about where they're coming from in this regard. That is their preference. We bring a different approach. It is thoughtful; it's based on our recent understanding of some painful lessons in the history of this province.

Canada is a nation of laws. A government is entitled to oppose the taking without legal authority of public lands, whether for political or other reasons. This is fundamental. In this case a group of First Nations persons took Ipperwash Provincial Park (the "Park") without any legal right to do so. They did not have any justifiable moral claim to do so. They did not have any democratic mandate to do so from any First Nation, legally recognized or not.

Great efforts have been made by some to cast the persons who took the Park as 'protesters', motivated by a concern over their belief that the Park contained unprotected burial grounds. These efforts have presented the takeover of the Park in its most sympathetic aspect. The protection of burial sites is important for people everywhere. That is certainly so among First Nations people. The characterization of the persons taking over the Park as 'protesters' suggests that their primary concern was with the exercise of the fundamental democratic right of free speech. Some have sought to characterize the taking of the Park as a 'peaceful protest'.

Before they took the Park the people who took it made no attempt to assert any substantial case to any relevant authority, including First Nations authorities, about the need for protection of a possible burial ground in the Park.

The Park was established on part of a tract of land, originally reserved to the First Nation by treaty, that the First Nation had surrendered for sale almost 70 years earlier. The land on which the Park was located was a part of that tract which was subsequently sold to the province. The people who took the Park made no attempt to formally or informally assert any substantial case to any relevant authority, including First Nations authorities, that they were entitled to ownership of the Park. They simply took the Park.

The people who took the Park were not engaged in a peaceful exercise. They secured control of the Park through violence and intimidation. They made no effort to communicate any message of protest. They showed no interest in any communication with authorities or the public. The predominant intention of the group was simply to take the land and keep it, as in the end they did.

Premier Mike Harris and his government opposed the taking of Ipperwash Provincial Park. Mr. Harris and the involved members of his Cabinet agreed that it would be best if the occupation ended as quickly as possible. Mr. Harris supported appropriate action to achieve that goal. The government chose, after taking expert advice, to submit the matter to the court in an application for an immediate court injunction.

There was never any secrecy about the government's position regarding the takeover of the Park. Immediately after it began the government had made public its opposition to the takeover. It was made clear that the government was reviewing its legal options, including the seeking of an injunction.

The Premier and his government had every right to adopt this policy and pursue legal action. The Park was one of the oldest and most popular public parks in the province. It provided camping for over 50,000 persons annually. The government was entrusted with ownership of the Park for the benefit of the public as a whole. The Premier and his government also had the right and the duty to take action legitimately available to government to uphold respect for the law and legal processes for the assertion of claims or grievances. They also had the right and the duty to take action to maintain civil order.

In deciding upon an appropriate government response to the takeover of the Park the Premier and his government had to be mindful of the bounds of appropriate government action.

In particular, while the government was entitled to oppose the takeover, make its position publicly known, and pursue an injunction in the civil courts against the takeover, the government had to be mindful that it could not direct the operations of police deployed at the scene of the takeover.

The evidence heard by this Inquiry shows that the assertions and insinuations contained in the statements quoted at the outset of this chapter are all patently false. The evidence in this Inquiry is clear that Mike Harris was fully aware that it would have been inappropriate for government to direct police operations at the scene at Ipperwash, and that he did not do so. The Premier did not order the police, directly or indirectly, expressly or implicitly, to engage in any operations against the persons who took over the Park. Mike Harris did not communicate in any way with any of the police officers managing the takeover of the Park.

Before the province's court application for an injunction could be heard, events on the ground at the Park resulted in a police decision to engage in a crowd control exercise. That exercise went tragically wrong. The police action was a response to provocative conduct by some of the First Nations people who had taken over the Park. It is also clear that some of the information upon which the police decision was based was flawed.

The crowd control exercise, and the use by police of significant force in arresting one of the First Nations people, resulted in an extraordinary rage of violence by some of occupiers of the Park. The explosive force of that rage was unexpected by the police. Some of the First Nations people taking over the Park, armed with sticks and clubs, drove a large school bus, followed by an automobile, at the police group. In the violent melee that followed, one of the combatants, Dudley George, was shot and killed by a member of the OPP's Tactics and Rescue Unit.

The evidence clearly confirms that the OPP's decision to deploy its Crowd Management Unit at Ipperwash was made by the Incident Commander at the scene on the basis of his belief in facts clearly relevant to the OPP's duties and goals of maintaining public order and safety. The evidence does not support any conclusion that the Incident Commander's decision was made on the basis of irrelevant or inappropriate considerations, including political considerations or political influence.

The real story of Ipperwash is the depth and explosive nature of the rage that the OPP Crowd Management Unit met at Ipperwash, and what it signifies.

Many of the persons who took the Park had previously been in occupation of CFB Ipperwash, a large federal military base adjacent to the Park. During World War II the First Nation had been requested to surrender the land upon which the army base was established. The First Nation voted overwhelmingly against surrendering the land. Notwithstanding the wishes of the First Nation, the federal government proceeded with a compulsory taking of the land under the *War Measures Act*. The government of the day softened the blow by stating that the land would be returned to the First Nation when it was no longer required for military purposes. The First Nation understood, in good faith, that the land would be returned to them after the war.

The taking of CFB Ipperwash by the federal government caused hardship to the First Nations people who had lived on that land. When the war ended the land was not returned to them. The federal government refused to return the land for 50 years.

In early 1995 the federal government finally announced that it would return the CFB Ipperwash land. By then it was too late. Justice had for so long been disregarded by the Government of Canada that for the persons who took over the Park, government, regardless of jurisdiction, had entirely lost its moral authority. Principles of civil order, the appropriate resolution of grievances, and reasoned discussion lost their currency. The rage the police met at Ipperwash was a flashpoint of this collapse of justice.

The real question arising from Ipperwash is how government may restore and maintain the rule of law and civil order where it is disregarded by persons who have experienced historical injustice. There are no civil rights without civil obligations to respect the law and civil order. No civil society can tolerate the taking of public lands by force. No civil society can do so and continue to *be* a civil society.

The current governing party, together with its media allies, have not concerned themselves with this overarching policy issue that arises from the Ipperwash tragedy. They chose instead to deploy smear tactics for short term political gain. They have sought to equate in the public mind the Harris government's opposition to the taking of the Park, and the support of the rule of law and civil order, with the violation of the principle of the separation of politicians and police and the direction of state violence against First Nations people. They have continued to do so to this day, notwithstanding this Inquiry's pending proceedings.<sup>1</sup>

If this smear campaign had only been an exercise in dirty politics it could simply be regarded as such and dismissed. Any political price could be left to be paid (or not) in the political forum. But the smear campaign has had two serious consequences for public policy.

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<sup>1</sup> On June 6, 2006 Premier McGuinty was criticized during Question Period by Progressive Conservative members regarding ongoing events in Caledonia, Ontario, where direct action has been taken by some First Nations persons regarding certain land issues. In responding to that criticism Premier McGuinty made the following statements:

The party opposite would prefer that we direct a police action. Let's be honest about where they're coming from in this regard. That is their preference. We bring a different approach. It is thoughtful; it's based on our recent understanding of some painful lessons in the history of this province. [...]

I prefer to be direct with Ontarians. Again, the Conservatives prefer that we direct the police and that we send them out on some kind of police action. We see things differently. They have not drawn the appropriate lessons from what happened some four years ago. We have. [...]

But I suggest to my friend opposite that he really should own up to the fact that the objection he has, in terms of the approach we have taken, is that we have refused to direct the Ontario Provincial Police. [...]

What the member opposite is asking us to do is to direct the Ontario Provincial Police in the conduct of a police action.

First, the promotion of the fiction that Mike Harris directed the police operations at Ipperwash has put a false issue on the public agenda in place of the real one. Anxious to squeeze every last ounce of propaganda value from this politically motivated smear, the current government has discredited the obligation of government to maintain the rule of law and civil order in cases of direct action.

Second, having equated the Harris government's opposition to the direct action at Ipperwash with improper conduct, the current governing party has disabled its own administration from standing in support of principles of law and civil order in opposition to the unilateral taking of land by First Nations persons.

The defence of those principles by no means precludes creativity, intelligence or sensitivity in the development of public policy. Nor does it necessitate the use of force against anyone. In our submission, however, no policy to address the unilateral taking of lands by persons for political purposes will ever find wide public acceptance unless it grants the principles of law and civil order significant weight.

## **1.02 THE SCOPE OF THESE SUBMISSIONS**

In these submissions we have focused upon the historical context of the events at Ipperwash in 1995, the police operations at Ipperwash Provincial Park up to the night of September 6, and events within the Ontario government in the summer of 1995 up to the night of September 6. In our view these are the aspects of this matter that bear most directly upon our submissions on behalf of Mr. Harris. We acknowledge that there are numerous other aspects of this matter that might appropriately be the subject of submissions, and trust that they will be fully addressed by other parties.

## **1.03 SUBMISSIONS AS TO CREDIBILITY**

In these submissions we will not attack the character of any witness. In a small number of instances testimony has been given on issues of particular interest to us that we think should not be relied upon as accurate. In these instances we make brief submissions explaining our reasoning.

## CHAPTER 2

# THE HISTORICAL CONTEXT

### 2.01 FOUNDATIONS: THE ROYAL PROCLAMATION OF 1763 AND THE TREATY OF NIAGARA

The issues of justice at Ipperwash have deep historical roots that may be traced to the very beginning of lawmaking as between aboriginal people and British colonizers of Canada. In the 18<sup>th</sup> Century, in order to have the benefit of the French surrender of Great Lakes lands and advance an alliance with the aboriginal people of the former French territory, King George III issued the Royal Proclamation of 1763.<sup>2</sup> This document has been called “the Magna Carta of the Indians of Canada” and remains part of the laws of Canada today.<sup>3</sup> The Royal Proclamation declared that all lands outside the bounds of described British colonies, “not having been ceded to or purchased by us”, were to be “Indian country”.<sup>4</sup> British governors were to have no right to survey that country, or allow for its settlement.<sup>5</sup>

The Royal Proclamation admitted to “great frauds and abuses in purchasing the lands of the Indians”.<sup>6</sup> It declared that the Crown would stand between aboriginal people and persons seeking to acquire their lands in the future, and that aboriginal people would in the future only cede or surrender their lands if they consented in a public forum.<sup>7</sup> If aboriginal people consented

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<sup>2</sup> Examination in chief of Joan Holmes, August 17, 2004, p. 47

<sup>3</sup> It was never revoked by the British Crown: Examination in chief of Joan Holmes, August 17, 2004, p. 54

<sup>4</sup> Its boundary was the “proclamation line”: Cross-examination of Darlene Johnston by William Henderson, July 15, 2004, p. 133; see also Examination in chief of Joan Holmes, August 17, 2004, p. 51.

<sup>5</sup> See map at Document 4000438. Examination in chief of Joan Holmes, August 17, 2004, p. 51.

<sup>6</sup> Anishnaabeg people viewed the British with great suspicion, not only because they had been adversaries of the Anishnaabeg’s great ally, the French. The British had acquired a bad reputation for deceit, and in particular the wrongful acquisition of aboriginal land, in their dealings with aboriginal people on the eastern seaboard of what is now the United States. See Examination in chief of Joan Holmes, August 17, 2004, p. 49-50.

<sup>7</sup> See Examination in chief of Joan Holmes, August 17, 2004, p. 31ff. for discussion of the terms “cession”, “surrender” and “purchase”. Today people often use the term “cession” to refer to some initial transaction under which a First Nation gave over some particular rights in their land to the Crown, and the term “surrender” is used to refer to a transaction under which a First Nation or group thereof gave over rights in reserve land to the Crown: see Examination in chief of Joan Holmes, August 17, 2004, p. 32. Traditional land is unceded land: it may be subject to a land cession. Reserve land is land set aside for exclusive use and occupation of aboriginal people: it may be land excepted from a treaty, or ceded land which the Crown has designated as a reserve: See Examination in chief of Joan Holmes, August 17, 2004, p. 33-34. There can be a surrender of land, or only of resources: see Examination in chief of Joan Holmes, August 17, 2004, p. 34. See Examination in chief of Joan Holmes, August 17, 2004, p. 52, as to the intermediary role of the Crown.



to a cession or surrender, the land would only be purchased in the name of the Crown at a public meeting.<sup>8</sup>

The agreement of aboriginal people of the Great Lakes region to commence a relationship with the British was also embodied in the Treaty of Niagara of 1764. In her expert historical testimony before this Inquiry, Professor Darlene Johnston said she considered the Treaty of Niagara, and not the Royal Proclamation of 1763, as “the formative constitutional document” in the relationship between the Great Lakes aboriginal peoples and the British.<sup>9</sup>

The Treaty of Niagara was made in accordance with Anishnaabeg protocol. As such it does not exist in alphabetic form, but only in the records of speeches at the time of its making, and in the form of wampum belts signifying the agreement.<sup>10</sup> One of two wampum belts tendered to the aboriginal people by the British at the making of the Treaty of Niagara uses the metaphor of a great chain, which had been used by the British in their relationship with the Haudenosaunee.<sup>11</sup> This belt, known as the Belt of the Great Covenant Chain,<sup>12</sup> depicts hexagonal links, each denoting an aboriginal nation, with two human figures standing shoulder to shoulder in the centre shaking hands.<sup>13</sup> In offering this belt to the aboriginal people, Britain’s representative promised a life free of economic want in their “Mat”, or territory, only a corner of which would be occupied by the British. The British representative said:

My children, I clothe your land, you see that Wampum before me, the body of my words, in this the spirit of my words shall remain, it shall never be removed, this will be your Mat to the eastern Cornice of which I myself will occupy, the Indians being my adopted children their life shall never sink in poverty.<sup>14</sup>

As Professor Johnston described it, this use of a parental metaphor by the British was common in British communications with aboriginal people, and did not denote a position of British

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<sup>8</sup> From the Royal Proclamation, Document 4000438:

And whereas great frauds and abuses have been committed in purchasing the lands of the Indians, to the great prejudice of our interest and the great dissatisfaction of the said Indians, in order, therefore, to prevent both irregularities -- such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do with the advice of our Privy Councils, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our colonies where we have thought proper to allow settlement. But that if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us in our name at some public meeting or assembly of the said Indians to be held for that purpose.

<sup>9</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 193.

<sup>10</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 192. See also p 55: “In doing aboriginal history, if you just look at the alphabetic records, you’re going to miss a very important part. You’re going to miss, in fact, the aboriginal part...of the history”.

<sup>11</sup> Examination in chief of Darlene Johnston, July 13, 2004, pp. 195-96.

<sup>12</sup> Examination in chief of Darlene Johnston, July 13, 2004, p. 194.

<sup>13</sup> Examination in chief of Darlene Johnston, July 13, 2004, pp 195-97.

<sup>14</sup> Document 400089. Examination in chief of Darlene Johnston, July 13, 2004, pp. 198-99.

dominance. Within the context of Anishnaabeg culture this parental metaphor instead signified a familial relationship with obligations of caring and sustenance.<sup>15</sup>

The second of the two belts tendered by the British is known as the Twenty-four Nations Belt.<sup>16</sup> It depicts 24 human figures, each signifying an aboriginal nation, in a row across the width of the belt, with a ship at the end of the row. With this belt Britain's representative promised that the British would provide the aboriginal people with a plentiful store of goods in perpetuity:

My children, see, this is my canoe floating on the other side of the Great Waters, it shall never be exhausted but always full of the necessities of life for you my Children as long as the world shall last.

Should it happen anytime after this that you find the strength of your life reduced, your Indian Tribes must take hold of the vessel and pull, it shall be out of your power to pull towards you this my canoe, and where you have brought it over to this Land on which you stand, I will open my hand as it were, and you will find yourselves supplied with plenty.<sup>17</sup>

At the making of the Treaty of Niagara in 1764 the aboriginal people picked up these wampum belts tendered by the British, and in so doing accepted the promises the belts signified.<sup>18</sup> Britain's future relationship with the aboriginal people of the Great Lakes region thus rested upon the promises of perpetual sustenance made in the non-alphabetic Treaty of Niagara, as well as the promises of territorial autonomy and protection set out in the Royal Proclamation of 1763.<sup>19</sup>

As Professor Johnston described it, from an aboriginal perspective treaties are living documents and evidence of a relationship that needs to be constantly renewed.<sup>20</sup> After the Treaty of Niagara this renewal was symbolized by the annual delivery of "presents" to the Anishnaabeg

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<sup>15</sup> Examination in chief of Darlene Johnston, July 13, 2004, p. 201; Examination in chief of Darlene Johnston, July 14, 2004, pp 16-17. Ms Holmes agreed with this: see Examination in chief of Joan Holmes, August 17, 2004, pp. 64-65.

<sup>16</sup> Examination in chief of Darlene Johnston, July 13, 2004, p. 200.

<sup>17</sup> Document 4000489; Examination in chief of Darlene Johnston, July 13, 2004, pp 201-03.

<sup>18</sup> In her evidence, Professor Johnston referred to a 19<sup>th</sup> Century British report which stated, "The most solemn form in which an Indian pledges his word is by the delivery of a Wampum Belt of shells, and when the purport of this symbol is once declared, it is remembered and handed down from father to son with an accuracy and retention of meaning which is quite extraordinary." Examination in chief of Darlene Johnston, July 13, 2004, p. 241.

<sup>19</sup> See Examination in chief of Darlene Johnston, July 13, 2004, pp 205-06: "There are later documents which prove that the people were aware of the belts, people from Walpole and Sarnia, and so I think there is very strong evidence that there were people from the region we're interested in, at the Treaty of Niagara."

<sup>20</sup> Examination in chief of Darlene Johnston, July 13, 2004, p. 151. See also Examination in chief of Darlene Johnston, July 13, 2004, p. 195.

people by the British.<sup>21</sup> The presents consisted of very important staples, such as blankets, clothing, guns, ammunition, twine for fishing nets, fishing hooks, and other goods.<sup>22</sup>

Within 20 years of the Treaty of Niagara, the Anishnaabeg people provided military support to the British in preventing American incursions into British territory, and supported the British in the American Revolution of 1776.<sup>23</sup> Aboriginal people again provided important support to the British in the War of 1812.<sup>24</sup>

## 2.02 THE SELLING OF THE LAND

Commencing in the late 18<sup>th</sup> Century, aboriginal people in what is now Southern Ontario entered into a series of agreements to sell lands to the British.<sup>25</sup> In 1818 the British began to pursue negotiations for the purchase of all of the Chippewa lands north of the Thames River for the purpose of agricultural settlement by non-natives. In 1819, the British reached a Provisional Agreement for the surrender of 2.75 million acres of land, covering much of the eastern coast of Lake Huron and extending far inland.<sup>26</sup> Out of the land subject to the 1819 Provisional Agreement, four reserves were to be retained by the aboriginal people. These totaled 23,040 acres, or less than one per cent,<sup>27</sup> of the 2.75 million acres.<sup>28</sup> Professor Johnston characterized these reserves as unceded lands, having been exempted from the British purchase.<sup>29</sup> The four reserves under the 1819 Provisional Agreement were (1) four square miles below the rapids of St. Clair River, (2) four square miles on the St. Clair River, (3) two square miles at the mouth of the River Aux Sable, and (4) two miles square at Kettle Point on Lake Huron.<sup>30</sup> As finally completed in 1827, the consideration for the purchase of the lands subject to the 1819 Provisional Agreement was ten dollars in goods per each of 440 aboriginal persons per year, or 1,100 pounds.<sup>31</sup> The per person amount of 1,100 pounds (which was functionally a per family amount, not paid directly *per capita*) was roughly equivalent to two months salary for a middle

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<sup>21</sup> Examination in chief of Darlene Johnston, July 13, 2004, pp. 217-18.

<sup>22</sup> Examination in chief of Darlene Johnston, July 13, 2004, p. 218.

<sup>23</sup> Examination in chief of Darlene Johnston, July 13, 2004, pp. 203-04.

<sup>24</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 69-70. The British “were most attentive to their Indian allies when they felt vulnerable to American aggression”: Examination in chief of Darlene Johnston, July 14, 2004, p. 69.

<sup>25</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 28” “they’re not styled as surrenders at this point; they’ve been purchased by the King’s representatives.” See also Examination in chief of Darlene Johnston, July 14, 2004, p. 47.

<sup>26</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 82

<sup>27</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 95. Precisely, .83782 per cent. In 1825 the percentage is .83621: see Examination in chief of Darlene Johnston, July 14, 2004, p. 115.

<sup>28</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 82-83

<sup>29</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 143

<sup>30</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 93-95. She emphasized that “right away ...they enumerate the particular locations that they want”: see Examination in chief of Joan Holmes, August 17, 2004, pp. 65-66

<sup>31</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 124; Examination in chief of Joan Holmes, August 17, 2004, p. 77.

ranking Indian Affairs' official of the time.<sup>32</sup> The treaty made no provision for an increase in the annual payment if the aboriginal population increased.<sup>33</sup>

## 2.03 'CIVILIZATION'

Professor Johnston accepted that once a military alliance with aboriginal people was no longer required, British respect for First Nations' leadership, customs, lifestyles and beliefs became eroded.<sup>34</sup> In the 1830's British governance of aboriginal people was shifted from military to civil personnel. With that came the promotion of a program of 'civilization', intended to cause aboriginal people to become sedentary farmers on small, concentrated reserves.<sup>35</sup> As early as 1830 the British unsuccessfully sought to have aboriginal people remove themselves from the largest of the 1927 reserves, the 10,000 acre reserve at Sarnia, and take up residence and farming at the smaller (2,650 acres) River Aux Sable reserve to the north, the most remote of the four reserves.<sup>36</sup>

As part of this 'civilization' program, the sustenance promised to aboriginal people by the Crown in return for their alliance and their lands was qualified. It became conditional upon the adoption of a lifestyle the British authorities preferred.<sup>37</sup> The provision of schools, medical assistance, housing and the assistance of blacksmiths became conditional upon the aboriginal people living exclusively upon the treaty reserves and complying with this policy.<sup>38</sup> British authorities sought to satisfy their treaty obligations by delivering goods suitable for an agricultural lifestyle, rather than goods appropriate to traditional hunting and fishing.<sup>39</sup> By the 1850's, the government was interfering with the choices of chiefs.<sup>40</sup> The Crown requested more

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<sup>32</sup> Examination in chief of Joan Holmes, August 17, 2004, p. 95-96. This annual payment in goods was made by the Crown delivering the goods in bulk to various chiefs, who then distributed the goods among the people: Examination in chief of Joan Holmes, August 17, 2004, p. 94. The annual payment in goods continued until 1838, when the payment was converted to cash paid into a band account, which was then spent in accordance with decisions made by a government Indian Agent and the band council: Examination in chief of Joan Holmes, August 17, 2004, p. 94. Later, at Confederation, the annuity payment was capitalized and interest earned from it was deposited in the band account: Examination in chief of Joan Holmes, August 17, 2004, p. 94. See Cross examination of Joan Holmes by Mr. Rosenthal, August 19, 2004, p. 95..

<sup>33</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 152. See Examination in chief of Joan Holmes, August 17, 2004, p. 79ff.

<sup>34</sup> Cross-examination of Darlene Johnston by William Henderson, July 15, 2004, p. 142.

<sup>35</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 117-18; 129; 155-57. Examination in chief of Darlene Johnston, July 14, 2004, p. 136: There had been no mention in treaty negotiations of any British intention to cause aboriginal people to change their traditional way of life.

<sup>36</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 129-35; Document 4000461.

<sup>37</sup> Such as blacksmith services or medical services: see Examination in chief of Darlene Johnston, July 14, 2004, pp. 126-27.

<sup>38</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 144-46.

<sup>39</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 124-26.

<sup>40</sup> Cross-examination of Darlene Johnston by William Henderson, July 15, 2004, p. 141. See also Examination in chief of Joan Holmes, August 17, 2004, p. 42.

land, and began requesting surrenders of parts of reserved lands.<sup>41</sup> By 1860, the annual delivery of presents pursuant to the Treaty of Niagara had been completely stopped.<sup>42</sup>

## 2.04 THE RIVER AUX SABLE INDIANS

In historical documents the term “River Aux Sable Indians” refers to all the aboriginal people living around Kettle Point and Stony Point on Lake Huron.<sup>43</sup> The River Aux Sable Indians resisted the civilization policy through the late 1830’s.<sup>44</sup> By the early 1840’s it appears that they had begun to comply with the British desire that they become Christian farmers.<sup>45</sup>

In the 1830’s an influx of Potawotomi aboriginal people from the American side of Lake Huron made it necessary to identify the aboriginal people who were entitled to receive the benefits of the 1827 surrender.<sup>46</sup> It was at this time that the River Aux Sable Indians were first specifically accounted for as such, and were stated to include 36 men, women and children.<sup>47</sup> These included the populations of both the Aux Sable (Stony Point) and Kettle Point reserves.<sup>48</sup> By 1842 there were 36 families there. They petitioned British authority as a distinct aboriginal group with its own chiefs, seeking further land so that they could relieve their state of destitution.<sup>49</sup>

The treaty establishing the Stony Point and Kettle Point reserves, known as Treaty 29, provided that the reserved lands were to be for “the said Nation of Indians and their posterity at all times hereafter for their own exclusive use and enjoyment.”<sup>50</sup> Professor Johnston accepted it was fair to characterize the reference to posterity as a reference to holding the lands in perpetuity.<sup>51</sup> Joan Holmes agreed with this as well.<sup>52</sup> In the post-treaty period, however, aboriginal people considered themselves at liberty to sell reserve land if they wished to do so, notwithstanding the reference to “posterity” in Treaty 29.<sup>53</sup> The Treaty had used similar language to describe the rights being acquired by the Crown pursuant to the Treaty, when the very purpose of the Treaty was to allow the Crown to acquire land and transfer it to others for

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<sup>41</sup> Cross-examination of Darlene Johnston by Mr. Klippenstein, July 15, 2004, pp. 9-10.

<sup>42</sup> Cross-examination of Darlene Johnston by Mr. Henderson, July 15, 2004, pp. 144-45.

<sup>43</sup> Examination in chief of Joan Holmes, August 17, 2004, p. 39.

<sup>44</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 161.

<sup>45</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 168-170; Document 4000475.

<sup>46</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 150-51; see also Cross-examination of Darlene Johnston, by Mr. Rosenthal, July 15, 2004, p. 27.

<sup>47</sup> Examination in chief of Darlene Johnston, July 14, 2004, p. 151; Document 4000469; Examination in chief of Darlene Johnston, July 14, 2004, pp. 152-54.

<sup>48</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 153-54.

<sup>49</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 168-170; Document 4000475.

<sup>50</sup> Cross-examination of Darlene Johnston by Mr. Klippenstein, July 14, 2004, p. 234; Document 4000023. See also Examination in chief of Joan Holmes, August 17, 2004, p. 76ff.

<sup>51</sup> Cross-examination of Darlene Johnston by Mr. Klippenstein, July 14, 2004, p. 240.

<sup>52</sup> Cross examination of Joan Holmes by Mr. Klippenstein, August 19, 2004, pp. 54-55.

<sup>53</sup> Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, p. 74; Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 110-12.

settlement and other purposes.<sup>54</sup> In 1836 an Indian Department official reported that aboriginal people had requested that “the northeasternmost reserve near the River Aux Sable, may be exchanged for an equal quantity of land on the southwestern side of the southern most reserve at that place”.<sup>55</sup> In 1840 they wished the government to purchase the reserve that is now Stony Point and to apply the money to improvements on what is now the Kettle Point reserve.<sup>56</sup>

Professor Johnston testified that during the period she studied (prior to 1845) the people at these two reserves were identified consistently in the historical record as the River Aux Sable Indians, with no distinction between Kettle Point and Stony Point.<sup>57</sup>

## **2.05 THE KETTLE & STONY POINT FIRST NATION**

Professor Johnston accepted that 1891 and 1894 documents put to her in cross-examination suggest there were separate chiefs at Stony Point and Kettle Point by that time.<sup>58</sup> It was not clear to her, however, that each chief only had authority for his own location, or that there were separate bands at each location, because the people were still one band under the Indian administration at Sarnia.<sup>59</sup> She did accept that by 1891 there were three separate bands for local matters only.<sup>60</sup> As to the past all the evidence was that the people of the two reserves were called the River Aux Sable Indians and they were living on the western reserve known as Kettle Point.<sup>61</sup> In the first half of the 19<sup>th</sup> Century there was mobility of aboriginal people between the Sarnia and Kettle and Stony Point reserves.<sup>62</sup>

In 1919 the Department of Indian Affairs consented to separation of aboriginal people at the Sarnia reserve from those at Kettle Point and Stony Point.<sup>63</sup> A Sarnia Band and a Kettle & Stony Point Band were thus officially established as two separate bands for the purposes of federal legislation.<sup>64</sup>

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<sup>54</sup> Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 118-19.

<sup>55</sup> Cross-examination of Joan Holmes by Mr. Downard, pp. 119-21.

<sup>56</sup> Examination in chief of Darlene Johnston, July 14, 2004, pp. 162-64; Document 4000475; Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, pp. 70-71, 77.

<sup>57</sup> Cross-examination of Darlene Johnston, by Mr. Rosenthal, July 15, 2004, p. 29. At a later point in time Stony Point was assigned the name Reserve Number 43, and Kettle Point was assigned the name Reserve Number 44: see Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, pp. 38-39.

<sup>58</sup> Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, pp. 36-39, 46-48, 99-100.

<sup>59</sup> Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, pp. 49, 53-54.

<sup>60</sup> Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, pp. 100-01, 104.

<sup>61</sup> Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, pp. 48, 73.

<sup>62</sup> Cross-examination of Darlene Johnston by Mr. Rosenthal, July 15, 2004, p. 72.

<sup>63</sup> Examination in chief of Joan Holmes, August 17, 2004, p. 180ff.

<sup>64</sup> Holmes Report, pp. 23, 37; Examination in chief of Joan Holmes, August 17, 2004, p. 182.

## 2.06 THE 1927 PURCHASE OF KETTLE POINT SHORELINE

As early as 1900, a surveyor recorded his opinion that the shoreline of Kettle Point and Stony Point would be good for recreational development.<sup>65</sup> Beginning around 1912, there was local pressure to open up part of the beachfront at both Kettle Point and Stony Point for development.<sup>66</sup> Attempts to obtain the land in 1912 and 1923 did not succeed.<sup>67</sup> A 1923 attempt to lease Kettle Point waterfront lots for the purpose of developing recreational property failed after band members opposing the proposal engaged a lawyer. The objecting persons' lawyer expressed concern that the potential lessee proposed to develop cottages and "derive therefrom a very large revenue".<sup>68</sup> The Department of Indian Affairs decided not to proceed.<sup>69</sup>

In 1927 a developer successfully acquired approximately one-fifth of the shoreline at Kettle Point for clubhouse and cottage development.<sup>70</sup> The local Indian Agent had recommended acceptance of the offer on the day it was made, arguing that the land was white drifting sand and worthless for agricultural purposes.<sup>71</sup> The local MP had strongly supported the sale to the developer.<sup>72</sup> The Department of Indian Affairs promptly prepared a draft surrender.<sup>73</sup> In further expert historical testimony, Joan Holmes said the attitude of the Department at the time was that reserve land only had value if it was useful for agricultural purposes. She said the Department would not have regarded land with development potential as being of value to the band.<sup>74</sup>

The Department of Indian Affairs had particular instructions, guidelines and requirements in place for taking surrenders of Indian land.<sup>75</sup> The Department drew up a voter's list of all the individuals on the Kettle Point and Stony Point reserves who had a right to vote, being men 21 years of age and older. Of the 39 individuals on the list, 27 voted in favour of the surrender of the land at Kettle Point, and none against it.<sup>76</sup> Joan Holmes said a note on the poll list indicates that those who did not vote in favour did not attend the meeting and did not vote.<sup>77</sup> Eighty-three acres of land, about three per cent of the land base at Kettle Point,<sup>78</sup> were sold to the developer for \$85 per acre.

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<sup>65</sup> Examination in chief of Joan Holmes, August 17, 2004, p. 178; Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 121-22.

<sup>66</sup> Examination in chief of Joan Holmes, August 18, 2004, pp. 12, 14.

<sup>67</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 12.

<sup>68</sup> Document 4000184; Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 122-23.

<sup>69</sup> Holmes Report, p. 38.

<sup>70</sup> Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 124-25.

<sup>71</sup> Examination in chief of Joan Holmes, August 18, 2004, pp. 12-13.

<sup>72</sup> Examination in chief of Joan Holmes, August 18, 2004, pp. 29.

<sup>73</sup> Holmes Report, pp. 38-39.

<sup>74</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 13.

<sup>75</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 12.

<sup>76</sup> Examination in chief of Joan Holmes, August 18, 2004, pp. 30-31.

<sup>77</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 32.

<sup>78</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 9.

The surrender caused a great deal of upset in the community.<sup>79</sup> A law firm challenged the surrender on behalf of some aboriginal people.<sup>80</sup> The developer had paid people \$5 to attend and vote. This was defended on the basis that the money was payable regardless of how the recipients cast their votes.<sup>81</sup> Indian Affairs took the position that the surrender was valid, and that the payment of a cash bonus was a common practice.<sup>82</sup>

## **2.07 THE 1928 PURCHASE OF STONY POINT SHORELINE**

In 1928, W.J. Scott, a real estate agent and the Mayor of Sarnia, applied to buy beachfront land at Stony Point. It does not appear that there was any attempt to develop the Stony Point shoreline prior to this time.<sup>83</sup> The Indian Agent described the land as white sand and worthless.<sup>84</sup> The local MP supported the sale, saying the aboriginal people were anxious to dispose of the land.<sup>85</sup>

The MP was told the sale should be submitted to the Department of Indian Affairs before negotiations commenced because of the objections that had been raised within the aboriginal community to the sale at Kettle Point.<sup>86</sup>

The Kettle & Stony Point Chief and Council passed a resolution endorsing the surrender. The surrender was approved by 25 of 28 people voting. Joan Holmes testified that during this period the Indian Agent would determine what information community members had available to them about the proposed surrender.<sup>87</sup> In the case of the 1928 Stony Point surrender it is unknown what was discussed. There is no record.<sup>88</sup>

Joan Holmes acknowledged that the experience at Kettle Point showed there were people in the local aboriginal community who would not hesitate to make their voices heard if they thought reserve land was being sold improperly.<sup>89</sup> She did not discover any indication in the historical record, however, of any protest by First Nations persons of Scott's purchase of the Stony Point beachfront land.<sup>90</sup> Similarly, she did not receive or identify any evidence of

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<sup>79</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 36; Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, p. 127.

<sup>80</sup> Examination in chief of Joan Holmes, August 18, 2004, pp. 35-36.

<sup>81</sup> Examination in chief of Joan Holmes, August 18, 2004, pp. 34, 32-33.

<sup>82</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 36.

<sup>83</sup> Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 147-48.

<sup>84</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 43.

<sup>85</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 43.

<sup>86</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 44.

<sup>87</sup> Cross examination of Joan Holmes by Mr. Klippenstein, August 19, 2004, p. 91ff.

<sup>88</sup> Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 149-50.

<sup>89</sup> Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, p. 136.

<sup>90</sup> Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, pp. 135-36.



allegations of bribery or cash bonuses being paid in connection with Scott's purchase of the Stony Point beachfront land.<sup>91</sup>

The Stony Point beachfront land - 377 acres, or about 14 per cent of the Stony Point land base - was sold for \$13,500.<sup>92</sup> Joan Holmes testified that she did not want to make a judgement as to what the Indian Agent knew or should have known regarding the adequacy of the price.<sup>93</sup>

## **2.08 THE 1936 PURCHASE OF LAND FOR IPPERWASH PROVINCIAL PARK**

During 1935 and 1936 local residents pressed the provincial government to create a public park at Stony Point.<sup>94</sup> In 1936 the province paid \$10,000 for 109 acres, almost \$100 per acre, for the land that became Ipperwash Provincial Park.<sup>95</sup>

As described further subsequently, Ipperwash Provincial Park was over the next 60 years to become one of Ontario's most popular provincial parks.<sup>96</sup> Prior to its closure in 1995, the Park provided camping for over 50,000 persons annually, and day use for approximately 16,000 additional persons each year.<sup>97</sup> In the economic dimension, the Park's assets were valued by Ontario in 1995 at approximately 4.1 million. Revenues by the end of August 1995 were \$194,652.91 for that season. The Park generated substantial employment and provided a market for numerous area businesses.<sup>98</sup>

## **2.09 THE 1942 FEDERAL APPROPRIATION OF STONY POINT**

In 1942, in the midst of World War II, the Department of National Defence decided that it wished to acquire the remainder of the Stony Point Reserve for an infantry training centre.

The Indian Agent favoured the surrender. He described it as a "wonderful opportunity to gather a few straggling Indians", and locate them permanently with the main body of First Nations people at Kettle Point.<sup>99</sup> The Indian Agent also considered the surrender a "golden opportunity" to remove non-native people from Kettle Point and replace them with families from Stony Point.<sup>100</sup>

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<sup>91</sup> Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, p. 135.

<sup>92</sup> Holmes Report, pp. 42-43.

<sup>93</sup> Cross examination of Joan Holmes by Mr. Klippenstein, August 19, 2004, pp. 101-02.

<sup>94</sup> Holmes Report, p. 43; Examination in chief of Joan Holmes, August 18, 2004, p. 55.

<sup>95</sup> Examination in chief of Joan Holmes, August 18, 2004, pp. 56-58; Document 4000257.

<sup>96</sup> Examination in chief of Les Kobayashi, October 25, 2005, p. 148.

<sup>97</sup> Examination in chief of Les Kobayashi, October 25, 2005, p. 150; Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, pp. 147-48.

<sup>98</sup> Exhibit P-796; Cross-examination of Peter Sturdy by Ms. McAleer, October 19, 2005, pp 198-199.

<sup>99</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 104; Document 4000264.

<sup>100</sup> Holmes Report, p. 49; Examination in chief of Joan Holmes, August 18, 2004, p. 122 ff.

Notwithstanding the support of the Indian Agent for the surrender, the Kettle & Stony Point band quickly objected to it.<sup>101</sup> An overwhelming majority of persons eligible to vote - 59 of 83 - voted against the surrender.<sup>102</sup> Notwithstanding the rejection of the surrender by the First Nations people, an Order in Council was passed on April 14, 1942 approving the appropriation, or compulsory acquisition, of the Stony Point reserve under the *War Measures Act*.

A recital in the Order in Council refers to a condition in the federal government's offer to purchase that negotiations for the return of the land would take place if the land was not required for military purposes after the conclusion of the war:

That it was considered that the sum of \$50,000 would, in the circumstances, be fair and reasonable compensation, which sum would include the cost of moving the Indian families, their buildings, chattels, etc., off the Reserve, together with the further condition that, if, subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement.<sup>103</sup>

Families were displaced to Kettle Point and elsewhere.<sup>104</sup> Stewart George described his father Abraham George's unhappiness at being removed from 40 acres of land at Stony Point to a plot at Kettle Point that was one acre in size, "if that".<sup>105</sup> At least some of the Stony Point residents perceived that they were not treated fairly by the First Nations people at Kettle Point, and that they were viewed as 'outsiders'.<sup>106</sup> Elizabeth Stevens, the Kettle & Stony Point Band Administrator in 1995, described how her father, then 10 years old, had been displaced from Stony Point in 1942. She said it was "a very traumatic experience for him".<sup>107</sup>

In 1944, the Department of National Defence acquired the beachfront lands at Stony Point, apart from that purchased by Ontario to establish Ipperwash Provincial Park, from private owners.<sup>108</sup> Thus the entirety of the former Stony Point reserve, save for the tract in its northwest corner constituting Ipperwash Provincial Park, was operated as Canadian Forces Base Ipperwash. In the aboriginal families formerly established at Stony Point, parents and

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<sup>101</sup> Holmes Report, pp. 49, 51; Examination in chief of Joan Holmes, August 18, 2004, p. 114 ff; Document 4000270.

<sup>102</sup> Examination in chief of Joan Holmes, August 18, 2004, p. 132ff; Document 4000278. Only 13 voted in favour. See Cross-examination of Joan Holmes by Mr. Downard, September 8, 2004, p. 150; Examination in chief of Joan Holmes, August 18, 2004, p. 140 ff.

<sup>103</sup> Holmes Report, p 51.

<sup>104</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 101.

<sup>105</sup> Examination in chief of Stewart George, November 2, 2004, p. 12. Roderick George confirmed that his father Abraham had 40 acres at Stony Point, and estimated Abraham's new lot at Kettle Point as being "about half an acre" in size: Examination in chief of Roderick George, November 23, 2004, pp. 9-10, 23-25.

<sup>106</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 101.

<sup>107</sup> Examination in chief of Elizabeth Stevens, March 7, 2005, pp. 19-20.

<sup>108</sup> Holmes Report, p. 54. This was done by negotiation: See Examination in chief of Joan Holmes, August 18, 2004, p. 147.

grandparents passed on to their children and grandchildren that the government was supposed to give Stony Point back after the war had ended.<sup>109</sup>

The war ended but the land was not returned. From the conclusion of World War II through the early Nineties, a movement grew among First Nations people for the return of CFB Ipperwash. Efforts to persuade the federal government did not succeed. Many witnesses in this Inquiry described their engagement in non-violent protests intended to inform the public of their cause.<sup>110</sup>

Lengthy negotiations for further monetary compensation resulted in a 1980 agreement by the federal government to pay \$2.4 million in compensation to the Kettle & Stony Point First Nation.<sup>111</sup> The 1980 agreement obligated the Government of Canada to return the CFB Ipperwash property to the First Nation when it was no longer required for military purposes.<sup>112</sup> Pursuant to this agreement the Kettle & Stony Point First Nation was paid approximately \$2.49 million in 1982 by the federal government.<sup>113</sup>

In connection with the movement for the return of CFB Ipperwash, some First Nations people with ancestral roots at Stony Point took the position that the aboriginal people of Stony Point (or 'Stoney Point') constituted a band separate and distinct from aboriginal people at Kettle Point. In this Inquiry Ron George described his involvement, commencing in the late Eighties, with informal groups of elders "expressing their desire to have land that they felt belonged to them, returned to them".<sup>114</sup> In addition to seeking to re-establish themselves and their families in the former Stony Point community, these elders also believed that a separate Stony Point band should be established.<sup>115</sup>

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<sup>109</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 100; Examination in chief of Warren George, December 8, 2004, p. 73.

<sup>110</sup> Examination in chief of Marlin Simon, September 28, 2004, pp. 111-13; Cross-examination of Marlin Simon by Mr. Downard, October 18, 2004, pp. 164-65. Carl Tolsma recalled observing a peaceful demonstration of this kind: Examination in chief of Carl Tolsma, February 9, 2005, pp. 34-35; Examination in chief of George Speck, March 22, 2006, pp. 20-21; Examination in chief of David George, October 19, 2004, pp. 19-22. Cecil Bernard George also recalled the demonstrations, although he described his attendance at some of them as brief: see Examination in chief of Cecil Bernard George, December 6, 2004, pp. 142-49; Examination in chief of Warren George, December 8, 2004, pp. 73-75; Cross-examination of Warren George by Mr. Downard, December 9, 2005, pp. 131-32; Cross-examination of Warren George by Mr. Sulman, December 9, 2005, pp. 148-49; Examination in Chief of Stacey George, November 22, 2004, pp. 32-33.

<sup>111</sup> Holmes Report, pp. 61-62; Examination in chief of Joan Holmes, August 19, 2004, p. 14; Document 4000315; Examination in chief of Joan Holmes, August 18, 2004, p. 197; Examination in chief of Joan Holmes, August 19, 2004, p. 19; Document 4000316.

<sup>112</sup> Exhibit P-57 (Letter to Anthony O'Brien ['Dudley'] George from the Honourable Ronald A. Irwin, Minister of Indian Affairs and Northern Development, Canada dated August 24, 1994).

<sup>113</sup> Examination in chief of Tom Bressette, March 1, 2005, pp. 183-84; see also pp. 187-88. Chief Tom Bressette testified that the amount was calculated as what should have been paid if the CFB Ipperwash bands had been rented. Part of these funds were disbursed to band members, with the remainder being retained by the band to finance community services: Examination in chief of Tom Bressette, March 1, 2005, pp. 185-87.

<sup>114</sup> Examination in chief of Ron George, February 28, 2005, pp. 47-61. The quoted words are at p. 53.

<sup>115</sup> Examination in chief of Ron George, February 28, 2005, pp. 80-81; see also Cross-examination of Ron George by Ms. Esmonde, March 1, 2005, pp. 11, 20-21. Ron George said that for these people the land in question was CFB Ipperwash, and they never had such discussions about the return of the Park land: Examination in chief of

On March 13, 1992, after hearings at which testimony was given by representatives of dislocated Stony Point families and the Department of National Defence,<sup>116</sup> the House of Commons Standing Committee on Aboriginal Affairs recommended that,

...the government rectify a serious injustice done to the Stoney Point First Nation almost fifty years ago by returning the land at Stoney Point to its aboriginal inhabitants and their descendants from whom the land was seized under the *War Measures Act*".<sup>117</sup>

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Ron George, February 28, 2005, p. 81. In his testimony Ron George was asked about the 1928 surrender of lands that included that upon which the Park was established. He said, "I spent considerable time on understanding the parameters of the 1942 expropriation of the land. I spent little to no time on the 1928 surrender..." See Cross-examination of Ron George by Mr. Alexander, February 28, 2005, p. 175.

<sup>116</sup> See Exhibit P-50. See also Exhibit P-51, a "Brief of Fact and Argument" dated December 11, 1991 submitted to the Standing Committee by "The Stoney Point Band".

<sup>117</sup> See Exhibit P-50.

## CHAPTER 3

# THE 1993 OCCUPATION OF THE RANGES

### 3.01 THE OCCUPATION OF THE RANGES

Carl Tolsma was known prior to 1997 as Carl George.<sup>118</sup> He was a great-grandson of Levi Johnson, a chief at Stony Point who was one of a paternal line of chiefs.<sup>119</sup> Carl Tolsma's grandfather had a location ticket at Stony Point. His mother had resided there until the 1942 appropriation, when the family was displaced to Kettle Point.<sup>120</sup>

Carl Tolsma testified that for approximately three months in early 1993, he discussed an occupation of CFB Ipperwash lands with a small group of people including Robert George, Ron George, Maynard T. George, Janet Cloud and Marlene Cloud.<sup>121</sup> He described his frustration at the time over the failure of the federal government to return the Stony Point lands, and his decision to get involved and do something about it.<sup>122</sup> Tolsma also described meetings in which the military was informed that the Stony Point land was to have been returned after World War II, and of the group's intention to stage a peaceful occupation at the lands, with the group intentionally not saying for how long they intended to stay.<sup>123</sup>

On the morning of May 6, 1993, Carl Tolsma attended at the Forest Detachment of the OPP. He advised the Detachment Commander, John Carson, that he was the Chief of Stoney Point, and that about 12 natives would occupy CFB Ipperwash until the land claim was settled. Tolsma informed Carson that he was going to proceed to the base, that there would be a peaceful

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<sup>118</sup> Mr. Tolsma testified that he changed his name after discovering the identity of his "real father": Examination in chief of Carl Tolsma, February 9, 2005, p. 13.

<sup>119</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 15.

<sup>120</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 16-20. Mr. Tolsma said that the land the family acquired at Kettle Point was "very poor", and "more or less like a swamp"; he also said his mother found the move "very hard, because...a lot of the people on Kettle Point didn't like people coming in": see pp. 20-21. See also Cross-examination of Mr. Tolsma by Mr. Rosenthal, February 21, 2005, pp. 72-74.

<sup>121</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 35-37; Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, pp. 166-67.

<sup>122</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 39-40.

<sup>123</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 37-38, 40-41, 51-52; Exhibit P-163. Mr. Tolsma said he did not disclose this, "Because if they knew what we intended to do, they would have never allowed it. They would have done anything to stop us." See Examination in chief of Carl Tolsma, February 9, 2005, pp. 53-54, 57.

entry and occupation, and no outside involvement was expected.<sup>124</sup> Carl Tolsma accepted in his evidence that he wanted to ensure there were no outside groups involved, because he wanted to maintain a degree of control over the behaviour of the people in occupation.<sup>125</sup>

The occupation commenced that day.<sup>126</sup> Carl Tolsma said between 12 and 30 people, including children, began to camp of CFB Ipperwash's rifle range, north of Highway 21.<sup>127</sup> The military informed the group that they were trespassing. Tolsma testified that his reaction was that the occupation was peaceful, and, "[T]hey had the documents stating that this was reserve land at one time and they were supposed to give it back."<sup>128</sup> Warren George, who participated in the occupation from a very early stage, testified that it took place because the federal "government didn't appear to be owning up to its promises" to return the CFB Ipperwash land.<sup>129</sup>

Carl Tolsma testified that it was the consensus of the initial occupying group that they wished to communicate that they were acting peacefully. Accordingly they brought no weapons to CFB Ipperwash.<sup>130</sup> He said "everybody agreed" that, "[W]e wouldn't have weapons on the property...but then after a while then it was like nobody paid to much attention to it."<sup>131</sup> Warren George testified that there were discussions that there should be no firearms because, "If we did bring firearms in, it would be an excuse for the military or the OPP to shoot us."<sup>132</sup>

Stacey George recalled hunting ducks and deer at CFB Ipperwash both before and after the commencement of the 1993 occupation.<sup>133</sup> He said that when hunting rifles were not being used they would be kept at a relative's house in Kettle Point, because, "We were instructed not to bring any weapons in. Just - only for hunting purposes."<sup>134</sup>

Carl Tolsma was referred to as the "Chief" of the Stoney Point First Nation in documents dating from around the commencement of the 1993 occupation.<sup>135</sup> Tolsma testified that,

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<sup>124</sup> Examination in chief of John Carson, May 10, 2005, pp. 192-94; Exhibit P-36; see also the Examination in chief of Carl Tolsma, February 9, 2005, pp. 47-50, 58-60, 103; Exhibits P-166, P-167; see also Cross-examination of Carl Tolsma by Ms. Tuck-Jackson, February 21, 2005, pp. 153-55.

<sup>125</sup> Cross-examination of Carl Tolsma by Ms. Tuck-Jackson, February 21, 2005, pp. 155-56.

<sup>126</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 113; Examination in Chief of Stacey George, November 22, 2004, pp. 34-36 ("I was there when they crossed over the fence").

<sup>127</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 54-55. He said the initial group included Maynard T. George and Janet Cloud: see p. 58. As to actual locations, see Examination in chief of Carl Tolsma, February 9, 2005, pp. 60-61, Exhibit P-168.

<sup>128</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 65-66.

<sup>129</sup> Examination in chief of Warren George, December 8, 2004, pp. 84-86; Cross-examination of Warren George by Mr. Downard, December 9, 2004, pp. 132-33.

<sup>130</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 57-58; see also the Examination in chief of Rose Manning, April 7, 2005, pp. 30-31.

<sup>131</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 182.

<sup>132</sup> Examination in chief of Warren George, December 8, 2004, pp. 86-87.

<sup>133</sup> Examination in chief of Stacey George, November 22, 2004, pp. 44-45.

<sup>134</sup> Examination in chief of Stacey George, November 22, 2004, pp. 45-46.

<sup>135</sup> See Exhibits P-163, P-166, P-167, P-169, P-170, P-171, P-172, P-174, P-176.

“[T]hat’s what the...group that I went in with wanted to call me.”<sup>136</sup> He said he did not like the title because he was only a spokesman, and not a chief.<sup>137</sup>

On May 18, the occupying group used the services of an Ontario bailiff, Scott Ewart, to serve a trespass notice on the military.<sup>138</sup> Authorities quickly concluded that the notice appeared to have no basis in law.<sup>139</sup> Tolsma said that the idea behind serving the trespass notice was “to fight them with their own laws”.<sup>140</sup> Once again, the occupying group had given the OPP advance notice of their intentions.<sup>141</sup> Tolsma said this was done,

So they knew that we were doing everything in a peaceful fashion; we weren’t going to rush in. That’s the main thing...I kept trying to stress. I didn’t want any violence to happen...I tried to let the Provincial Police know up to that point everything that we were doing; that we weren’t going to block the roads and, you know, just to keep everything in a peaceful fashion.<sup>142</sup>

Later that day Carl Tolsma and Bert Manning cut a chain securing a gate to the CFB Ipperwash property along Highway 21. Additional persons joined the occupation, including the Manning family and the family of Glenn George.<sup>143</sup> Media were present for the cutting of the chain.<sup>144</sup> The initial occupying group actively solicited media coverage in order to communicate their message to the public.<sup>145</sup>

### **3.02 THE KETTLE & STONY POINT RESPONSE**

Chief Tom Bressette of the Kettle & Stony Point First Nation (“KSP”) testified of concern that the 1993 occupation had commenced without the authority of the community:

...[P]eople weren’t supportive of the process that was being undertaken because there was no community consultation. No one understood the rationale or what was going to be the outcome of all of this kind of action.<sup>146</sup>

A grandfather of Chief Bressette owned land at Stoney Point prior to the 1942 appropriation. A great-uncle of his owned that land when the appropriation occurred.<sup>147</sup>

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<sup>136</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 50-51.

<sup>137</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 50-51.

<sup>138</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 71-74, 103; Examination in chief of John Carson, May 10, 2005, pp. 210-12; Exhibits P-35, P-169, P-170.

<sup>139</sup> Examination in chief of John Carson, May 10, 2005, pp. 248-49; Exhibit P-176.

<sup>140</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 88; Exhibit P-173.

<sup>141</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 73, Exhibits P-169, 170.

<sup>142</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 76.

<sup>143</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 54, 61-63; Exhibits P-169, P-170.

<sup>144</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 104.

<sup>145</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 55-56.

<sup>146</sup> Examination in chief of Thomas Bressette, March 1, 2005, pp. 245-46.

Although Chief Bressette was frustrated with the Government of Canada's conduct of negotiations for the return of CFB Ipperwash,<sup>148</sup> he testified that it continued to be his mandate to continue in the negotiation process.<sup>149</sup> He was concerned that the Band could not support the occupation of CFB Ipperwash because it could hamper those negotiations, and thus be detrimental to the band membership as a whole.<sup>150</sup>

Chief Bressette testified that he attempted to visit the occupiers at CFB Ipperwash after the occupation started and speak to them. He was told that because he did not support their position, "[T]hey didn't want me around and...that was the end of that".<sup>151</sup>

Carl Tolsma understood that the Chief and Council of KSP were opposed to the occupation of CFB Ipperwash.<sup>152</sup> He also understood that some other First Nations people were opposed to the occupation "because...we were on their parents', grandparents' property and they didn't like the idea of us being there".<sup>153</sup> This was also a reason why Tolsma opposed people from other First Nations groups joining the occupation at CFB Ipperwash.<sup>154</sup>

Documents indicate that Maynard T. George took the position that the occupying group was not represented by KSP "in any way, shape or form".<sup>155</sup> Carl Tolsma testified that as the 1993 occupation proceeded, "[E]verybody started saying that...Kettle and Stony Point don't represent us."<sup>156</sup> Tolsma testified that at the time he "had to just play along with the game", but actually supported the right of KSP to negotiate for the return of the Stony Point lands.<sup>157</sup> Tolsma testified that when he had started the occupation he had intended to represent both the interests of the small group he was with and the KSP interest. He stated, however, that during this period he kept these intentions to himself.<sup>158</sup> Tolsma described his ambitions as modest:

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<sup>147</sup> Examination in chief of Tom Bressette, March 1, 2005, pp. 178-79.

<sup>148</sup> See Exhibit P-237 and Examination in chief of Tom Bressette, March 1, 2005, at p. 253, where he described himself at the time as "getting quite frustrated that the [federal] government doesn't seem to be in good faith negotiations".

<sup>149</sup> Examination in chief of Tom Bressette, March 1, 2005, p. 254.

<sup>150</sup> See Exhibit P-234; Examination in chief of Tom Bressette, March 1, 2005, pp. 220, 254-55.

<sup>151</sup> Examination in chief of Tom Bressette, March 1, 2005, p. 254.

<sup>152</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 64.

<sup>153</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 67. In cross-examination Mr. Tolsma said there were "a few" such people: see Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, p. 170.

<sup>154</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 67-68.

<sup>155</sup> Exhibit P-195. It appears that around this time, Maynard T. George also wrote to then Attorney-General Marion Boyd and indicated that Stony Point people would be setting up their own police force to patrol First Nations territories between Ravenswood and Goderich, a matter which Mr. Tolsma said he knew nothing about: see Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 43-44; letter dated July 16, 1993, Document 2001517. Similarly it appears that in January of 1994 a letter was prepared by Maynard T. George (and signed by Carl Tolsma) which took the position that issues regarding government health services should be discussed by government with Stony Point people directly, and not through the Kettle & Stony Point Band: see Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 82-86, Exhibit P-200.

<sup>156</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 22, 23.

<sup>157</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 20-21.

<sup>158</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 53. Mr. Tolsma testified, "I couldn't tell anybody because, you know, if you got a group of people and someone doesn't like what you're doing then they're going



What I wanted to accomplish was to get them talking and something in place, then I can kind of phase out of the picture and let chief and council take over from there...I was intending to represent the small group that I was with and also like, Kettle Point and Stony Point, everyone as a whole. Not just one small group here and one small group there.<sup>159</sup>

Tolsma said that in his opinion it was for KSP to negotiate the return of the Stony Point lands with a view to those lands being returned to that band, and that any monetary compensation should be paid to KSP.<sup>160</sup> He testified that the occupiers did not discuss their intentions to occupy CFB Ipperwash with the Chief and Council of the KSP,<sup>161</sup> although he wished to act on behalf of “everyone”.<sup>162</sup> He acknowledged that the occupiers did not have a mandate from the majority of people who had an interest in the Stony Point lands.<sup>163</sup>

Carl Tolsma denied ever having made any statements regarding the desire of his group to be recognized as an independent First Nation, notwithstanding a contemporary document indicating in 1993 that he had done so.<sup>164</sup> He said he considered that the position that a separate Stony Point band should be recognized would be helpful in attracting the government’s attention.<sup>165</sup> He did not disclose his views to KSP at the outset,<sup>166</sup> and acknowledged that in early 1994 he met with Chief Bressette and advocated for separation.<sup>167</sup> He testified, however, that at a later point he explained his intentions to Chief Bressette, who “was okay with it, he understood”.<sup>168</sup> He also said “most” of the people in occupation at CFB Ipperwash came to understand that this was his view, and that some of them “didn’t think I was acting on their behalf”.<sup>169</sup>

Carl Tolsma also testified that during the time he was involved with the occupation of CFB Ipperwash from 1993 to 1995, the consensus of the occupiers was that they did not want the Kettle and Stony Point police policing them.<sup>170</sup>

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to do something opposite, so everything would have got messed up.” See also Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 21-22, 25-26.

<sup>159</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 52-53; see also Cross-examination of Carl Tolsma by Ms. Jones, February 21, 2005, p. 221.

<sup>160</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 219-20.

<sup>161</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, p. 17.

<sup>162</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 53.

<sup>163</sup> Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, pp. 167-68.

<sup>164</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 100, Exhibit P-176.

<sup>165</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 21-23, 24-25.

<sup>166</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, p. 26.

<sup>167</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 97-99.

<sup>168</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 64; see also Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 99-100.

<sup>169</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 100-101.

<sup>170</sup> Cross-examination of Carl Tolsma by Ms. Tuck-Jackson, February 21, 2005, p. 152.

### **3.03 THE OPP RESPONSE**

#### **(1) OPP POLICY ON OCCUPATIONS**

On May 12, 1993, Inspector John Carson was appointed OPP Incident Commander for any occurrences involving CFB Ipperwash.<sup>171</sup> Carson had been an OPP Staff-Sergeant and the Detachment Commander at Forest, Ontario since 1989.<sup>172</sup> Two days prior to his appointment as Incident Commander for Ipperwash matters, on May 10, he had been promoted to the position of Inspector and posted to OPP District Headquarters in London.<sup>173</sup> Notwithstanding that change in posting, Inspector Carson was appointed Incident Commander for Ipperwash issues in light of his familiarity with the area, the issues, and people involved.<sup>174</sup>

John Carson testified that 1993 it was his understanding, based on two other incidents in recent history, that the position of the OPP regarding aboriginal occupations of land was that a complainant would be required to seek and obtain a court injunction before the OPP would take any overt action to remove anyone from the occupied land.<sup>175</sup> Upon the obtaining of an injunction the OPP would act as directed by the court.<sup>176</sup> The OPP had no authority, however, to negotiate land ownership issues.<sup>177</sup>

#### **(2) OPP COMMUNICATIONS WITH THE OCCUPIERS**

As stated above, the initial occupying group had initiated communications with the OPP from the outset of their occupation of CFB Ipperwash. As of May 1993, Tolsma considered that he had a “pretty good” relationship with the OPP in relation to the occupation.<sup>178</sup> Tolsma sought to reassure non-aboriginal residents in the area through the OPP that, “[W]e weren’t violent and...we only want our land back...We weren’t there to cause problems for anybody else.”<sup>179</sup>

Carl Tolsma testified that he also took steps to maintain communications with the military authorities, and that Maynard T. George met with local municipal representatives.<sup>180</sup>

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<sup>171</sup> Examination in chief of John Carson, May 10, 2005, p. 205.

<sup>172</sup> Examination in chief of John Carson, May 10, 2005, p. 147.

<sup>173</sup> Examination in chief of John Carson, May 10, 2005, pp. 147-48.

<sup>174</sup> Examination in chief of John Carson, May 10, 2005, pp. 205-06.

<sup>175</sup> Examination in chief of John Carson, May 10, 2005, pp. 209-10. As to whether this was a policy of the OPP, Inspector Carson said that he suspected it was a “general policy”, but doubted that it existed in written form: see p. 209. See also Examination in chief of John Carson, May 11, 2005, pp. 52-53.

<sup>176</sup> Examination in chief of John Carson, May 10, 2005, p. 210. See also Examination in chief of John Carson, May 11, 2005, p. 53: “[W]e would expect that if the Military went forward with an application that there would be some commentary in regards to what was expected of the OPP.”

<sup>177</sup> Examination in chief of John Carson, May 10, 2005, pp. 270-71.

<sup>178</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 109-10; see also Cross-examination of Carl Tolsma by Ms. Tuck-Jackson, February 21, 2005, pp. 146-47, 150.

<sup>179</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 69-70; see also Exhibit P-399 and the Examination in chief of John Carson, May 10, 2005, pp. 221-22.

<sup>180</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 128-29.

### (3) OPP COMMUNICATIONS WITH THE MILITARY

In May of 1993, Sergeant Major Fred White was the commander of CFB Ipperwash.<sup>181</sup> The Inquiry did not hear evidence from Sergeant Major White or any of the military personnel who were at CFB Ipperwash in 1993. The military's response to the occupation in 1993 was communicated through the evidence of John Carson, the occupiers, and subsequent CFB Ipperwash Camp Commanders.

Carl Tolsma testified that the military initially allowed the small occupying group to enter the base, but after a few days sought to prevent further people from occupying the CFB Ipperwash lands.<sup>182</sup> Warren George testified that during the early stages of the occupation, the military unsuccessfully sought to contain the occupiers within the far southeast corner of CFB Ipperwash.<sup>183</sup>

At a point early in the occupation, the military served an eviction notice on the occupiers.<sup>184</sup> Marlin Simon testified that the initial response of the First Nations people was to leave, but that elders decided against doing so.<sup>185</sup>

John Carson testified that in May of 1993, the OPP had an ongoing liaison with the base staff, and in particular the Base Commander, Major White. Carson testified that at the outset of the occupation the military informed the OPP that it would co-operate with the occupation to the extent possible.<sup>186</sup> Carson also testified that on May 19, 1993, he received a call from his superior, Superintendent Wall, communicating a request on behalf of the military that responsibility for law enforcement at Camp Ipperwash be turned over to the OPP.<sup>187</sup> Carson testified that the military's preference was that the OPP "simply go in and enforce trespass", but the OPP felt this was not the appropriate approach.<sup>188</sup>

John Carson testified that by May 19, 1993, he had requested that research be done into the ownership of Camp Ipperwash.<sup>189</sup> He reviewed original documents related to the

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<sup>181</sup> Examination in chief of John Carson, May 10, 2005, pp. 222-23.

<sup>182</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 54, 61-62.

<sup>183</sup> Examination in chief of Warren George, December 8, 2004, pp. 94-95.

<sup>184</sup> Examination in chief of Marlin Simon, September 28, 2004, pp. 133. Mr. Simon said he thought this probably occurred in June of 1993, but his recollection was that the occupiers' eviction notice was served in response to the military's notice.

<sup>185</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 133.

<sup>186</sup> Examination in chief of John Carson, May 10, 2005, pp. 222-223.

<sup>187</sup> Examination in chief of John Carson, May 10, 2005, pp. 207-08.

<sup>188</sup> Examination in chief of John Carson, May 10, 2005, pp. 224-227. See in particular at p. 227: "[T]he 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". See also Exhibit P-397, Inspector Carson's May 22 note: "We were not prepared to assist Military police and cause confrontation at this time". See also Examination in chief of John Carson, May 10, 2005, p. 249-52, in particular p. 252. See also Cross-examination of John Carson by Ms. Jones, June 1, 2005, pp. 108-09.

<sup>189</sup> Examination in chief of John Carson, May 10, 2005, pp. 225-226.

appropriation, and concluded that “[I]t was fairly easy...to read into that document that there was good reason to understand how the Stony Point people would have a strong belief...or a strong expectation that the property be returned to them at some point in time, subsequent to the needs of the military, pursuant to the 1942 appropriation.”<sup>190</sup> Carson “certainly felt there was lots of room to debate” whether the occupiers of CFB Ipperwash had a colour of right.<sup>191</sup>

The military had independent authority under federal law to remove any trespasser from the base.<sup>192</sup> If the military were to exercise that authority they would be able to transfer custody of any arrested person to the OPP for the purpose of legal proceedings.<sup>193</sup> Carson testified that in OPP communications with the military, “[W]e were very clear that our preferred approach would have been an injunction.”<sup>194</sup> If an injunction was obtained the OPP contemplated negotiating evacuation and a peaceful resolution, subject to the conditions of the injunction.<sup>195</sup>

As early as May 23, 1993, Sergeant Major White of CFB Ipperwash reported to Inspector Carson that he felt First Nations people were “attempting to antagonize military”, although he emphasized that this would not provoke a military response.<sup>196</sup> Carson testified that the OPP made clear to the military that the OPP was prepared to investigate and lay charges where there were reasonable and probable grounds to lay charges against any occupier regarding a criminal offence.<sup>197</sup> Carson said the OPP made this clear as the OPP “were certainly feeling that the military felt we were shirking our responsibility in not taking action, particularly in regards to what they saw as the trespassing at the base”.<sup>198</sup>

John Carson testified that he did not “want to be seen as being supportive of either the military issues or the occupiers’ issues; that as a police agency...we remained neutral”.<sup>199</sup> The OPP took no steps, and has never taken steps, to oust the occupiers from CFB Ipperwash.<sup>200</sup>

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<sup>190</sup> Examination in chief of John Carson, May 10, 2005, p. 228; see also p. 235.

<sup>191</sup> Examination in chief of John Carson, May 10, 2005, pp. 228-29; see also May 11, 2005, pp. 12-13.

<sup>192</sup> Examination in chief of John Carson, May 10, 2005, p. 227.

<sup>193</sup> Examination in chief of John Carson, May 10, 2005, pp. 229-230; see also pp. 266-68 regarding the authority of military police and OPP protocol; see also May 11, 2005, pp. 92, 94-95, 104, 114-15.

<sup>194</sup> Examination in chief of John Carson, May 10, 2005, p. 230; see also pp. 273-75: If an injunction was sought the OPP contemplated preventing additional occupiers from coming into the area pending the disposition of the application. See also Examination in chief of John Carson, May 11, 2005, pp. 35, 46-47, 69, 71-74, 76-77, 121.

<sup>195</sup> Examination in chief of John Carson, May 10, 2005, pp. 277-78.

<sup>196</sup> Examination in chief of John Carson, May 10, 2005, p. 253.

<sup>197</sup> Examination in chief of John Carson, May 11, 2005, p. 74; see also pp. 77-78. This was communicated within the OPP’s members: see pp. 96-97.

<sup>198</sup> Examination in chief of John Carson, May 11, 2005, p. 74.

<sup>199</sup> Examination in chief of John Carson, May 11, 2005, pp. 128-29.

<sup>200</sup> Cross-examination of Carl Tolsma by Ms. Tuck-Jackson, February 21, 2005, pp. 150-51.

### 3.04 IPPERWASH PROVINCIAL PARK

#### (1) RELATIONSHIP WITH LOCAL FIRST NATION PRE-1993

In May of 1993, Les Kobayashi was the superintendent for both Ipperwash Provincial Park (the “Park”) and Pinery Provincial Park. He had held this position since 1988. He was responsible for managing, organizing and planning the operations at the Park.<sup>201</sup> His responsibilities also involved fostering relationships with local communities, including KSP.<sup>202</sup> With respect to KSP, Kobayashi indicated that he was pleased with the efforts on both sides to develop stronger relationships.<sup>203</sup> He also indicated that relationships between the Park’s staff and the local First Nations people were “very solid and strong”.<sup>204</sup>

In or around 1988 or 1989, a draft management plan was developed for the Park.<sup>205</sup> Part of the planning phase involved consultation with interested communities and parties. KSP was provided with a preliminary plan in August of 1989.<sup>206</sup> Kobayashi recalled meeting at the KSP office to solicit comments and address concerns from KSP with respect to the management plan.<sup>207</sup> Kobayashi recalled discussions regarding fishing rights and a traditional ceremonial site located in the Park.<sup>208</sup>

Les Kobayashi understood the ceremonial site was a point jutting out into the lake where First Nations people had gathered shards to make arrowheads, and which had been used as a traditional meeting place.<sup>209</sup> It was agreed that this area would not be developed. Kobayashi asked the Band to provide a short narrative of its history.<sup>210</sup> Kobayashi added that if there was a request to have a ceremony at the Park, the Park’s position was that the First Nations people would be allowed access and would not be charged.<sup>211</sup> According to Kobayashi, initial concerns

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<sup>201</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 231.

<sup>202</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 232.

<sup>203</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 236

<sup>204</sup> Examination in chief of Les Kobayashi, October 20, 2005, pp. 287-288.

<sup>205</sup> Examination in chief of Les Kobayashi, October 20, 2005, pp. 238-249. Mr. Kobayashi indicated that part of the planning predated his arrival at the park in 1988, and believed the final draft of the plan was prepared around 1992. But see at pp. 274-275; according to Exhibit P-832 the draft plan may not have been finalised until in or around June of 1994.

<sup>206</sup> Examination in chief of Les Kobayashi, October 20, 2005, pp. 241-242, with reference to Exhibit P-826 (Memo to Ipperwash Planning Team Members re Summary of Public Review, August 24, 1989).

<sup>207</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 244.

<sup>208</sup> Examination in chief of Les Kobayashi, October 20, 2005, pp 244-245; see also P-768 Letter dated October 24, 1989 forwarding KPSP Band comments on the draft management plan.

<sup>209</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 238.

<sup>210</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 260; see also P-830.

<sup>211</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 272. This practice started around 1991 or 1992, as a result of discussions regarding the park management plan. Kobayashi testified that he could only recall one occasion when the First Nation conducted such a ceremony.

raised by KSP regarding the draft management plan were addressed through discussions and revisions to the plan, and KSP provided its “blessing” to the final draft plan.<sup>212</sup>

Les Kobayashi also spoke about opportunities for First Nations peoples at the Park. He referred to the co-operative distance education program, run through Sioux College, and a futures initiative program. MNR staff also provided consultation to the band with respect to the small park on the KSP reserve. There were also employment opportunities at the Park for people from the surrounding communities, including members of KSP.<sup>213</sup>

Les Kobayashi indicated that he and Band Administrator Elizabeth Stevens sat down together on several occasions to discuss how to improve relations between the Park, as a government agency, and KSP.<sup>214</sup> They also discussed the possibility of a co-management agreement with respect to the Park.<sup>215</sup>

Kobayashi was clear that to his knowledge, prior to 1993, no claim had ever been made, either formal or otherwise, to the effect that the Park was a site of aboriginal burial grounds.<sup>216</sup>

## **(2) RELATIONSHIP BETWEEN PARK AND LOCAL OPP**

Les Kobayashi testified that the MNR’s relationship with the OPP had always been excellent in his particular area. He said the OPP:

...supported us in many situations and provided excellent support and so our relationship was obviously very strong...We always shared information back and forth, whether there be occurrences of any sort, with any major occurrence especially...and they in turn also passed on information to us if their officers were in the Park and came across any major infractions. It was just day to day business, really, for the [OPP] to drop in and it was also, on our part, at least on a weekly basis, we would certainly drop into the local detachment and find out if there was anything that we should [do], that had come up over the course of the week or weeks or days.”<sup>217</sup>

## **(3) OCCUPIERS’ ASSERTIONS ABOUT THE PARK**

Carl Tolsma testified that in 1993 he considered both CFB Ipperwash and the Park to be part of the Stoney Point lands reserved to First Nations people by treaty.<sup>218</sup> On March 9, 1993,

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<sup>212</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 266. According to Kobayashi, the plan was never formally approved by the Ministry, but he managed the Park in accordance with the principles articulated in the plan.

<sup>213</sup> Examination in chief of Les Kobayashi, October 20, 2005, pp. 268-270.

<sup>214</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 270.

<sup>215</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 276; See also Exhibit P-833 (Email from Les Kobayashi to MNR Native Liaison Officer Wendy McNabb, dated February 22, 1993).

<sup>216</sup> Examination in chief of Les Kobayashi, October 20, 2005, p. 283.

<sup>217</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 47-48.

<sup>218</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 29-31, 38-39; Exhibit P-164; Cross-examination of Carl Tolsma by Mr. Klippenstein, February 21, 2005, pp. 68-69.

Maynard T. George wrote to Minister Howard Hampton, providing “Notice to Vacate Ipperwash Provincial Park at the Stoney (Stony) Point Indian Reserve #43.”<sup>219</sup>

On May 18, 1993, in addition to serving a trespass notice on the military, the group utilized the bailiff’s services to serve notice on the Park that “the Stoney Point First Nations #43 of Aashoodana Territory had seized lands in right of our exclusive enjoyment and use, as Chippewa First Nations members”.<sup>220</sup>

Les Kobayashi testified that prior to receiving the bailiff’s notice he not been aware of a group of Aboriginal persons who self-identified as the Stoney Point First Nation # 43. He also did know Carl George or Maynard T. George.<sup>221</sup>

#### **(4) MAY 19 CO - MANAGEMENT LETTER**

Kobayashi recalled that in response to the bailiff’s notice, the MNR district office and Native Liaison Officer at the time indicated that he should respond to the KSP Chief and Council. He was also directed to meet with Carl George.<sup>222</sup>

On May 20, 1993, Kobayashi and Native Liaison Officer Terry Humberstone met with Maynard T. George and Carl George. A letter entitled “Ipperwash Provincial Park – Co-Management Agreement”, dated May 19, 1993, was provided to Kobayashi at the meeting.<sup>223</sup>

The letter was signed by Carl Tolsma, identified as “Chief”, Maynard T. George and four other persons identified as “Councillors” of Stoney Point First Nation. In the letter it was stated that,

As the declared owners, with legal documents of identified lands at the Ipperwash Provincial Park, we offer these principles to the Ministry of Natural Resources to consider.

- They are:
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.

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<sup>219</sup> Exhibit P-214 (Letter from Maynard T. George to Howard Hampton, March 9, 1993).

<sup>220</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 75; Examination in chief of Les Kobayashi, October 24, 2005, pp 17-18, Exhibits P-834 and P-835.

<sup>221</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 16.

<sup>222</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 20.

<sup>223</sup> Exhibit P-171; Examination in chief of Les Kobayashi, October 24, 2005, p. 22. See also Exhibit P-837 (Email from Les Kobayashi to District Manager Ron Baldwin, reporting on the meeting with Maynard T. George and Carl George on May 20).

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 Point, with MNR officials and other veterans.

In the letter the group stated, "In consideration of this short term agreement...we will withhold members from our First Nation's structure, from immediate take-over and occupation." They added, "Without co-operation from MNR officials, we may face circumstances, beyond our present control."<sup>224</sup>

The penultimate paragraph of the May 19, 1993 letter also states that, "Some of the lands within Ipperwash Park are sacred burial grounds. These areas must be recorded and documented by our First Nation's structure."

When asked about this, Carl Tolsma said, "We pointed out where the grave sites - we figured they were, but that was about all."<sup>225</sup> Carl Tolsma did not recall any additional steps having been taken to attempt to record the burial sites.<sup>226</sup> Tolsma further testified that he had never been informed by any of his relatives of the existence of burial grounds in the Park. He said, however, that there were three grave sites in the Park, located at or near the Park's maintenance building and elsewhere, which he said had been marked on a map he no longer possesses.<sup>227</sup>

Ron George testified that prior to September 1995 he had at least twice heard about the possibility of burial grounds existing in the Park.<sup>228</sup> He said that once when he was a teenager his Uncle Abraham had made a "very quick reference" to a graveyard in the Park, and again, shortly after the commencement of the May 1993 occupation of CFB Ipperwash, he had been informed of this while visiting the occupied area.<sup>229</sup>

Kobayashi testified that he recalled asking Maynard T. George at this time where the burial sites were located. George had said they were underneath the Park's maintenance building. Although Kobayashi made further inquiries about this, he was informed that no one

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<sup>224</sup> Although the letter referred to refraining from occupying the Park, Carl Tolsma testified that there was no intent to occupy the Park: see Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, pp. 197-98.

<sup>225</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 80.

<sup>226</sup> Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, pp. 194-95.

<sup>227</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 22, 24-31, Exhibit P-164. Mr. Tolsma initially testified that the map had been obtained by Maynard T. George from an unknown source: see Cross-examination of Carl Tolsma by Mr. Rosenthal, February 21, 2005, pp. 77-78. Subsequently he recalled being informed that the map had been drawn by hand in approximately 1942 by a Kettle Point councillor named Beattie Greenbird, on the basis of information told to him by his father: see Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, pp. 193-94.

<sup>228</sup> Examination in chief of Ron George, February 28, 2005, pp. 73-74.

<sup>229</sup> Examination in chief of Ron George, February 28, 2005, pp. 74-78. Ron George thought his Uncle Abraham had heard of this by his Ron George's great grandfather.



ever recollected seeing anything during the construction of the maintenance building that would have indicated the presence of burial sites, and that the maintenance building was in fact built directly upon shale limestone.<sup>230</sup>

In the course of research in connection with the development of the Park management plan, nothing had been discovered that indicated the presence of burial sites.<sup>231</sup> Throughout the consultation process regarding the management plan in 1989 to 1990, KSP had never made assertions that there was a burial ground in the Park.<sup>232</sup> At the time of the 1993 allegation Kobayashi felt fairly certain that there were no burial sites in the Park.<sup>233</sup>

### **3.05 PROVINCIAL GOVERNMENT'S RESPONSE<sup>234</sup>**

#### **(1) MINISTERIAL BRIEFING**

In May 1993 Thomas O'Grady was the Commissioner of the OPP. O'Grady testified that as Commissioner he had the control and management of the OPP, subject to the direction of the Solicitor General. He further specified that the Solicitor General could impose general policy that would effect the operation of the force, but was not entitled to give any direction whatsoever in the OPP's day to day operational activities.<sup>235</sup>

O'Grady also indicated that the Solicitor General had the right to be informed about police operations on a general level. Again he specified that if a matter was subject to wide media scrutiny, it might also be subject to discussion in the legislature. The Solicitor General would have to be informed on the general action of the OPP, but not the details.<sup>236</sup> The method used to inform the Solicitor General or his or her ministry on these matters was an issue note prepared by the Commissioner's office. The issue note was designed specifically so that the Solicitor General could answer questions from his colleagues, the media or public with respect to the OPP.<sup>237</sup>

On May 19, 1993, the Commissioner's office prepared a briefing note for the Solicitor General's office regarding the "Native Demonstration at Camp Ipperwash". The note provided that the "Ministry Position" was, "OPP role is continuing to keep the peace." The following background facts were also provided:

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<sup>230</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 43-45. He said informed Peter Sturdy of the allegation but he did not know if anything was done about it. He believed that at some point he discussed the *Cemeteries Act* procedure with Peter Sturdy, but did not recall ever discussing it with Maynard T. George: see pp. 44-46.

<sup>231</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 45-46.

<sup>232</sup> Examination in chief of Les Kobayashi, October 20, pp. 248-249.

<sup>233</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 45-46.

<sup>234</sup> In May of 1993, the NDP was in power in the Ontario. Bob Rae was Premier and Howard Hampton was the Minister of Natural Resources.

<sup>235</sup> Examination in chief of Thomas O'Grady, August 18, 2005, pp. 192-193.

<sup>236</sup> Examination in chief of Thomas O'Grady, August 18, 2005, p. 193.

<sup>237</sup> Examination in chief of Thomas O'Grady, August 18, 2005, pp. 193-194.

A peaceful occupation of Camp Ipperwash took place on May 6, 1993 at 10:00 hours pursuant to ongoing native claims for the return of this land to them. Camp Ipperwash is presently property of and occupied by The Department of National Defence.

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Occupation continues and is peaceful and civil disobedience is being maintained. Occupation will continue until negotiations with the Federal Government are concluded.<sup>238</sup>

The issue note also indicated that a notice had been served on the MNR on May 18 indicating that a structure might be placed on Ipperwash Provincial Park, but that no such structure had in fact been moved on to the Park property.<sup>239</sup>

## **(2) INTER-MINISTERIAL COMMITTEE ON ABORIGINAL EMERGENCIES**

### **(I) THE MAY 21, 1993 IMC MEETING**

On May 21, 1993, the Inter-Ministerial Committee on Aboriginal Emergencies ("IMC") met to discuss, in part, the issues surrounding CFB Ipperwash and the Park. According to the list of participants, the meeting consisted of representatives from various ministries, including MNR, ONAS and the Solicitor General's ministry (including the OPP representative, Doug Scott)<sup>240</sup> and a representative from the Premier's Office, Hillary McMurray.<sup>241</sup>

According to the notes of the meeting, the IMC discussed the same four points outlined in Maynard T. George's co-management letter of May 19. In addition, the IMC discussed notice from the occupiers that they intended to move a structure into the Park from which to distribute information and sell crafts. They also discussed reports that "Warriors" from other areas might join the occupation.<sup>242</sup>

One of the participants at the meeting questioned whether there was any issue regarding the validity of the 1928 surrender which lead to the the province's acquisition on the Park.<sup>243</sup> The notes also provide, "It was agreed that the differences between Camp Ipperwash and Ipperwash Provincial Park should be stressed. Ontario supports the return of Camp Ipperwash lands. However, the park lands were purchased from third parties following a surrender by the First Nation."<sup>244</sup>

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<sup>238</sup> Exhibit P-399 (MSGCS Briefing Note, Version 2, May 19, 1993); Examination in chief of Thomas O'Grady, August 22, 2005, pp. 32-33.

<sup>239</sup> Exhibit P-399 (MSGCS Briefing Note, Version 2, May 19, 1993).

<sup>240</sup> Examination of John Carson, May 10, 2005, p.225( "Doug Scott was an Inspector who was providing liaison duties to the Ministry.")

<sup>241</sup> Examination in chief of Eileen Hipfner, September 15, 2005, p. 33.

<sup>242</sup> Exhibit P-712, Confidential Meeting Notes, IMC, May 21, 1993.

<sup>243</sup> Exhibit P-712, Confidential Meeting Notes, IMC, May 21, 1993. See reference to Andrew Macdonald at p. 5.

<sup>244</sup> Exhibit P-712, Confidential Meeting Notes, IMC, May 21, 1993, p. 5.

It was resolved that, “The matter will be dealt with at a non-confrontational, local level for at least the May 24<sup>th</sup> weekend.”<sup>245</sup> It was also determined that an “Ipperwash Working Group Committee” would be set-up and that the IMC would next meet on May 25, 1993.<sup>246</sup>

## **(II) THE MAY 25, 1993 IMC MEETING**

The IMC working group on CFB Ipperwash and Ipperwash Provincial Park (the “IMC Working Group”) met on May 25, 1993.<sup>247</sup> According to the meeting notes, it was agreed at the meeting that Ontario should convey three key positions: (1) Ontario legally owned the land; (2) The bailiff’s order was invalid; and (3) Ontario viewed the elected band chief and council (i.e. Chief Tom Bressette and the KSP council) as the legitimate government of the community.<sup>248</sup>

Inspector Carson did not participate in the May 25, 1993 IMC meeting. He was not provided with minutes of the meeting.<sup>249</sup> He was briefed about the meeting by a superior OPP officer.<sup>250</sup> According to the May 1993 OPP District Operational Plan regarding the occupation of CFB Ipperwash, one of the identified roles for the OPP was “Request and assist discussions of issues at the inter-ministerial committee meetings.”<sup>251</sup>

On May 25, Les Kobayashi provided Carl George with a letter, which he indicated had been drafted by the District Manager and the Native Liaison Officer, informing Carl George that he would be permitted to distribute information from an information booth on the forthcoming Victoria Day weekend.<sup>252</sup> The letter also communicated that the Ministry did not accept the validity of the bailiff’s notice.<sup>253</sup> Kobayashi also prepared a letter to be passed out to Park

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<sup>245</sup> Exhibit P-712 (Confidential Meeting Notes, IMC, May 21, 1993), p.6.

<sup>246</sup> Exhibit P-712 (Confidential Meeting Notes, IMC, May 21, 1993), pp.6 –7.

<sup>247</sup> Exhibit P-216 (Confidential Meeting Notes, IMC Working Group on Camp Ipperwash and Ipperwash Provincial Park, May 25, 1993). Note that this is only a partial document. The last page(s) are missing, including the list of attendees.

<sup>248</sup> Exhibit P-216 (Confidential Meeting Notes, IMC Working Group on Camp Ipperwash and Ipperwash Provincial Park, May 25, 1993), p. 2.

<sup>249</sup> Exhibit P-216; Examination in chief of John Carson, May 10, 2005, pp. 258-59.

<sup>250</sup> Examination in chief of John Carson, May 10, 2005, p. 259.

<sup>251</sup> Exhibit P-400, revised May 28, 1993, p. 3.

<sup>252</sup> With respect to the request to erect a structure in the park as itemized in the Stoney Point group’s May 19 letter, Carl Tolsma testified, “[W]e just wanted to more or less hand information out. We weren’t going to put any building on the land.” See Examination in chief of Carl Tolsma, February 9, 2005, p. 75. His recollection of what actually occurred in this respect was uncertain: see pp. 79-80. Carson and Kobayashi both testified that the information booth consisted of a small white structure on a trailer: Examination in chief of Les Kobayashi, October 25, 2005, p. 28; Examination in chief of John Carson, May 10, 2005, pp. 231, 247. Les Kobayashi testified that it remained in the Park for “quite a while” after the May 24 weekend, but information was only disseminated from it for a short period of time: see Examination in chief of Les Kobayashi, October 24, 2005, p. 50. Although he recalled its removal, he was not sure when or under what circumstances that occurred. The documentary record indicates that it was removed on June 3 or 4: see Examination in chief of Les Kobayashi, October 24, 2005, p. 51; Exhibit P-846.

<sup>253</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 25-26; see Exhibit P-838 (Letter from Les Kobayashi to Carl George, May 25, 1993). Note that although this letter appears to stem from the conclusions reached at the IMC on May 21 and 25, 1993, Les Kobayashi indicated that he actually was not aware of the IMC in May of 1993: see Examination in chief of Les Kobayashi, October 24, 2005, p. 35.

visitors over the Victoria weekend informing them of the intentions of the Stoney Point group to distribute material in the Park.<sup>254</sup>

On May 25, Les Kobayashi also met with Detective Sergeant Matthews of the OPP to exchange contingency plans as between the OPP and the Park officials regarding the Stoney Point group.<sup>255</sup>

On May 26, Maynard T. George informed Kobayashi that he was having difficulty maintaining control over his people.<sup>256</sup>

On May 26, Terry Humberstone discussed the occupation with Chief Tom Bressette. The MNR reported that Chief Bressette had said KSP did not believe there was a legitimate land claim to the Park, and that the MNR should be throwing out persons who occupy the Park.<sup>257</sup> An MNR memorandum from Humberstone also documents concerns expressed by Chief Bressette regarding Maynard T. George's extension of activities to the Park. The memorandum states,

Tom thinks we are setting ourselves up for some real trouble by letting them in the Park to demonstrate. He said they will probably move more people in at a later date and then we are going to have real trouble ever getting them out. He and his council and people are having difficulty understanding why we, MNR, would allow an illegal occupation of public park lands take place. He thinks we should evict them now.<sup>258</sup>

In his evidence, Tom Bressette confirmed the accuracy of this memorandum, and said that it expressed a general concern of members of his council and community as well as himself.<sup>259</sup> Chief Bressette testified about his concern that actions outside legal processes could lead people "down a path" that could lead to no official recognition of a claim.<sup>260</sup> He also expressed concern about the implications for relations with non-natives. He said, "[W]hen you do something like this it...inadvertently draws an adverse effect from surrounding communities and it upsets the balance in how we deal with our neighbours."<sup>261</sup> He said that in 1993, "[W]e

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<sup>254</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 27 and 29; see Exhibit P-839 (Letter from Kobayashi to Park Visitors, May 21, 1993).

<sup>255</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 36-42. See also Exhibit P- 844 (Email to Baldwin from Kobayashi, re Meeting OPP Det. Sgt. Matthews May 25, 1993). See also Exhibit P-843, Ipperwash Provincial Park Enforcement Plan, May 1993.

<sup>256</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 48-49, with reference to Exhibit P-845 (OPP Letter to Supt from Sgt Beacock, May 26, 1993); see also Examination in chief of John Carson, May 10, 2005, pp. 259-60; Exhibit P-397, p. 27.

<sup>257</sup> Examination in chief of John Carson, May 10, 2005, pp. 263-64; Exhibit P-257.

<sup>258</sup> Exhibit P-236. See also Examination in chief of Les Kobayashi of October 24, 2005, p. 33-34 with reference to Exhibit P-841 (Email from Humberstone to Kobayashi "Conversation with Tom Bressette", May 20, 1993).

<sup>259</sup> Examination in chief of Thomas Bressette, March 1, 2005, pp. 236-42. See also Exhibit P-237 and Examination in chief of Thomas Bressette, March 1, 2005, p. 250: "I told him basically...that trespass charges should be laid against him and leave it up to the appropriate authorities."

<sup>260</sup> Examination in chief of Thomas Bressette, March 1, 2005, pp. 243-44.

<sup>261</sup> Examination in chief of Thomas Bressette, March 1, 2005, p. 244, commenting on Maynard T. George's utilization of a bailiff to serve a notice purporting to establish ownership of the Park without an adjudication of ownership.

had just come through...the Oka crisis...We didn't want to see that kind of event unfold in our area. And it was a grave concern to a lot of our community members.”<sup>262</sup>

### **(III) THE MAY 27, 1993 IMC MEETING**

The next meeting of the IMC Working Group was on May 27, 1993.<sup>263</sup> According to the notes from the meeting, Ron Baldwin reported on the recent meetings with Chief Bressette. He also reported that there had been indications, verified by the OPP, that “Warriors” from other First Nations were at the base. The committee was also briefed that the bailiff’s notice had no legal validity. Yan Lazor, the IMC Chair, also reported that Major White had assured Lazor of his willingness to attend an IMC committee meeting.

The notes also indicate that Superintendent Tom Wall was present at the meeting. He reported on events at CFB Ipperwash.<sup>264</sup>

According to the notes, it was agreed that Ron Baldwin would draft a letter to Chief Bressette clarifying the position of Park ownership, recognition of KSP and the lack of legal validity of the bailiff’s order. They also agreed that the letter should state that if the Stoney Point group felt they had a land claim they should follow the appropriate procedures with the federal government.<sup>265</sup>

### **(IV) THE JUNE 4, 1993 IMC MEETING**

The meeting notes from May 27, 1993 and June 4, 1993 both refer to a meeting of the IMC Working Group on May 31, 1993, but there are no documents that relate to that meeting.

The IMC Working Group next met on June 4, 1993.<sup>266</sup> Elizabeth Christie, who was in attendance at the meeting, testified that the meeting had been called because the information booth, or kiosk, that had been set up at the Park by the Stoney Point group pursuant to the MNR’s May 25 letter of permission had been removed to the Camp, and there was some information regarding a potential rally at the Camp.<sup>267</sup> According to Ms. Christie, there was some discussion at the meeting about the viability of seeking an injunction to prevent the Stoney Point Group from putting the kiosk back in the Park.<sup>268</sup>

The notes from the meeting indicate that the next meeting was scheduled to be on June 11, 1993, but there are no documents reflecting whether that meeting took place.

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<sup>262</sup> Examination in chief of Thomas Bressette, March 1, 2005, pp. 244-45.

<sup>263</sup> Inq Doc.1007625. Excerpts from this document were made Exhibits, but the IMC notes from May 27, 1993, do not appear to have been made an Exhibit.

<sup>264</sup> IMC Meeting Notes, May 27, 1993 (Inq Doc.1007625).

<sup>265</sup> IMC Meeting Notes, May 27, 1993 (Inq Doc.1007625).

<sup>266</sup> Exhibit P-745 (Confidential Meeting Notes, IMC Working Group Meeting re Ipperwash Provincial Park, June 4, 1993).

<sup>267</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 22.

<sup>268</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 28.

On June 11, Les Kobayashi met with Chief Tom Bressette. According to Kobayashi, Chief Bressette, “reaffirmed that he felt that Maynard T. George assertion of ownership [was] creating a situation that if they were in the park that they should be treated like trespassers and that it could lead onto other things, that he wasn’t supportive of their assertion.”<sup>269</sup>

On June 14, Kobayashi once again met with Maynard T. George. They discussed recent elections among the Stoney Point group. In June of 1993 Carl George was elected Chief of the Stoney Point band.<sup>270</sup> Roderick George, Glenn George, Roberta Ann George, Terrence Leroy George, Bruce Manning and Marlene Cloud were elected Councillors.<sup>271</sup> Roderick George testified that the election was open to all people whose families had lived on Stony Point before the 1942 appropriation, whether or not they were in occupation of the CFB Ipperwash lands.<sup>272</sup> Tolsma said the Chief and Council made decisions on a consensus basis, and also sought the advice of elders.<sup>273</sup> Carl Tolsma acknowledged that after the election he still did not have a mandate from the majority of people who had an interest in the Stony Point lands.<sup>274</sup>

On June 14, Maynard T. George also indicated to Kobayashi that he had maps that showed the Park was Stoney Point land, and that there was a sacred burial ground in the Park. Kobayashi believes that he was provided with documents by Maynard T. George, but did not recall whether they specified a burial ground. Maynard T. George did advise that his people wanted to proceed in a non-confrontational manner, and that they would be searching the area for burial sites and other artifacts. Kobayashi agreed to this request, but does not believe that any such searches were carried out. Maynard T. George also indicated that they intended to hold a Remembrance Day ceremony in the Fall. Kobayashi agreed, but does not recall any such ceremony having been held by the group. At this meeting, Maynard T. George also apparently informed Kobayashi that the group wanted their sacred area returned, and that they were claiming land from Ravenswood to Parkhill to Goderich.<sup>275</sup>

On June 14, Ron Baldwin wrote to Tom Bressette stating the provincial position regarding the Park. The letter stated, in part, that the provincial government’s position was that the MNR was in lawful possession of the Park based on its purchase of the lands in 1936, following the 1928 surrender.<sup>276</sup>

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<sup>269</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 53, See also Exhibit P-847 (Email from Kobayashi to Humberstone re Kobayashi/Bressette Meeting, June 11, 1993).

<sup>270</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 116-18; Exhibit P-179; Examination in chief of Roderick George, November 23, 2004, pp. 33-34.

<sup>271</sup> Examination in chief of Roderick George, November 23, 2004, pp. 34-35, 40 (“Around August, end of July, first of August somewhere”); see also (very generally) Examination in chief of Stacey George, November 22, 2004, pp. 40-41; see also Examination in chief of Carl Tolsma, February 9, 2005, pp. 116-18.

<sup>272</sup> Examination in chief of Roderick George, November 23, 2004, p. 35.

<sup>273</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 116-17; see also Stacey George’s evidence regarding the Council of Elders, Examination in Chief of Stacey George, November 22, 2004, pp. 35-36.

<sup>274</sup> Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, pp. 168-69. Mr. Tolsma also agreed that the same held true for an election held in 1994: see pp. 169-70.

<sup>275</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 54-57. See also Exhibit P-848 (Email from Kobayashi to Humberstone re “Meeting Maynard George and L. Kobayashi” June 14, 1993).

<sup>276</sup> Exhibit P-241; Examination in chief of Thomas Bressette, March 1, 2005, pp. 270-73.

On June 18, MNR Minister Howard Hampton attended the opening of a new facility at Pinery Provincial Park. Representatives of KSP were in attendance, but the Stoney Point occupiers were not invited. Kobayashi indicated that he thought the Stoney Point group was a little disappointed that they had not been included. He recalled a Stoney Point elder, Janet Cloud, expressing her concerns. At this meeting, Maynard T George and Janet Cloud also informed Kobayashi that if they were evicted from the Army Camp they would take ownership of the the Park and Pinery Provincial Park.<sup>277</sup>

## **(V) THE JUNE 25, 1993 IMC MEETING**

The last known meeting of the IMC Working Group prior to 1995 took place on June 25, 1993.<sup>278</sup> Inspector Carson testified that he provided Inspector Bill Crate with daily information updates for the purpose of updating the IMC.<sup>279</sup> According to the meeting notes, Bill Crate informed the working group as follows:

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 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.<sup>280</sup>

The following resolution of the Working Group is reflected in the notes: "Pressure for a Federal Injunction - ONAS, the OPP and MNR desire a federal injunction if DND is unable to negotiate a resolution and enforcement action becomes necessary."<sup>281</sup>

By late June Inspector Carson was informed by a military representative that the military did not wish to seek an injunction.<sup>282</sup> This was confirmed to Carson on June 29.<sup>283</sup> As a result of a meeting with military representatives on June 28, Inspector Carson concluded that the military preferred to deal with the occupiers through enforcement of federal government regulations by the military itself.<sup>284</sup> On June 30, Maynard T. George indicated that if army camp

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<sup>277</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 58. See also Exhibit P-849 (Email to Baldwin from Kobayashi re "Meeting with Maynard George", June 18, 1993).

<sup>278</sup> Exhibit P-721 (Confidential Meeting Notes, IMC Working Group on Ipperwash Provincial Park and Camp Ipperwash, June 25, 1993).

<sup>279</sup> Examination in chief of John Carson, May 11, 2005, pp. 67-69.

<sup>280</sup> Exhibit P-721 (Confidential Meeting Notes, IMC Working Group on Ipperwash Provincial Park and Camp Ipperwash, June 25, 1993).

<sup>281</sup> Exhibit P-721 (Confidential Meeting Notes, IMC Working Group on Ipperwash Provincial Park and Camp Ipperwash, June 25, 1993).

<sup>282</sup> Examination in chief of John Carson, May 11, 2005, p. 50; see also pp. 54, 60-61, 73.

<sup>283</sup> Examination in chief of John Carson, May 11, 2005, pp. 102-104.

<sup>284</sup> Examination in chief of John Carson, May 11, 2005, pp. 90-92; see also pp. 103-04, 112-14.

occupiers were evicted, the occupation would spread to provincial parks or township and county land.<sup>285</sup>

Les Kobayashi testified that as of June 1993 he was not aware of any substantive negotiations as between the MNR and the Stoney Point group regarding the Park and its use. He was also not aware of any discussion about recognizing the Stoney Point First Nation as a band. He said, "At the time the direction that I had and understood was that we would be dealing with Kettle Point and Stony Point directly, as the recognized Band of status, and that Stoney Point was not a recognised Band at that particular point in time."<sup>286</sup>

### **3.06 SUMMER OF 1993**

#### **(1) TENSIONS AT THE MILITARY BASE**

As the 1993 occupation proceeded, the number and identity of people occupying CFB Ipperwash fluctuated.<sup>287</sup> There were also renewed concerns regarding the alleged presence of Mohawk 'Warriors'.<sup>288</sup>

The occupiers built a white building on a pre-existing concrete pad on the occupied lands near Highway 21.<sup>289</sup> Initially a steeple was put on the building and it was used as a church.<sup>290</sup> Stacey George testified that "they decided to make it into a church so that if anything went wrong...they could go there because it's considered as a place of refuge".<sup>291</sup> The steeple was subsequently removed and it was used as a meeting hall.<sup>292</sup> Roderick George testified that it became known as the "Argument Hall", because "everybody usually ended up in an argument there", as it was used to air differences among people.<sup>293</sup>

Marlin Simon described the occupiers' relationship with the military from 1993 to 1995 as one of "just kind of one of taunting each other. Kind of like neighbours bickering at each other all the time".<sup>294</sup> He described a general concern about the prospect of the OPP coming into CFB Ipperwash and removing the occupiers, although this never happened.<sup>295</sup> He was unaware

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<sup>285</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 68-69; Exhibit P-851.

<sup>286</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 62-63.

<sup>287</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 63.

<sup>288</sup> Examination in chief of George Speck, March 22, 2006, pp. 75-77. Speck identified Ed Isaac, Buck Doxtator, Layton Elijah as 'Warriors' - although he said not everybody who is a 'Warrior' is a criminal.

<sup>289</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 117; Examination in chief of Roderick George, November 23, 2004, pp. 38-39.

<sup>290</sup> Examination in chief of Roderick George, November 23, 2004, pp. 38-39.

<sup>291</sup> Examination in chief of Stacey George, November 22, 2004, p. 51 ("I helped build that building").

<sup>292</sup> Examination in chief of Roderick George, November 23, 2004, pp. 38-39.

<sup>293</sup> Examination in chief of Roderick George, November 23, 2004, pp. 39-40.

<sup>294</sup> Examination in chief of Marlin Simon, September 28, 2004, pp. 152-57. For Mr. Simon, "It was kind of like a occupation or something at first, then after a while it was just -- was just home." See September 28, 2004, p. 164.

<sup>295</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 162.



of the OPP ever having asked the occupiers to leave, and he said no security precautions were taken against this by the occupiers.<sup>296</sup>

Warren George recalled the military conducting perimeter patrols in a “loud and annoying” truck at all hours, during which military personnel were “always watching us”.<sup>297</sup> Rose Manning testified,

They used to go by on the main road and they used to chant away that we forgot to pay our taxes. Sounded kind of nice the way they sang it, you know...they were marching and they were chanting at the same time.<sup>298</sup>

Warren George testified that after a while, “their routine patrols were getting pretty annoying”, and he and Dudley George would throw at the military truck “whatever we had, rotten eggs or rotten fish laying around”.<sup>299</sup>

In August 1993, there was an altercation between Kevin Simon and members of the military. Simon and his property were removed from a tin building where Simon had taken up residence. The military seized property as “found property” and loaded it onto a military truck. The tin building was subsequently burned down. Constable Speck investigated but nobody could identify those responsible. After some reluctance, the military agreed to return the property, but Speck did not know if it was in fact returned. Speck testified that at the time of the fire there was no doubt the fire was started by Stoney Point occupiers in retaliation for Kevin Simon being removed from the tin building.<sup>300</sup> Stacey George said the shed “got burned that night”, but that he did not know who did it. “We thought it was the military that did it,” he said.<sup>301</sup>

## **(2) HELICOPTER SHOOTING**

On the evening of August 23, 1993 someone shot at a Canadian Forces helicopter as it flew over CFB Ipperwash.<sup>302</sup> Stacey George said the helicopters would do “real low-flying manoeuvres all over the base”, which “kind of made people on edge”.<sup>303</sup> Similarly, Warren George testified that the helicopter, “would fly low above the trees there quite often. It was

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<sup>296</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 133.

<sup>297</sup> Examination in chief of Warren George, December 8, 2004, pp. 90-92.

<sup>298</sup> Examination in chief of Rose Manning, April 6, 2006, p. 253. See also Cross-examination of Rose Manning by Ms. Jones, April 7, 2005, pp 128-29.

<sup>299</sup> Examination in chief of Warren George, December 8, 2004, p. 98. Harley George recalled “throwing fruits and stuff” at the military range patrol when he visited CFB Ipperwash prior to July 29, 1995: see Examination in chief of Harley George, January 20, 2005, p. 138.

<sup>300</sup> Examination in chief of George Speck, March 22, 2006, pp. 48-59; Exhibit P-1159; see also Examination in chief of Marlin Simon, September 28, 2004, pp. 158-60; see also Cross-examination of David George by Mr. West, November 1, 2004, pp. 9-10; Examination in chief of John Carson, May 11, 2005, p. 174ff.

<sup>301</sup> Examination in chief of Stacey George, November 22, 2004, pp. 52-55.

<sup>302</sup> Examination in chief of John Carson, May 11, 2005, p. 185ff.

<sup>303</sup> Examination in chief of Stacey George, November 22, 2004, pp. 47-48. Stacey George said the helicopters would “fly all around the reserve and follow cars and stuff”.

fairly close and sort of put fear into whoever was down there”.<sup>304</sup> Rose Manning described how the helicopters would fly over the occupiers at night and shine lights on them, and that they disturbed her sleep.<sup>305</sup> All of the occupiers living at the base who testified denied having any knowledge as to who had fired at the helicopter.

Constable Speck was not responsible for investigating the incident, but he knew people in the community.<sup>306</sup> He testified that “everybody thought it was Abe George who fired the shot”.<sup>307</sup> He indicated, “I know Knobby was mad at Abe”. (“Knobby” refers to Robert George, who was Abraham George’s brother.) According to Speck, “I think Knobby went over there and took the gun away from Abe”. Speck could not recall the source of his information.<sup>308</sup>

Carl Tolsma testified that on the night of the helicopter shooting he was at his home at Kettle Point.<sup>309</sup> Robert George came and told him that somebody had shot at a helicopter flying around and that they had to go down there right away. According to Carl Tolsma,

On the way down there, he told me, he said, Abraham George shot at the helicopter and so we went there first...Robert George done most of the talking. He asked him, he says, did you shoot at the helicopter, and he says, Yes, I shot up in the air at it, he said, I don’t know if I hit it or not.”<sup>310</sup>

According to Tolsma, Robert George then took Abraham George’s gun, which to the best of his recollection was a shotgun, and said, “I’m gonna have to take this home with me to get it out of here.”<sup>311</sup>

The OPP carried out a search at the army camp the next day, but did not find any weapons, or identify the responsible parties.<sup>312</sup>

### **(3) INCIDENTS AT IPPERWASH PROVINCIAL PARK**

Les Kobayashi testified that from 1993 to 1995, there was an escalation of occurrences at the Park and surrounding roadways and beach areas.<sup>313</sup> These incidents included:

Ignition of fireworks within Camp Ipperwash causing noise complaints from Park campers.<sup>314</sup>

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<sup>304</sup> Examination in chief of Warren George, December 8, 2004, pp. 101-02. He said the helicopter flew “fairly slow”, “just above the tree line”.

<sup>305</sup> Examination in chief of Rose Manning, April 7, 2005, pp. 8-9.

<sup>306</sup> Examination in chief of George Speck, March 22, 2006, pp. 18-19; 71-72.

<sup>307</sup> Examination in chief of George Speck, March 22, 2006, p. 72.

<sup>308</sup> Examination in chief of George Speck, March 22, 2006, p. 72.

<sup>309</sup> Examination in chief of Carl Tolsma, February 9, 2006, p. 145.

<sup>310</sup> Examination in chief of Carl Tolsma, February 9, 2006, pp. 145-146.

<sup>311</sup> Examination in chief of Carl Tolsma, February 9, 2006, pp. 145-146.

<sup>312</sup> Examination in chief of John Carson, May 11, 2005, p. 186ff.

<sup>313</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 63.

<sup>314</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 64; see Exhibit P-850.

A dispute between the military and the Stoney Point group regarding placement of cement cubes between the CFB Ipperwash and Park beaches, attracting approximately 100 Park users.<sup>315</sup>

Rumours of potential vandalism to the CFB Ipperwash water pumphouse located in the Park.<sup>316</sup>

On July 12, 1993, members of the Stoney Point group set-up a toll booth on Matheson Road, which was a township road providing a municipal boat launch to the lake. Matheson Drive ran adjacent to the Park and the CFB Ipperwash along the Park's south and east boundaries.<sup>317</sup> Kobayashi testified that the toll booth led to a number of complaints from Park users because the traditional use pattern was that Park users used the DND beach at no charge.<sup>318</sup> Three Stoney Point occupiers, including elder Clifford George, were arrested as a result of the incident.

#### **(4) OCCUPIERS' RELATIONS WITH KSP AND LOCAL COMMUNITY**

On June 29, 1993, there was a meeting of representatives from the OPP, the MNR, the Township of Bosanquet and KSP.<sup>319</sup> Municipal representatives expressed concern to Inspector Carson about the potential impact of the CFB Ipperwash occupation on the local economy, and expressed the view that "inaction was not a viable alternative".<sup>320</sup> In his evidence Chief Bressette testified that he shared their concern about the potential impact on the area economy.<sup>321</sup> The meeting participants also discussed the prospect of the occupation spreading to the Park in the event they were evicted by the military from CFB Ipperwash.<sup>322</sup>

In July of 1993 representatives of KSP and the occupying group commenced discussions with a view to advancing their aims together, with the assistance of Gord Peters of the Chiefs of Ontario.<sup>323</sup> By September these efforts had collapsed.<sup>324</sup> Further efforts in early 1994 were also unsuccessful.<sup>325</sup>

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<sup>315</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 89-90; see also Exhibit P-858 (Email from Humberstone to Baldwin re "Ipperwash Confrontation", July 27, 1993).

<sup>316</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 94-95.

<sup>317</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 71-80. See also Exhibit P-853 (Email from Brett Hodgeson re Ipperwash Situation, July 15, 1993); Examination in chief of George Speck, March 22, 2006, pp. 40-48; Exhibit P-1162; Examination in chief of John Carson, May 11, 2005, p. 144ff.

<sup>318</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 79-80; see also Exhibit P-854 (Memo from Varley to Kobayashi re "Camper comments concerning native situation," July 16, 1993).

<sup>319</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 67. See also P-851 (Email from Kobayashi re Bosanquet Township Meeting, June 29, 1993).

<sup>320</sup> Examination in chief of John Carson, May 11, 2005, pp. 106-08. Norm Shawnoo of Kettle Point also attended this meeting.

<sup>321</sup> Examination in chief of Thomas Bressette, March 1, 2005, pp. 244-45.

<sup>322</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 69.

<sup>323</sup> Exhibit P-209.

### **3.07 FALL OF 1993**

#### **(1) MARCH TO OTTAWA**

In September of 1993 a group of First Nations people took the extraordinary measure of walking approximately 700 kilometres to Ottawa to raise awareness about Stoney Point.<sup>326</sup> When the occupiers arrived no one from government met them.<sup>327</sup>

Warren George recalled participating with Marlin Simon, Kevin Simon and others in the writing of letters to federal politicians in 1993 or 1994 demanding the return of the CFB Ipperwash lands to the Stony Point people.<sup>328</sup> He said the only result of this was a reply that “they were looking into it and that was it”, and that this response formed part of the impetus behind the later takeover of the built-up area of CFB Ipperwash.<sup>329</sup>

#### **(2) RELATIONS BETWEEN MILITARY AND OCCUPIERS**

Clifford George, Glenn George, Dudley George and a number of young men maintained the occupation of CFB Ipperwash in the winter of 1993-94.<sup>330</sup>

During the fall of 1993, there were additional confrontations between the stoney Point occupiers and the military, including:

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<sup>324</sup> Carl Tolsma testified that this happened as a result of Maynard T. George rewriting an agreement that had been made by the two groups: see Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 49-51.

<sup>325</sup> Carl Tolsma said in cross-examination that discussions were again disrupted by Maynard T. George changing an agreement that had been reached: see Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 102-04.

<sup>326</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 177-81; Exhibit P-189; Examination in chief of Roderick George, November 23, 2004, pp. 102-03; Examination in Chief of Stacey George (who participated), November 22, 2004, pp. 33-34, see also Cross-examination of Stacey George by Mr. Ross, November 22, 2004, pp. 146-47; Examination in chief of Rose Manning, April 6, 2005, pp. 259-61.

<sup>327</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 177-81; Examination in chief of Roderick George, November 23, 2004, pp. 102-03 (“a very big disappointment”); Cross-examination of Stacey George by Ms. Esmonde, November 22, 2004, pp. 136-38; Examination in chief of Rose Manning, April 6, 2005, pp. 261-64.

<sup>328</sup> Examination in chief of Warren George, December 8, 2004, pp. 77-78, 110-11; Cross-examination of Warren George by Mr. Downard, December 9, 2004, p. 133.

<sup>329</sup> Examination in chief of Warren George, December 8, 2004, pp. 110-11.

<sup>330</sup> Marlin Simon identified the other occupiers over the first winter as himself, David George, Joe George, Warren George and Kevin Simon: see Examination in chief of Marlin Simon, September 28, 2004, p. 116; see also Examination in chief of Warren George, December 8, 2004, pp. 80-84, 87-90 (regarding the initial stage of the occupation generally), and Cross-examination of Warren George by Ms. Jones, December 9, 2004, at pp. 38-39 (regarding the winter of 1993-94). Roderick George visited from time to time from 1993 through 1995, prior to moving into the built-up area of CFB Ipperwash immediately after its takeover on July 29, 1995: see Examination in chief of Roderick George, November 23, 2004, pp. 30-33, 54-56. Stacey George testified that he stayed at CFB Ipperwash intermittently during the winter of 1994-94: see Examination in chief of Stacey George, November 22, 2004, pp. 51-52.

October:

- arson to outhouse in the marriage patch;
- 3 cedar outhouses and storage shed near Bio Lake burned down;
- 4 large military signs at the beach cut with a chainsaw;
- outhouse on grenade range pulled off foundation and burnt;
- windows in buildings at grenade range broken, additional damage to buildings;
- a gas heater damaged;
- approximately \$20,000 damage in total<sup>331</sup>

December:

- 6 bullet holes in doors of grenade range and tower also shot;<sup>332</sup>
- theft of an outhouse, value \$1,085 , located at Dudley George's trailer<sup>333</sup>

Warren George recalled Dudley George would tell military personnel they were trespassing, and give them 'orders' to leave the land.<sup>334</sup> Stacey George testified, "We would always swear at them when they went walking by... You know, like, what are you guys doing here? Get off our land."<sup>335</sup> Elwood George, a visitor with the occupiers during this period, recalled "little arguments" with the military, and Dudley George telling the military personnel that "they were fired".<sup>336</sup> Stacey George recalled Dudley George as "one of these real outspoken dudes that likes to swear at authority figures".<sup>337</sup> Carl Tolsma recalled Dudley George as a "happy-go-lucky guy" who "more or less, got along with everybody".<sup>338</sup>

Carl Tolsma testified that although members of the occupying group were concerned that an attempt would be made by the military to remove the occupiers by force, the occupying group would adopt tactics of passive resistance.<sup>339</sup> "[W]e had planned that we weren't going to fight back," he said. "[W]e'd just let them do whatever they want and we'd take the beating."<sup>340</sup> Tolsma also testified that the group was concerned the OPP might also seek to do this, in which event the group planned to use the same tactic.<sup>341</sup>

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<sup>331</sup> Examination in chief of George Speck, March 22, 2006, pp. 59-62.

<sup>332</sup> Examination in chief of George Speck, March 22, 2006, pp. 65-66.

<sup>333</sup> Examination in chief of George Speck, March 22, 2006, pp. 66-68. Speck acknowledged that the incidents investigated at this time were not of the most serious sort.

<sup>334</sup> Examination in chief of Warren George, December 8, 2004, pp. 97-98.

<sup>335</sup> Examination in chief of Stacey George, November 22, 2004, p. 41. Asked about any response from the military personnel, he said, "Usually they wouldn't say nothing."

<sup>336</sup> Examination in chief of Elwood George, November 3, 2004, p. 23.

<sup>337</sup> Examination in chief of Stacey George, November 22, 2004, pp. 41-42. He testified that he had observed Dudley George doing this. Asked whether any of this was returned, he said, "I don't think so."

<sup>338</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 63-64.

<sup>339</sup> See Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 71-73.

<sup>340</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, p. 72.

<sup>341</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, p. 73.

Ron George testified that although he had no involvement in the commencement of the May 1993 occupation,<sup>342</sup> he subsequently continued to visit the CFB Ipperwash lands from time.<sup>343</sup> After 1993 his involvement diminished.<sup>344</sup> “I began to see a lot of what I thought was anger and frustration developing amongst the group,” he testified, “and I found that very difficult.”<sup>345</sup> He still continued to visit the lands from time to time.<sup>346</sup> He said he never witnessed any interaction with the military that gave him a sense that the military wanted him or the people in occupation off the land.<sup>347</sup>

### **3.08 1994: THE DECISION TO RETURN CFB IPPERWASH**

#### **(1) ANNOUNCEMENT TO RETURN CFB IPPERWASH**

On February 22, 1994, Chief Bressette was informed by the Department of National defence that CFB Ipperwash would be closed and the land returned to the First Nation<sup>348</sup>

Les Kobayashi testified that the announcement caused him some significant concerns. He was concerned about the Park’s water system, which ran through the Army Camp. He also believed that unlimited freedom and accessibility of people at the base would certainly increase the day to day occurrences from 1993.<sup>349</sup>

#### **(2) NEGOTIATIONS FOR THE RETURN OF CFB IPPERWASH**

Carl Tolsma testified that during 1994 and 1995 the Stoney Point group became involved in KSP’s negotiations with the federal government. He was satisfied that the Stoney Point group’s interests were properly being taken into account.<sup>350</sup> Carl Tolsma was aware that the position of the federal government was that it would only negotiate the return of the land with KSP.<sup>351</sup>

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<sup>342</sup> Examination in chief of Ron George, February 28, 2005, pp. 84-87; see also Cross-examination of Ron George by Ms. Esmonde, March 1, 2005, pp. 16-17; Cross-examination of Ron George by Mr. Ross, March 1, 2005, pp. 64-65.

<sup>343</sup> Examination in chief of Ron George, February 28, 2005, pp. 88-91,

<sup>344</sup> Examination in chief of Ron George, February 28, 2005, p. 95.

<sup>345</sup> Examination in chief of Ron George, February 28, 2005, p. 96.

<sup>346</sup> Examination in chief of Ron George, February 28, 2005, p. 102.

<sup>347</sup> Examination in chief of Ron George, February 28, 2005, p. 106.

<sup>348</sup> Examination in chief of Thomas Bressette, March 2, 2005, pp. 46-48 (the negotiations for the return continue to this day); Exhibit P-245; Inspector Carson became aware of this announcement: Examination in chief of John Carson, May 12, 2005, pp. 23-24.

<sup>349</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 101; see P-862, Email from Kobayashi to Sturdy re Ipperwash Issue, February 24, 1994 and P-863, Email from Kobayashi to Sturdy February 25, 1994.

<sup>350</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 111-12.

<sup>351</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 76-77; see also pp. 89-91 and Exhibit P-212 (May 12, 1994 letter to Ross from Doerr).

At the same time, Chief Tom Bressette was concerned that as long as the occupiers remained at CFB Ipperwash the progress of an environmental assessment of the land for the purpose of its cleanup could be hindered.<sup>352</sup> On May 5, 1994, Chief Bressette reported at a band meeting that the continued occupation was impeding the conduct of an environmental assessment of CFB Ipperwash. He indicated that the government was reluctant to proceed with an environmental assessment while the occupation continued.<sup>353</sup>

Carl Tolsma accepted that at this time the issue whether Stoney Point was separate from Kettle and Stony Point was “a major sticking issue”.<sup>354</sup>

### **(3) TENSIONS AMONG OCCUPIERS**

In May of 1994 it was reported that Carl Tolsma was no longer staying at CFB Ipperwash because he no longer controlled those in occupation there. According to reports, Carl had admitted he could not control the people at the army camp, and he had moved off the camp for that reason. The military also advised the OPP that occupiers were walking around at night, armed with rifles, and that the military anticipated a strong possibility of serious confrontations.<sup>355</sup>

### **(4) RELATIONS BETWEEN OCCUPIERS AND MILITARY**

In July of 1994, Captain Howse was posted to CFB Ipperwash as Commanding Officer. He remained in that position until the summer of 1995.<sup>356</sup> His role was to supervise the overall operations of the camp and camp staff, and to supervise ‘Operation Maple’ staff and ensure that information was being passed through the chain of command in a timely fashion.<sup>357</sup> Captain Howse described Operation Maple as a security operation established to maintain timely information to higher headquarters on the occupation of CFB Ipperwash, to protect the assets of the camp as much as possible, and to provide safety and well being to camp staff.<sup>358</sup>

With respect to the occupation, Captain Howse had been told the military’s position was that the specific areas of occupation were to be observed but left alone. “We were not to try and dislodge the occupiers from those sites,” he said.<sup>359</sup> He also testified that he was aware of

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<sup>352</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 91-96. See in particular p. 95, regarding a statement by Chief Bressette at a Council meeting that, “As long as they’re there they hinder the process of environment assessment going ahead and, as such, may let the Government of Canada off the hook by saying the Band refused to let them in and clean the land.”

<sup>353</sup> Examination in chief of Thomas Bressette, May 12, 2005, p. 10.

<sup>354</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, p. 97.

<sup>355</sup> Examination in chief of George Speck, March 22, 2006, pp. 88-93; Exhibit P-1165.

<sup>356</sup> Examination in chief of Captain Howse, June 27, 2006 p 15.

<sup>357</sup> Examination in chief of Captain Howse, June 27, 2006 pp. 18-19.

<sup>358</sup> Examination in chief of Captain Howse, June 27, 2006, p. 21. Captain Smith testified that the name “Operation Maple” was used for administrative purposes to describe the generic activities of what was taking place at Camp Ipperwash with respect to the billing and costing of all resources: see Examination in chief of Captain Smith, June 26, 2006, p. 45.

<sup>359</sup> Examination in chief of Captain Howse, June 27, 2006, p. 29.

‘Security Guidelines for Use of Ipperwash Training Facilities’ from August of 1993, which provided for a non-confrontational approach with respect to the occupiers.<sup>360</sup>

Captain Howse testified that after arriving at the Camp he had a few meetings with Carl George. One meeting related to the breach of the perimeter fence, which was causing difficulty for the OPP and the municipality. He also recalled speaking to Carl George about concerns he had regarding the discharge of firearms by persons hunting close to the built-up area of the base.<sup>361</sup>

Captain Howse indicated, however, that despite discussing these issues with Carl, he took actions on his own rather than having a compromise solution. He arranged to have a trench dug on the army property along Outer Drive in order to prevent the fences from being breached by vehicle traffic.<sup>362</sup> Captain Howse testified that it was later reported to him that while the trench was being dug, two First Nations people approached and started a verbal confrontation. They left and there was a gunshot. The military team then completed their task and left without further incident.<sup>363</sup>

## **(5) IMPACT ON PARK OPERATIONS**

Kobayashi testified that the Park opened for its regular season in the spring of 1994. He also indicated that occurrences as between Park users and First Nations persons increased in frequency from 1993. “My perception was that they were increasing and the severity was becoming greater,” he said.<sup>364</sup>

Throughout the summer Kobayashi continued to have regular meetings with the local OPP in relation to potential security issues at the Park.<sup>365</sup> During this timeframe, some of the Park employees voiced reluctance to work at Ipperwash due to safety issues, and requested additional enforcement equipment.<sup>366</sup>

Les Kobayashi also met with Staff Sergeant Wade Lacroix to review contingency planning. As a result increased OPP patrols in the Park were arranged for weekends.<sup>367</sup> Kobayashi described the situation as follows: “I don’t feel that they [OPP] felt that an occupation was imminent, however, with the heightening of occurrences and so forth we were dusting off plans and so forth to think about an occupation.”<sup>368</sup>

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<sup>360</sup> Examination in chief of Captain Howse, June 27, 2006, p. 32; Exhibit P-1789.

<sup>361</sup> Examination in chief of Captain Howse, June 27, 2006, pp 23-24.

<sup>362</sup> Examination in chief of Captain Howse, June 27, 2006, p. 26.

<sup>363</sup> Cross-examination of Captain Howse by Ms. Jones, June 27, 2006, pp. 153-154, See also Examination in chief of George Speck, March 22, 2006, pp. 63-65.

<sup>364</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 106; see also p. 118.

<sup>365</sup> Examination in chief of les Kobayashi, October 24, 2005, p. 107.

<sup>366</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 112-113; see also Exhibit P-866 (Email from Kobayashi to Dan Elliott, May 31, 1994).

<sup>367</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 116-17; see also Exhibit P-867 (Email from Kobayashi to Distribution list, June 2, 1994).

<sup>368</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 119-120.



## CHAPTER 4

# TAKING BY FORCE I: THE TAKING OF THE BUA AT CFB IPPERWASH

### 4.01 AN INCREASE IN TENSION

Inspector Carson testified that there were very few incidents at CFB Ipperwash from January 1995 through the middle of June of that year.<sup>369</sup> Commencing in mid-June, however, there was an increase in altercations between military personnel and some members of the occupying group.<sup>370</sup> This was consistent with Captain Howse's evidence, who also indicated that during this time period incidents became more frequent, and in some cases more aggressive.<sup>371</sup> Les Kobayashi also testified that occurrences involving Park users and occupiers escalated over the summer of 1995.<sup>372</sup>

Incidents included:

Marlin Simon described an incident in which the tires on his '4 x 4' vehicle at CFB Ipperwash were slashed, an act he attributed to military personnel.<sup>373</sup>

Warren George reported to police that all the tires on his car had been slashed during the night, while it had been parked beside Dudley George's trailer.<sup>374</sup>

Nicholas Cottrelle and Harley George were involved in a confrontation that arose from the removal of signs. Harley, who was driving the school bus, attempted to collide with a

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<sup>369</sup> Examination in chief of John Carson, May 12, 2005, pp. 24-25.

<sup>370</sup> Examination in chief of John Carson, May 12, 2005, p. 26.

<sup>371</sup> Examination in chief of Captain Howse, June 27, 2006, p. 75.

<sup>372</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 154.

<sup>373</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 161. This incident is also referenced in Exhibit P-1796 (DND Situation Report Number 1, June 29 to 30, 1995).

<sup>374</sup> Examination in chief of Warren George, December 8, 2004, pp. 113-16. Nothing came of the investigation of the damage, which Warren George attributed to the military. See also Cross-examination of Warren George by Ms. Jones, December 9, 2004, pp. 42-48 (note also that police records reviewed in this passage indicated that evidence was contaminated because persons from the occupying group had placed foreign objects in the holes in the tires).

military vehicle. "I tried to get the bus moving as fast as I could towards it."<sup>375</sup> Although he believed the military vehicle was sure to move so as to avoid a collision, he did this to "bully the Army around" and intimidate them.<sup>376</sup> "They've been doing it to our people for years," he said. "I figure I might as well return the favour."<sup>377</sup>

Les Kobayashi described an incident in the area of the boat launch at the end of Matheson Drive involving a dispute between some of the occupiers and a camper, in which a camper had his foot run over by a car driven by occupiers.<sup>378</sup>

## **(1) FACTORS CONTRIBUTING TO ESCALATION**

Captain Howse indicated that it was his concern that a determination had been made on the part of the occupiers that they had to be more aggressive in order to persuade the military to leave.<sup>379</sup> Captain Howse agreed that it appeared the occupiers were becoming more frustrated with the length of time it was taking for the military to leave.<sup>380</sup>

According to some accounts, the escalation in conflict coincided with a change in leadership amongst the occupiers. Captain Howse testified that on May 25, 1995 there was a gathering at a community centre located in the ranges along Highway 21 (presumably the church or "Argument Hall").<sup>381</sup> It was reported that at that meeting Glenn George had been elected leader of the Stoney Point group. It was also reported, "This is significant because Glenn George is a radical Native who has proven his volatile nature in the past."<sup>382</sup>

According to Captain Howse, in or about the time that Glenn George was recognised as the new chief of the Stoney Point group, discussions with Glenn George became more confrontational.<sup>383</sup> Captain Howse testified that he had "a concern about Glenn George being a

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<sup>375</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 234.

<sup>376</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 233-35.

<sup>377</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 235.

<sup>378</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 155.

<sup>379</sup> Examination in chief of Captain Howse, June 27, 2006, p. 79.

<sup>380</sup> Examination in chief of Captain Howse, June 27, 2006, p. 79.

<sup>381</sup> Examination in chief of Captain Howse, June 27, 2006, p. 55.

<sup>382</sup> Exhibit P-1846 (Incidents at Camp Ipperwash, April to June 1995), referred to in Examination in chief of Captain Howse, June 27, 2006, p. 55.

<sup>383</sup> Examination in chief of Captain Howse, June 27, 2006, p. 57. See also Exhibit P-1792 (Op Maple LFCA operation order June 1995), page 1: "Since a new SPG leader was elected on May 25 or 25 May '95 there has been a series of harassment incidents which have become increasingly violent in nature. This aggressive behaviour has been directed at DND personnel in the training and built-up areas of the Camp and at civilians who were legally on the beach. These incidents, a threat to forcibly remove DND personnel from the Camp and the difficulties in maintaining law and order is directed at refs 'A' and 'B' indicate that the irresponsible elements of the SPG are no longer deterred by the current military police presence. As a result of an incident on 25 June, '95 all patrols in the training area have been suspended until further notice. The KPSPB may also be expected to become more active if court does not issue an injunction order to deny the environmental assessment contractor access to Camp Ipperwash."

more hands on and direct leader than Carl George was, that he's showing initiative and showing that the occupiers may be presenting a more offensive-oriented protest".<sup>384</sup>

As of June 1995 it also appeared to Inspector Carson that Glenn George was occupying more of a leadership role among the occupiers.<sup>385</sup> Inspector Carson testified that Glenn George had become more aggressive in 1995 than he had been in earlier years of the occupation.<sup>386</sup>

Les Kobayashi said that in 1995 there was very little contact with Carl George or Maynard T. George. Kobayashi believed that Carl George had stepped down as being Chief of the Stoney Point group in early 1995.<sup>387</sup>

Kobayashi reported on May 19, 1995, that the Grand Bend Detachment Commander, Sergeant Bouwman, had called him to report that Glenn George had attended the Grand Bend detachment and advised Bouwman that OPP ATV patrols along the DND beach would no longer be tolerated, and that if they continued there would be serious confrontations between the Stoney Point group and the OPP. George also apparently informed Bouwman that campers and the public were not welcome, and that if they were seen on the army base they would be dealt with. He also indicated that if the Park could not keep the campers off occupiers' land, they would come to the Park and deal with them there.<sup>388</sup>

According to Constable George Speck, in August of 1995 Glenn George had asserted that all land between Army Camp Road and Kettle Point belonged to the Stoney Point people. He also stated that both the Park and Pinery Park were "high on their agenda to control." According to Speck, Glenn George also indicated that his group did not like the idea of the water control for CFB Ipperwash being in the Park.<sup>389</sup> George Speck indicated that he had no problem communicating with the occupiers during the summer of 1993 when the leader was Carl George.<sup>390</sup> He testified, however, that this changed significantly when Glenn George became the acting spokesman.<sup>391</sup>

Les Kobayashi was further advised by Sergeant Bouwman that on June 30 Bouwman met with "the passive occupiers", and was advised by Carl George that his group was going to confront "the radical group" at the army camp on Monday July 3<sup>rd</sup> with the intent of forcing the "radicals" off the base. Kobayashi did not recall if this in fact had occurred.<sup>392</sup>

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<sup>384</sup> Cross-examination of Captain Howse by Ms. Jones, June 27, 2006, p. 161.

<sup>385</sup> Examination in chief of John Carson, May 12, 2005, p. 26.

<sup>386</sup> Examination in chief of John Carson, May 12, 2005, pp. 73-75; see also Cross-examination of John Carson by Mr. Falconer, June 28, 2005, p. 284.

<sup>387</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 120.

<sup>388</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 130; see also Exhibit P-774.

<sup>389</sup> Examination in chief of George Speck, March 22, 2006, pp. 168-170; Cross-examination of George Speck by Ms. McAleer, March 27, 2006, pp. 32-34.

<sup>390</sup> Examination in chief of George Speck, March 22, 2006, pp. 82-83.

<sup>391</sup> Examination in chief of George Speck, March 22, 2006, pp. 84-85.

<sup>392</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 149; see Exhibit P-869 (Email from Kobayashi to Distribution List, July 02, 1995).

Carl Tolsma testified that he ceased to be involved because “the people that I was supposed to represent didn’t trust me anymore”.<sup>393</sup> Carl Tolsma also testified that he was concerned that a “small breakaway group” of people at CFB Ipperwash was “causing problems”.<sup>394</sup>

The presence of “outsiders” was also identified as a contributing factor to the escalation of tensions. According to Les Kobayashi, on June 30 Sgt. Bouwman had “advised that it was an extremely volatile situation due to the fact that the majority of the natives were not from the area, but from different reserves.”<sup>395</sup> After he had left the occupation, in June of 1995, Carl Tolsma was also concerned about outsiders in occupation at CFB Ipperwash, and believed they should leave.<sup>396</sup> Tolsma testified that in the summer of 1995, some First Nation ‘warriors’ participated in the CFB Ipperwash occupation.<sup>397</sup> He said chiefs at the Oneida Longhouse requested the outsiders to leave after being requested to do so by Tolsma and Cecil Bernard George.<sup>398</sup> Tolsma said that most of the ‘warriors’ subsequently left, except for a “few” who “didn’t...even listen to their own Chiefs”.<sup>399</sup> Tolsma testified that Les Jewell was the “main problem everybody was talking about”.<sup>400</sup> Stacey George testified that in his opinion, “they [outsiders] shouldn’t have been there. I didn’t like the idea of them being there, it was like an internal matter.”<sup>401</sup>

## **(2) CAPTAIN SMITH’S ARRIVAL AT CFB IPPERWASH**

Close to the end of June 1995, Captain Smith was sent to Ipperwash to take over as the Tactical Commander of security forces for CFB Ipperwash.<sup>402</sup> Captain Smith explained that his role was to coordinate and remove all recoverable assets from CFB Ipperwash.<sup>403</sup> When he was sent to Ipperwash at the end of June he had been told that tensions and confrontations had increased, and the military was increasing the manning of military police at the base.<sup>404</sup> He described his role as “trying to maintain a degree of calm in what seemed to be a fairly confrontational situation and, sort of, peacefully hand over the base to the native group”.<sup>405</sup>

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<sup>393</sup> Cross-examination of Carl Tolsma by Mr. Sulman, February 22, 2005, pp. 232-33. He did not consider that anything occurring at the time was “militant”: see p. 234.

<sup>394</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 122-24. He was vague about this.

<sup>395</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 150, with reference to Exhibit P-869.

<sup>396</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 117-18. He testified that his concern was not for a possibility that the outsiders could increase the risk of violence, but only that they were “interfering”: see p. 152.

<sup>397</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 32-33, 117-19.

<sup>398</sup> Examination in chief of Carl Tolsma, February 9, 2005, pp. 110-12.

<sup>399</sup> Examination in chief of Carl Tolsma, February 9, 2005, p. 112.

<sup>400</sup> Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, pp. 134-35.

<sup>401</sup> Examination in chief of Stacey George, November 22, 2004, pp. 58-60. He did not know, however, whether such persons were ever asked to leave.

<sup>402</sup> Examination in chief of Captain Smith, June 26, 2006, pp. 19-20, 29.

<sup>403</sup> Examination in chief of Captain Smith, June 26, 2006, p. 29. Note that Captain Smith also indicated that the initial objective was to complete the removal of assets by July 17, 1995.

<sup>404</sup> Examination in chief of Captain Smith, June 26, 2006, p.28.

<sup>405</sup> Examination in Chief of Captain Smith, June 26, 2006, p. 43.

When Captain Smith assumed his role at CFB Ipperwash he understood the policy of the Canadian Armed Forces with respect to the relations between military personnel and the occupiers was one of non-confrontation, and that this had been the policy since 1993.<sup>406</sup> According to the *Operation Maple Law Enforcement Guidelines* dated June 30, 1995:

...[I]ncreased militancy and intensity of criminal acts have taken place...[The military] is now in a custodial role, pending the removal of the removable assets, completion of the environmental assessment and the eventual return of the Camp to the legitimate Native group...[P]aramount concerns are now to avoid escalation of tension and to provide safety for the general public as well as the DND/CF personnel”.<sup>407</sup>

Captain Smith indicated that he was familiar with this document,<sup>408</sup> and that it accorded with his understanding.<sup>409</sup>

The guideline further provided that any person involved with the occupation of CFB Ipperwash might be arrested and charged for serious offences which threatened the safety and security of the public or military personnel, but that there would not be any law enforcement action against Stoney Point group members or their associates for minor offences committed within the area occupied by the Stoney Point group, or where there was no immediate threat to the health, safety, discipline and security of military personnel and the public.<sup>410</sup> Captain Smith agreed that this was his understanding.<sup>411</sup> He also indicated that the military instituted a policy by which patrolling would be restricted to the built-up area of the army camp and the exterior perimeter of the fence line surrounding CFB Ipperwash, in order to avoid unnecessary conflict.<sup>412</sup>

### **(3) ATTEMPTS TO DE-ESCALATE**

Captain Smith testified regarding steps he took upon assuming his role at CFB Ipperwash. In his first situation report Captain Smith identified the requirement for “cultural awareness brief training to focus on local Native customs, traditions, methods of negotiation et cetera.”<sup>413</sup> Captain Smith explained that he had decided, “[W]e needed to help educate everybody on what we were doing and...the situation we were in”.<sup>414</sup>

Captain Smith called Chief Tom Bressette shortly after arriving at Ipperwash as part of his “ongoing liaison plan”, in an attempt “to establish contact with all the different parties

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<sup>406</sup> Examination in chief of Captain Smith, June 26, 2006, p. 21. This policy was reflected in the *Guidelines For Use of Ipperwash Training Facilities*, Exhibit P-1789, August 1993.

<sup>407</sup> Exhibit P-1793, p. 2.

<sup>408</sup> Examination in chief of Captain Smith, June 26, 2006, p. 32.

<sup>409</sup> Examination in chief of Captain Smith, June 26, 2006, p. 33.

<sup>410</sup> Exhibit P-1793, p. 4.

<sup>411</sup> Examination in chief of Captain Smith, June 26, 2006, p. 36.

<sup>412</sup> Examination in chief of Captain Smith, June 26, 2006, pp 38-41, with reference to section 3(D) of Exhibit P-1793 (*Operation Maple Law Enforcement Guideline*, June 30, 1995).

<sup>413</sup> Exhibit P-1796 (Situation Report #1, June 29-30, 1995), p. 2.

<sup>414</sup> Examination of chief of Captain Smith, June 26, 2006, p. 53.

involved.”<sup>415</sup> Smith was also invited to attend a KSP band council meeting on July 3, 1995.<sup>416</sup> Smith testified that the purpose of attending was to introduce himself to the band and explain what he was trying to accomplish, and to see “if we could mutually come up with some kind of solution to the problem.” The problem he identified was “the violence or the potential for violence on the base itself”. Smith indicated that he felt the Band, as the elected representatives, would have the ability to exert some control over the members of the band, but that he was told by council that they essentially had no control of the members at CFB Ipperwash.<sup>417</sup> Smith recalled that he also discussed an upcoming cross-cultural training session with council, and that the decision reached was “to try and work together as much as we could to resolve it.”<sup>418</sup>

Captain Smith testified that by July 5, “[W]e’d achieved a bit of an uneasy calm and we were just waiting to see how things would move along from there.” He also indicated that he increased training for military police at the camp as part of contingency planning in the event that things did get more violent.<sup>419</sup>

In his Situation Report for the period July 11 and 12, 1995, Captain Smith wrote,

OPP agrees that conflict will occur between KSPB, Kettle and Stoney Point Band, and SPG, Stoney Point Group, when the military vacates Camp Ipperwash. As far as the OPP is concerned that will be an internal band problem and they will not get involved until it is over.<sup>420</sup>

Captain Smith testified that this information had been provided to him by the OPP.<sup>421</sup>

#### **(4) CULTURAL AWARENESS TRAINING**

The cultural awareness training session was scheduled to take place on July 12 and 13, 1995.<sup>422</sup> Captain Smith anticipated that a large number of military police would attend and that there would be representation from KSP, several native elders, and additional administrative and public affairs people from the military. Smith indicated that an invitation was also provided to the occupiers at the base to attend.<sup>423</sup>

Captain Smith testified that he was predominantly responsible for getting Bob Antone and Bruce Elijah to lead the training. He indicated that although he did not know Antone or Elijah, they had been recommended to him.<sup>424</sup> Bob Antone testified that he had received a call from Priscilla George, who worked for the provincial government, indicating that she had

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<sup>415</sup> Examination in chief of Captain Smith, June 26, 2006, p. 56.

<sup>416</sup> Examination in chief of Captain Smith, June 26, 2006, p. 56.

<sup>417</sup> Examination in chief of Captain Smith, June 26, 2006, p. 69.

<sup>418</sup> Examination in chief of Captain Smith, June 26, 2006, p.70.

<sup>419</sup> Examination in chief of Captain Smith, June 26, 2006, p. 72.

<sup>420</sup> Exhibit P-256 (Situation Report for July 11-12, 1995), para 4(c).

<sup>421</sup> Examination in chief of Captain Smith, June 26, 2006, p. 83.

<sup>422</sup> Examination in chief of Captain Smith, June 26, 2006, p. 72.

<sup>423</sup> Examination in chief of Captain Smith, June 26, 2006, p. 76.

<sup>424</sup> Examination in chief of Captain Smith, June 26, 2006, p. 77.

received a request from the military asking if they knew any facilitators who could go and do “some sensitization work” with the military at CFB Ipperwash.<sup>425</sup> Antone testified that he thought this sounded interesting, and agreed.<sup>426</sup> Bruce Elijah testified that he received a call from Bob Antone asking him to assist in a workshop for the military.<sup>427</sup>

According to Bob Antone, his and Bruce Elijah’s objective was to help people understand their culture, way of thinking and world view. Antone testified,

Our intent was to come in and help the military – the soldiers that were in the field at the time to help understand what the situation was about, because obviously they had their own perspective of it, you know...Our objective was to try and build a relationship between Stoney Point people that were occupying the range and the military.<sup>428</sup>

Antone said, “[T]he military was concerned that their men were getting too agitated to remain in control of their emotional – in the field, you know...There’s a lot of racism – racist kind of statements that the men were making about the Stoney Point people.”<sup>429</sup> Bruce Elijah agreed with the suggestion that the military had requested the cross cultural training to address the military’s perception of an environment of escalating tensions.<sup>430</sup> Elijah explained that his and Antone’s objective was to help the military understand the significance of the land to the aboriginal people, and to help the aboriginal people understand the practical issues involved with reverting the land to the First Nation.<sup>431</sup>

The training session took place on July 12 and 13. None of the occupiers attended the training session.<sup>432</sup> Captain Smith described the training as “excellent”.<sup>433</sup> Bob Antone thought that he and Bruce Elijah had been successful in helping people to understand their perspective.<sup>434</sup> Antone indicated that it was his belief that the cross cultural awareness training lead to a reduction in the incidents between the Stoney Point people and the military personnel patrolling the area.<sup>435</sup> Captain Smith provided the following report with respect to the training:

During the process of the CCAT, cross cultural awareness training, a plan of action was developed that would enable the military to mediate its way out of the situation. This plan was also presented as a means of immediately reducing tension between the SPG and Military personnel of Camp Ipperwash, and in the near future will provide a means of ensuring the environmental assessment is completed in conjunction with an orderly

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<sup>425</sup> Examination in chief of Bob Antone, March 10, 2005, p. 35.

<sup>426</sup> Examination in chief of Bob Antone, March 10, 2005, p. 35.

<sup>427</sup> Examination in chief of Bruce Elijah, March 9, 2005, p. 45.

<sup>428</sup> Examination in chief of Bob Antone, March 10, 2005, pp. 36-37.

<sup>429</sup> Examination in chief of Bob Antone, March 10, 2005, p. 41.

<sup>430</sup> Examination in chief of Bruce Elijah, March 9, 2006, pp. 46-47.

<sup>431</sup> Examination in chief of Bruce Elijah, March 9, 2006, pp. 51-52.

<sup>432</sup> Examination in chief of Captain Smith, June 26, 2006, p. 82.

<sup>433</sup> Examination in chief of Captain Smith, June 26, 2006, p. 83.

<sup>434</sup> Examination in chief of Bob Antone, March 10, 2005, p. 41.

<sup>435</sup> Examination in chief of Bob Antone, March 10, 2005, p. 44.

handover of the land to the KSPB/SPG. The plan is outlined as follows. A detailed plan will be developed over the next two weeks.”<sup>436</sup>

Captain Smith went on to report that plans had been made to hold a ‘Native Circle’ at the Oneida Reserve, to be conducted over five days. The anticipated attendees included Antone and Elijah, representatives from the military, the OPP and the KSP police, an environmental contractor, KSP, elders, the “radical” element of the Stoney Point group, and the “traditional” Stoney Point group.<sup>437</sup> The anticipated August 26<sup>th</sup> meeting was also referred to as the “Oneida Conference”.<sup>438</sup>

## **(5) ATTEMPTS TO COMMUNICATE**

Captain Smith testified that at the cross-cultural training session on July 12 and 13 Bruce Elijah and Bob Antone agreed to approach Glenn George and speak with him.<sup>439</sup> Captain Smith understood that Elijah and Antone would present George with an offer to mediate the dispute.<sup>440</sup> Antone indicated that:

[W]e did have meetings with the Stoney Point people shortly after the training and we were talking to them about, well, can you sit down with the Captain, is it possible to try and work out some arrangements around this – co-existence in this territory. There was that discussion was going on and we were kind of the mediators of that process, Bruce and myself.<sup>441</sup>

According to Bob Antone, Glenn George appeared to be a leader of the occupying group. He added, however, that “[S]ome of the ladies that were there also had a great deal to say too ...often times during this kind of discussion you have to talk to several people, and certainly Glenn was one of them.”<sup>442</sup> Antone indicated that a lot of people at the meeting were resistant to trusting anyone, including him, and that he was unable to obtain a commitment from anybody to cease aggressive action.<sup>443</sup> Bruce Elijah indicated that when he communicated back to the Stoney Point group what he had learned from the military, the elders responded that they did not have a lot of time, and the younger people heard only more promises and wanted to know when the return of the land would happen.<sup>444</sup>

In his report following the cultural training session Captain Smith wrote:

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<sup>436</sup> Exhibit P-271 (Situation Report #13, July 12-13, 1995); see also Examination in chief of Captain Smith, June 26, 2006, pp. 85-86.

<sup>437</sup> Exhibit P-271.

<sup>438</sup> Examination in chief of Captain Smith, June 26, 2006, p.102.

<sup>439</sup> Examination in chief of Captain Smith, June 26, 2006, p. 86.

<sup>440</sup> Examination in chief of Captain Smith, June 26, 2006, p. 92-93. See also Exhibit P-1813 (Situation Report #15, July 15-16, 1995, para 1).

<sup>441</sup> Examination in chief of Bob Antone, March 10, 2005, p. 40.

<sup>442</sup> Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, p. 83.

<sup>443</sup> Cross-examination of Bob Antone by Mr. Hourigan, March 10, 1995, p. 206.

<sup>444</sup> Examination in chief of Bruce Elijah, March 9, 2005, p. 54.



It is very strongly recommended that the Military participation at the meeting on August 26'95 be kept at the lowest, ie working level. Relationships involving trust and working plan have already been established from this level. This must be maintained through to completion of negotiation process. Not only will this enhance military credibility but participants will require in-depth knowledge of the situation and various personalities. And additionally every effort must be made to [support] this meeting as the military now has a window of opportunity to eliminate a confrontational situation, achieve the political aim by properly returning cleaned-up land to the Natives, return the land in a relatively short timeframe and establish credibility with the First Nations people for possible future land claim issue.<sup>445</sup>

Captain Smith also testified that he met with Dick Bressette, a Kettle and Stony Point elder, in an effort to ensure that events did not jeopardize the Oneida Conference.<sup>446</sup>

By the end of July 1995, Bob Antone and Bruce Elijah had been successful in communicating with Glenn George, and the Stoney Point group had expressed interest in attending the Oneida Conference scheduled for August 26.<sup>447</sup> As of July 27 the Stoney Point group was apparently in the process of picking three persons to attend the proposed meeting.<sup>448</sup>

By July 26, 1995, Bob Antone had reported to Captain Smith that Chief Tom Bressette was resistant to the prospect of the August 26 Oneida Conference. Antone informed Smith that he was going to meet with Chief Bressette in an attempt to get him to attend as well.<sup>449</sup>

By July 26, 1995, Captain Smith had also been informed by Bob Antone that Antone had arranged for a meeting between Smith and Glenn George to take place on August 1, 1995, to discuss signs and security.<sup>450</sup> Bob Antone offered to act as a mediator at that meeting.<sup>451</sup> Smith indicated that by this point in time, it was anticipated that the recoverable assets, other than those being used by him and his team, would be removed by July 28<sup>452</sup> and that the final clean-up of the building area was to be completed by August 4, 1995.

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<sup>445</sup> Exhibit P-271 (Situation Report #13, July 12-13, 1995), para 7(c); Examination in chief of Captain Smith June 26, 2006, p. 88.

<sup>446</sup> Examination in chief of Captain Smith, June 26, 2006 at p. 101-102, with reference to Exhibit P-1818 (Intelligence Report #9, July 20, 1995), para 6(c).

<sup>447</sup> Exhibit P-272 (Situation Report #23, July 24-26, 1995), para 2(c).

<sup>448</sup> Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, p. 207; see also Exhibit P-284 (Situation Report #24, July 27, 1995), para 2.

<sup>449</sup> Examination in chief of Captain Smith, June 26, 2006, pp. 110-111; Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, pp. 207-208; see also Exhibit P-272 (Situation Report #23, July 24-26, 1995), p. 2: "Bob Antone and Bruce Elijah will meet with Tom Bressette at 25-26 July, 95 with a view to convincing him to support the meeting scheduled for 26 August 95."

<sup>450</sup> Examination in chief of Captain Smith, June 26, 2006, p. 111; Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, p. 208.

<sup>451</sup> Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, p. 208.

<sup>452</sup> Examination in chief of Captain Smith, June 26, 2006, p. 111. Captain Smith further indicated that although the military did not remove all recoverable assets from CFB Ipperwash by July 28, "We were getting close."

## 4.02 THE TAKING OF THE BUA

On July 29, 1995, about 30 First Nations persons, including persons from other area First Nations reserves, took over the cluster of military buildings in the southwest corner of CFB Ipperwash, known as the ‘built up area’ (“BUA”).<sup>453</sup>

Marlin Simon said there was “kind of a plan” for taking over the BUA. He said the persons involved met at a camp on the CFB Ipperwash beach to the east of the Park, where some male teenagers were living on a school bus owned by his uncle, Warren George.<sup>454</sup> Rose Manning confirmed that this meeting took place.<sup>455</sup> “[W]e just kind of had a quick plan there,” she said, “as to who was going to go in the cars and who was going to take the back and who was going to take the side.”<sup>456</sup>

Harley George was 15 years old in the summer of 1995.<sup>457</sup> He often stayed at CFB Ipperwash on weekends, sleeping in Warren George’s school bus with other young people at the beach of the army base. He testified that at the meeting on the beach it was suggested that the bus be driven into CFB Ipperwash.<sup>458</sup> As he was “kind of the caretaker” of the bus, he assumed the role of driver.<sup>459</sup> He understood that while he entered CFB Ipperwash on the bus, others would be entering the BUA from other entrances in vehicles.<sup>460</sup>

Together with a number of passengers, mostly other young people, Harley George drove the bus to a gate at the northwest corner of the BUA.<sup>461</sup> He testified that he backed the bus through the locked gate, turned it around, and drove to the parade square at the centre of the

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<sup>453</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 171. Mr. Simon said that persons from Oneida and Walpole, and possibly Sarnia, participated. Carl Tolsma testified that although it may have been mentioned from time to time, it had never been his intention to take over the BUA of CFB Ipperwash, and he would have opposed the takeover if he had still been part of the occupation: see Examination in chief of Carl Tolsma, February 9, 2005, pp. 93-95, Exhibit P-175; Cross-examination of Carl Tolsma by Ms. Jones, February 22, 2005, p. 133.

<sup>454</sup> Cross-examination of Marlin Simon by Ms. Jones, October 12, 2004, pp. 132-36; Examination in chief of Marlin Simon, September 28, 2004, p. 177. See also Examination in chief of Harley George, January 20, 2005, pp. 137-39. Harley George, testified that the bus had been a gift from his father, Warren George, to the Stoney Point community.

<sup>455</sup> Examination in chief of Rose Manning, April 7, 2005, pp. 39-46; see also Examination in chief of Harley George, January 20, 2005, pp. 139-44. Harley George testified that this meeting involved 25 to 30 people, including Glenn George. See also Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 200-01.

<sup>456</sup> Examination in chief of Rose Manning, April 7, 2005, p. 45; see generally, pp. 39-46.

<sup>457</sup> Examination in chief of Harley George, January 20, 2005, p. 130; Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 203.

<sup>458</sup> Examination in chief of Harley George, January 20, 2005, pp. 144-146; see also Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 202-203; 208.

<sup>459</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 202-03. See also p. 206: “It was my duty and kind of my bus.”

<sup>460</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 207-08.

<sup>461</sup> Examination in chief of Harley George, January 20, 2005, pp. 146-150.

BUA.<sup>462</sup> There he slowly circled transport trailers while military personnel followed him around in a circle.<sup>463</sup> He then used the bus to push in the large door to the base's drill hall,<sup>464</sup> after which he reversed the bus into a military vehicle that had parked behind it sideways, for at least 20 feet.<sup>465</sup> Harley George characterized his actions as an "act of retaliation" for past actions of the military against his people.<sup>466</sup> He said that "[I]n my eyes, they were the trespassers. They were the bad guys."<sup>467</sup> Harley George testified that at the time he had turned in his seat and saw one military officer in the vehicle, and another one "get out of the way when I narrowly missed him".<sup>468</sup> He said he backed into the military vehicle because he "didn't want to be contained" by it.<sup>469</sup> Immediately after George backed into the military vehicle, another member of the occupying group, Lincoln Jackson, drove a forklift out of the drill hall door, either opening it from the inside or crashing through it.<sup>470</sup>

Harley George had intended to proceed forward and drive around slowly, which he thought would make the military personnel "look stupid" when they would not be able to catch him.<sup>471</sup> The impact of the bus upon the military vehicle had resulted in the bus door swinging open, which allowed a military police officer to get "half of his body" in the door of the bus.<sup>472</sup> Harley George used a lever to attempt to close the door but could not because the officer's "body was in the way".<sup>473</sup> At this point the military police officer sprayed Harley George in the face with pepper spray as he ordered him to stop the bus.<sup>474</sup> George stopped the bus, got off, and attempted to kick the officer.<sup>475</sup> He testified that the officer kicked his foot and made him fall down, after which he "started swinging at the officer" without landing any blows.<sup>476</sup> George

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<sup>462</sup> Examination in chief of Harley George, January 20, 2005, pp. 151-54; Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 210-12.

<sup>463</sup> Examination in chief of Harley George, January 20, 2005, pp. 151-154.

<sup>464</sup> A building also referred to as the "rec hall": Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 212.

<sup>465</sup> Examination in chief of Harley George, January 20, 2005, pp. 154-155; Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 214-216. In this passage of the cross-examination Harley George conceded that the military vehicle may possibly have been pushed a distance closer to 45 feet.

<sup>466</sup> Cross-examination of Harley George by Mr. Downard, January 20, 2005, pp. 247-248; see also Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 235.

<sup>467</sup> Cross-examination of Harley George by Mr. Ross, January 20, 2005, p. 251.

<sup>468</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 215-16.

<sup>469</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 216-17.

<sup>470</sup> Examination in chief of Harley George, January 20, 2005, pp. 167-68, 171-72; see also Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 224-25.

<sup>471</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 218-19.

<sup>472</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 219.

<sup>473</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 219-20.

<sup>474</sup> Examination in chief of Harley George, January 20, 2005, pp. 156-57; Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 220.

<sup>475</sup> Examination in chief of Harley George, January 20, 2005, pp. 157-60; Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 221-22.

<sup>476</sup> Examination in chief of Harley George, January 20, 2005, pp. 157-60; Cross-examination of Harley George by Mr. Roland, January 20, 2005, pp. 222-24.

testified that by this point several more vehicles and other supporters had arrived in the parade square, and he was able to walk away from the altercation into a group of people.<sup>477</sup>

Although Harley George's ability to perceive events was hindered by the effects of the pepper spray, he recalled that a crowd of occupiers had arrived in the area.<sup>478</sup> He recalled groups of people standing in different locations, "yelling at each other", and a military officer telling other military personnel not to engage in an altercation with the First Nations people.<sup>479</sup> Rose Manning testified:

[B]y the time I got there it was pretty well kind of over with...[W]hen I went out there I seen those kids. They were all pepper sprayed and...there was a big hullabaloo about getting the kids out. Somebody opened the...back door to get all the children out. And the guy who was driving,...he was all pepper sprayed and I think somebody drove him to the beach real quick...to wash him all off...<sup>480</sup>

Rose Manning testified that Glenn George had been present for the takeover, although he had not been involved in the planning.<sup>481</sup>

Warren George testified that the BUA was taken over to "get the government to start to do something about the return of the land".<sup>482</sup> Marlin Simon testified that there were many reasons for taking over the BUA,<sup>483</sup> including the securing of a place for elders to stay, possibly securing a building for accommodation in the winter,<sup>484</sup> and a desire to put an end to conflicts that had occurred with military personnel.<sup>485</sup>

Captain Smith testified, "[O]n that particular day we had really no indication that the base was going to be occupied...I believe everyone was under the impression that negotiations were moving along well."<sup>486</sup> Captain Smith was just about to go for a run, and had just stepped out of his door when he saw the bus crash through the back gate of the army camp, which had been

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<sup>477</sup> Examination in chief of Harley George, January 20, 2005, p. 160; Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 225.

<sup>478</sup> Cross-examination of Harley George by Mr. Roland, January 20, 2005, p. 225.

<sup>479</sup> Examination in chief of Harley George, January 20, 2005, pp. 162-66.

<sup>480</sup> Examination in chief of Rose Manning, April 7, 2005, pp. 51-52. She confirmed that this took place "right in front of the drill hall". See further regarding this episode generally, pp. 52-55.

<sup>481</sup> Cross-examination of Rose Manning by Ms. Jones, April 7, 2005, pp. 125-27. Ms. Manning said Glenn George was detained by a flat tire caused by a spike belt put in place by the military, but "when the dust settled he was there".

<sup>482</sup> Examination in chief of Warren George, December 8, 2004, pp. 109-10.

<sup>483</sup> Cross-examination of Marlin Simon by Ms. Jones, October 12, 2004, p. 140.

<sup>484</sup> Examination in chief of Marlin Simon, September 28, 2004, pp. 175-76; see also Cross-examination of Marlin Simon by Ms. Jones, October 12, 2004, p. 141.

<sup>485</sup> Cross-examination of Marlin Simon by Ms. Jones, October 12, 2004, pp. 139-40:

Just everybody figured it was about time. They were fed up with these army guys, military people, running around in back -- backyards and causing trouble and everything...The military police they couldn't -- they couldn't keep care of their own guys, so it was time for them to go...before something bad really did happen.

<sup>486</sup> Examination in chief of Captain Smith, June 26, 2006, p. 113.

chained and blocked off with a number of large truck size garbage bins.<sup>487</sup> On his way to police headquarters Captain Smith noticed that, “[T]he front gate was being crashed also by a number of natives and the commissionaires on the front gate were obstentiously [*sic*] being swarmed by them. They were trying to sort of control things and they could not.”<sup>488</sup>

While on his way to police headquarters, Captain Smith heard a call for help come over the radio from his men in the parade square. Upon arriving at the parade square he observed that three of his men were surrounded by “a fairly hostile mob”. He observed that his men had deployed pepper spray to try and keep the crowd back from them, “and things looked to be escalating at a fairly rapid rate.”<sup>489</sup> Captain Smith indicated that at that point he ordered his three men back to headquarters, and “I knew at that point that we would not be able to hold this base”.<sup>490</sup>

Captain Smith indicated that he could not recall who was in charge on the First Nations side, but that it wasn’t Glenn George. He did talk with someone, and an agreement was reached to try and de-escalate the fighting and allow the natives to occupy the church and a couple of other buildings in the BUA, so as to try and separate the forces and get control of the situation.<sup>491</sup> Captain Smith added, however, that he knew the military could not hold the base, and that to try and come up with a plan to co-exist in the BUA was not tenable.<sup>492</sup>

Captain Smith then called Dick Bressette in order to solicit his assistance to try and get some “calm and control on the situation.” He believes Dick Bressette showed up some time later, but was not allowed into the army by the Stoney Point group.<sup>493</sup> Captain Smith also called Bob Antone and Bruce Elijah and asked for them to come to the Camp to assist. Antone testified that he did not have any prior knowledge regarding the occupiers’ plans to take over the BUA. He indicated that “it really surprised me” when he received the call from Captain Smith.<sup>494</sup> Antone testified that there was “a bit of panic in his voice...like really really concerned.”<sup>495</sup>

Bruce Elijah testified that he had had prior discussions with the Stoney Point group concerning the occupation of the lands.<sup>496</sup> He indicated that he had provided advice regarding the manner in which to carry out the occupation. In particular, he had advised against sending men to take the land back for fear that they would be shot. He had advised, “[T]he best way to do it is...to get the grandmas and the children to do it. I says, they don’t know how to deal with that.”<sup>497</sup> Elijah indicated that he had heard rumours about the potential take-over of the BUA,

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<sup>487</sup> Examination in chief of Captain Smith, June 26, 2006, pp. 113-114.

<sup>488</sup> Examination in chief of Captain Smith, June 26, 2006, p. 115.

<sup>489</sup> Examination in chief of Captain Smith, June 26, 2006, p. 115.

<sup>490</sup> Examination in chief of Captain Smith, June 26, 2006, p. 117.

<sup>491</sup> Examination in chief of Captain Smith, June 26, 2006, p.118.

<sup>492</sup> Examination in chief of captain Smith, June 26, 2006, p. 119.

<sup>493</sup> Examination in chief of Captain Smith, June 26, 2006, p.120.

<sup>494</sup> Examination in chief of Bob Antone, March 10, 2005, p. 45.

<sup>495</sup> Examination in chief of Bob Antone, March 10, 2005, p.46.

<sup>496</sup> Examination in chief of Bruce Elijah, March 9, 2005, pp. 57-62.

<sup>497</sup> Examination in chief of Bruce Elijah, March 9, 2005, pp.59-60.

but didn't have any information with respect to timing.<sup>498</sup> "I knew it was coming, but I didn't know when," he said.<sup>499</sup>

Bob Antone said that after speaking with Captain Smith, he and Bruce Elijah "got together right away and came up."<sup>500</sup> According to Antone they met Captain Smith at the front gate and Smith explained the circumstances. Antone informed Smith that he and Elijah would go talk to the occupiers and try and find out what was going on.<sup>501</sup> Antone testified that Smith told him that the military were moving everything out, and that Smith did not want any confrontation between his men and the Stoney Point group.<sup>502</sup>

Bob Antone described the mood at the time as "pretty tense."<sup>503</sup> He indicated that the soldiers were "staying away".<sup>504</sup> He described the occupiers as "pretty excited". He explained, "I mean, when we went over there they were all excited...said they weren't going to leave and they said, I don't care what you have to say, you know, we're not leaving and this is our land – and all that."<sup>505</sup> Bruce Elijah observed that people were looking at the buildings and talking about the sizes of families and who would be moving in where. "There was a lot of commotion at that time," he said.<sup>506</sup>

Bob Antone said that he and Bruce Elijah sat down and spoke to some of the men of the Stoney Point group for about an hour, and warned them not to start any fights with the soldiers.<sup>507</sup> According to Antone, they then returned to Captain Smith and informed him that the only way the Stoney Point group were going to leave would be if they were forced out. Smith replied that he did not want to do that, and that he didn't want to start a fight.<sup>508</sup> According to Antone it was decided that he and Elijah would assist the military with removing their assets "by keeping the real owners of the land at bay."<sup>509</sup>

According to Captain Smith, in addition to being informed by Bob Antone and Bruce Elijah that the Stoney Point group had no intention of leaving, he was informed that the Stoney Point group was armed, that the OPP had confirmed this, and that KSP had no control over the

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<sup>498</sup> Examination in chief of Bruce Elijah, March 9, 2005, pp. 61-62.

<sup>499</sup> Cross-examination of Bruce Elijah by Mr. Henderson, March 9, 2006, p. 195.

<sup>500</sup> Examination in chief of Bob Antone, March 10, 2005, p. 46; see also Examination in chief of Bruce Elijah, March 9, 2005, pp. 86-87.

<sup>501</sup> Examination in chief of Bob Antone, March 10, 2005, p. 47.

<sup>502</sup> Examination in chief of Bob Antone, March 10, 2005, pp. 47-48.

<sup>503</sup> Examination in chief of Bob Antone, March 10, 2005, p. 48.

<sup>504</sup> Examination in chief of Bob Antone, March 10, 2005, p. 48.

<sup>505</sup> Examination in chief of Bob Antone, March 10, 2005, p. 48.

<sup>506</sup> Examination in chief of Bruce Elijah, March 9, 2005, p. 88.

<sup>507</sup> Examination in Chief of Bob Antone, March 10, 2005, pp. 48-49.

<sup>508</sup> Examination in chief of Bob Antone, March 10, 2005, p. 49.

<sup>509</sup> Examination in chief of Bob Antone, March 10, 2005, p.50. See also Examination in chief of Bruce Elijah, March 9, 2005, pp. 87-89, in which he indicates that Captain Smith asked Elijah and Antone to speak to the occupiers and allow them the opportunity to remove everything by midnight. Elijah further indicated that Captain Smith was concerned about the safety of his men.

Stoney Point group.<sup>510</sup> Antone denied that he had informed Captain Smith that the occupiers were armed. "They were angry, but they weren't armed," he said.<sup>511</sup> Bruce Elijah testified that he had relayed to Captain Smith that the occupiers were not in possession of firearms,<sup>512</sup> and specifically denied indicating to Smith that the Stoney Point Group were armed.<sup>513</sup>

According to Bob Antone, he and Bruce Elijah remained with Captain Smith until all of Smith's personnel had left CFB Ipperwash.<sup>514</sup>

Bob Antone agreed that the takeover of the BUA by the Stoney Point group was contrary to what the Stoney Point group had been telling him only two days earlier about their willingness to take part in the Native Circle ceremony, the Oneida Conference planned for August 26.<sup>515</sup> He further agreed that the aggressive take-over of the BUA was completely contrary to the notion of having a process for the orderly transfer of the base.<sup>516</sup> Antone testified that he asked the occupiers why they had decided not to follow an orderly process, but he never got answer.<sup>517</sup>

Earlier, at 3:30 p.m. Inspector Carson and Detective-Sergeant Mark Wright had met at CFB Ipperwash with Captain Smith.<sup>518</sup> According to John Carson, Smith informed them that he had allowed the occupying group access to the base's church and officers' mess to prevent damage and confrontation.<sup>519</sup> He also advised the OPP officers that the military was not prepared to seek an injunction, and might leave the base.<sup>520</sup>

The OPP undertook an investigation of the incident that had occurred at the outset of the takeover of the BUA.<sup>521</sup> Inspector Carson testified that the OPP considered that the manner in which the school bus had been used constituted "an overt criminal act".<sup>522</sup> In his view it was only by good fortune that someone had not been seriously injured.<sup>523</sup> He testified that with this event:

...the aggression towards the military particularly became very significant. And significantly different than it had up until that point in time. So, you know, the message in my view, was that the...level of aggression was escalating and there certainly was potential for more serious altercations.<sup>524</sup>

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<sup>510</sup> Examination in chief of Captain Smith, June 26, 2006, p. 121.

<sup>511</sup> Examination in chief of Bob Antone, March 10, 2005, p. 52.

<sup>512</sup> Examination in chief of Bruce Elijah, March 9, 2005, p. 90.

<sup>513</sup> Examination in chief of Bruce Elijah, March 9, 2005, pp. 92-93.

<sup>514</sup> Examination in chief of Bob Antone, March 10, 2005, p. 53.

<sup>515</sup> Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, p. 209.

<sup>516</sup> Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, p. 209.

<sup>517</sup> Cross-examination of Bob Antone by Mr. Hourigan, March 10, 2005, p. 209.

<sup>518</sup> Examination in chief of John Carson, May 12, 2005, p. 63.

<sup>519</sup> Examination in chief of John Carson, May 12, 2005, pp. 63-64.

<sup>520</sup> Examination in chief of John Carson, May 12, 2005, pp. 65-66.

<sup>521</sup> Examination in chief of John Carson, May 12, 2005, p. 67.

<sup>522</sup> Examination in chief of John Carson, May 12, 2005, pp. 67-68.

<sup>523</sup> Examination in chief of John Carson, May 12, 2005, p. 71.

<sup>524</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, p. 146.

Carson said,

This was the first time that, in conjunction with the aggressive behaviour involving a drill hall, there had been altercations with vehicles on the rifle ranges and other roadways within the Base where there had been playing this cat and mouse game. And there had been several near misses involving vehicles as far as near collisions. But this was the first time that the altercation became such that, quite frankly, people's safety was in jeopardy. It was more good luck that good fortune that no one was injured in this incident with the bus and the drill hall. And it was clear as a result of that altercation that, you know, some...very aggressive demands were being made on the Military. And it wasn't a matter of just verbal rhetoric. This time it had certainly come to explicit behaviour. And...that was certainly the issue that caused concern and in and amongst this event, comments are...overheard by persons there that the Ipperwash Park is next. So quite frankly, the -- this had gone on. There had...been a very modest tolerance of the military and the occupiers on the base, but clearly, at this point in time, the tolerance level was no longer appearing to be the norm.<sup>525</sup>

At 5:30 p.m. Inspector Carson met with Maynard T. George, who delivered a document advising that native people now occupied the BUA. Inspector Carson indicated to him that he did not have peaceful possession of the BUA, that the possession was therefore a trespass, and anyone on the BUA was committing an offence and could be arrested and charged.<sup>526</sup>

Just before midnight Inspector Carson was informed that the military had vacated CFB Ipperwash.<sup>527</sup> OPP officers stood by while this occurred, in order to keep the peace.<sup>528</sup> Chief Bressette testified in this inquiry that he "was just kind of shocked that the military just decided to go parading down the highway".<sup>529</sup> On July 30 Lieutenant Colonel Sweeney of the military confirmed to Inspector Carson that the military had only left CFB Ipperwash for safety reasons, and had not turned the land over to anyone.<sup>530</sup> Captain Smith was to remain in Forest to deal with issues including the utility infrastructure at the base.

On the day after the takeover of the BUA, Les Kobayashi received information about a possible takeover of the Park. Kobayashi was informed by a military police officer that when military personnel left CFB Ipperwash the previous night, a native person told him, "Tell your buddies at the Park that they are our next target." This was the first direct threat of a Park takeover that Kobayashi had heard that summer.<sup>531</sup>

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<sup>525</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, p. 157.

<sup>526</sup> Examination in chief of John Carson, May 12, 2005, pp. 68-69.

<sup>527</sup> Examination in chief of John Carson, May 12, 2005, p. 70.

<sup>528</sup> Examination in chief of John Carson, May 12, 2005, p. 70.

<sup>529</sup> Examination in chief of Thomas Bressette, March 2, 2005, p. 68.

<sup>530</sup> Examination in chief of John Carson, May 12, 2005, pp. 76-77.

<sup>531</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 161-62.



## CHAPTER 5

# PREPARING FOR A TAKEOVER OF THE PARK

### 5.01 INITIAL OPP CONCERNS

Inspector Carson was aware that when the BUA was taken comments were made that the Park was also to be taken over.<sup>532</sup> This caused him serious concern as to the challenges this would create for police.<sup>533</sup> He considered that the departure of the military would “cause a tremendous anxiety in the broader community”.<sup>534</sup> He thought this would also extend to Kettle Point. He expected that the expanded occupation would have an impact upon the band council’s negotiations for the return of the CFB Ipperwash lands.<sup>535</sup>

Inspector Carson was also concerned that it was unclear who among the occupying group was a person through whom the OPP could effectively communicate with that group. He testified,

Who do we talk to? We certainly were having difficulty determining who was the leader or Chief. Bert Manning was doing a lot of the talking at this point in time. For quite a period of time it had been Carl George and Glenn was heavily involved in '93 as well, and it just clearly wasn't - it was not obvious.<sup>536</sup>

In June of 1995 Tony Parkin, a senior OPP officer, had been appointed Operational Superintendent of the OPP for Southwestern Ontario.<sup>537</sup> He reported directly to Chief Superintendent Christopher Coles, the Regional Commander of the OPP in Southwestern Ontario.<sup>538</sup> On June 20, 1995 Superintendent Parkin had a briefing on the Ipperwash situation in a meeting with Coles, Carson, Detective Sergeant Mark Wright and other OPP officers.<sup>539</sup>

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<sup>532</sup> Examination in chief of John Carson, May 12, 2005, p. 71.

<sup>533</sup> Examination in chief of John Carson, May 12, 2005, p. 71.

<sup>534</sup> Examination in chief of John Carson, May 12, 2005, p. 72.

<sup>535</sup> Examination in chief of John Carson, May 12, 2005, p. 72.

<sup>536</sup> Examination in chief of John Carson, May 12, 2005, p. 73.

<sup>537</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 69-71.

<sup>538</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 65, 66.

<sup>539</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 65, 66.

On June 28 he had received further information that the situation was “heating up” at Ipperwash, and in particular about criminal charges pending against Glenn George.<sup>540</sup>

Following the takeover of the BUA, on July 30, Inspector Carson met Superintendent Parkin at Forest to review the events at Ipperwash. Carson told Parkin of information received that the Park “was next”.<sup>541</sup> Parkin testified that he and Carson discussed the development of an operational plan.<sup>542</sup> He said Carson and Detective Sergeant Mark Wright were attempting to develop communication with an identified spokesperson for the occupiers, and at that time had spoken with Bert Manning.<sup>543</sup> They had already developed a basic plan for 24 hour, two person uniformed patrols of the Park, as well as undercover officers posing as campers there.<sup>544</sup> Two OPP Emergency Response Teams (“ERT”) were to be “housed off-site for rapid response in an emergency”.<sup>545</sup> Wright and Constable George Speck were assigned the task of gathering intelligence.<sup>546</sup> Don Matheson, the Assistant Superintendent of the Park, joined the meeting and was informed of the OPP’s position and concerns regarding a potential takeover of the Park.<sup>547</sup> The policy position the MNR would take in the event of the Park’s occupation was identified as an issue.<sup>548</sup>

On July 30 Inspector Carson distributed a message to all OPP officers in the Kent, Essex and Lambton area, which read in part,

Our concern is now that of the adjacent properties, in particular, Ipperwash Provincial Park and integrated response is put in place. I am the incident commander in this matter.

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<sup>540</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 74-76. Superintendent Parkin then traveled to Grand Bend and Forest. He had discussions with Staff Sergeant Bouwman and Inspector Carson and received further information: see pp. 76-77. On June 29 Superintendent Parkin had a discussion with Chief Superintendent Coles which included reference to Ipperwash, but Parkin did not recall the substance of the discussion: see p. 79.

<sup>541</sup> Examination in chief of John Carson, May 12, 2005, p. 79; Examination in chief of Anthony Parkin, February 6, 2006, pp. 79-83, and in particular p. 82: “[I]t had come out that, again, there was a concern with respect to the Provincial Park, Ipperwash Provincial Park...[T]hat was the next issue we were going to have to deal with and somebody overheard that comment being made...”.

<sup>542</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 81.

<sup>543</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 82, 83-84. See also p. 90: “Spokesperson for militants being worked on by Staff Sergeant Charlie Bouwman”. See also pp. 91-92. On July 31 Inspector Carson informed Superintendent Parkin that the OPP had “identified Glenn George as spokesperson and Les Jewell as an alternate”: see p. 94. On July 31 at 3:20 p.m. Parkin reported to the office of OPP Commissioner O’Grady that Glenn George had been identified as the occupiers’ spokesperson, and that Glenn George wished to have an informal discussion with the OPP which “won’t likely take place until sometime tomorrow”: Exhibit P-501, p. 6.

<sup>544</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 82-83.

<sup>545</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 83, 87.

<sup>546</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 86.

<sup>547</sup> Examination in chief of John Carson, May 12, 2005, pp. 79-81; Examination in chief of Anthony Parkin, February 6, 2006, pp. 87-88, 90-91; Exhibit P-877 (Matheson Memorandum dated August 2, 1995). Superintendent Parkin testified that it would not have been a “major concern” that Don Matheson was receiving some OPP operational information in this meeting, “given...the generalities of what we’re dealing with here”: see p. 88.

<sup>548</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 89-90.

Superintendent A. Parkin who is the Superintendent in charge of operations for West Region is overall Commander of the incident. Chief Superintendent Coles of West Region is also aware of the situation, and has been involved in the implementation of a plan regarding our response to a deterioration in the situation in and around CFB Ipperwash, and Ipperwash Provincial Park.<sup>549</sup>

This message was distributed to prepare OPP personnel in the event that there was a necessity to deploy them in the Forest area on short notice.<sup>550</sup>

On July 31 Inspector Carson made arrangements for “at least a dozen” additional OPP ERT officers, and possibly more, to attend in the area, and for 24 hour patrols of the CFB Ipperwash area.<sup>551</sup>

On July 31 Inspector Carson met again in Forest with Superintendent Parkin, and also Chief Superintendent Coles.<sup>552</sup> A briefing note on the situation was prepared by Carson for the OPP Commissioner’s office.<sup>553</sup> Carson also met again with Don Matheson and Les Kobayashi. They discussed a potential occupation of the Park, and Carson asked to know the MNR’s position on any occupation, and an “injunction and the consequences”.<sup>554</sup>

On the night of July 31 Inspector Carson received a report that a camper had been harassed by First Nations persons. They were alleged to have said the Park was native land, and they would have it soon.<sup>555</sup>

On August 1, 1995, Staff Sergeant Bouwman met with Sergeant Detective Mark Wright, Rose Manning and Glenn George regarding a fatal motor vehicle accident that had occurred the previous evening. According to OPP notes of the event, at the meeting Rose Manning stated that Matheson Drive and the Park were “theirs” and had never been given up. Manning stated they never agreed to give up the Park because it contained their cemetery and burial ground.<sup>556</sup> According to the report John Carson received, Glenn George had said there were disputes as to the ownership of Matheson Drive and the Park, and that there was a burial ground in the Park.<sup>557</sup> It was agreed that a gate at the end of Matheson Drive would be closed from dusk until dawn for public safety, and there was discussion of native people being spoken to in order to curtail rowdyism on the beach. Glenn George also agreed to co-operate with a RIDE program in the area. He said the occupiers did not support criminal activity and did not

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<sup>549</sup> Examination in chief of John Carson, May 12, 2005, pp. 85-88.

<sup>550</sup> Examination in chief of John Carson, May 12, 2005, p. 88.

<sup>551</sup> Examination in chief of John Carson, May 12, 2005, pp. 82-83.

<sup>552</sup> Examination in chief of John Carson, May 12, 2005, pp. 82-84.

<sup>553</sup> Exhibit P-412; Examination in chief of John Carson, May 12, 2005, pp. 84-85.

<sup>554</sup> Examination in chief of John Carson, May 12, 2005, pp. 91-92.

<sup>555</sup> Examination in chief of John Carson, May 12, 2005, p. 98. Note that Carson later clarified that he was not present at the meeting, see pp. 132-133.

<sup>556</sup> Exhibit P-332, p.15. In her evidence Rose Manning denied having said this. Asked whether at the time she believed the Park belonged to her group, she said “[N]o, not at that time”: see Examination in chief of Rose Manning, April 7, 2005, pp. 67-73.

<sup>557</sup> Examination in chief of John Carson, May 12, 2005, pp. 117-18.

want the occupied lands to become a 'hole in the wall', or haven.<sup>558</sup> Glenn George also expressed concern over the possibility of a KSP band council resolution directing outsiders to leave CFB Ipperwash.<sup>559</sup>

On August 1, Peter Sturdy of the MNR informed Inspector Carson that the MNR considered that its legal title to the Park was secure. Inspector Carson discussed with Sturdy that the MNR "would be expected to get an injunction should an occupation occur".<sup>560</sup>

## 5.02 KSP POSITION

Chief Tom Bressette testified that in 1995, he and a majority of the KSP council members had family ties to the Stony Point lands, as did the band administrator, Elizabeth Stevens.<sup>561</sup> One of the councillors with family ties to the Stony Point land, Cecil Bernard George, testified that KSP sought to advance the interests of all of its members, including those living on the CFB Ipperwash lands.<sup>562</sup> Chief Bressette testified that in 1995 there were approximately 1,800 to 1,900 members of the Kettle and Stony Point First Nation.<sup>563</sup>

Carl Tolsma testified that in his estimation approximately three-quarters of the KSP membership had a family connection, either through marriage or as a direct descendant, to the Stony Point land.<sup>564</sup>

On August 1, 1995, KSP held a Band meeting.<sup>565</sup> The OPP was aware that Chief Bressette had scheduled the meeting, and that the occupiers would be invited.<sup>566</sup> Chief Bressette opened the meeting with a review of the negotiations with DND and the status of the difficulties surrounding the environmental clean-up. He also stated:

I have had meetings with Carl; he has been in touch with people who have strong feelings about Stony Point. We want to explore possibilities, to try to draw people back together. It is a difficult issue to disagree with your own people. I have not stood up and said that I support what is being done. I don't want the military there either, but there are certain legalities to consider. If we take a hard stand against them it makes negotiations very difficult.<sup>567</sup>

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<sup>558</sup> Examination in chief of John Carson, May 12, 2005, pp. 117-20.

<sup>559</sup> Examination in chief of John Carson, May 12, 2005, p. 120. The 'outsiders' referred to were persons who were not members of the Kettle and Stony Point First Nation.

<sup>560</sup> Examination in chief of John Carson, May 12, 2005, pp. 112-13. See P-410, p. 23.

<sup>561</sup> Examination in chief of Thomas Bressette, March 2, 2005, pp. 69-71.

<sup>562</sup> Cross-examination of Cecil Bernard George by Mr. Downard, December 8, 2004, pp. 28-29, 31.

<sup>563</sup> Examination in chief of Thomas Bressette, March 1, 2005, p. 183.

<sup>564</sup> Cross-examination of Carl Tolsma by Ms. McAleer, February 22, 2005, p. 166.

<sup>565</sup> Minutes of the Meeting are Exhibit P-43.

<sup>566</sup> Exhibit P- 501 (July 31 Parkin email to Mansell, cc. Fox, Linton); Examination in chief of Anthony Parkin, February 6, 2006, pp. 97-98.

<sup>567</sup> Exhibit P-43 (meeting notes).

According to notes of the meeting, one of the councilors pointed out that “[T]here are a number of people on this committee who represent locatees and Stony Point...Each of us has an interest in those lands...the majority of the committee have an interest in those lands...”<sup>568</sup>

The meeting notes indicate that another woman spoke as follows:

If people at Kettle Point want another Oka, another Wounded Knee, remind them of the loss of life, there is no point. Should we be filled with statistics of death or another successful land return? With great sorrow, I don’t feel safe to go on to Stony Point. Fear because of other Anishnabe brought in to strong arm, represent criminal element. We are Ojibway, we can have land returned peacefully.<sup>569</sup>

Chief Bressette indicated at the meeting that Ovide Mercredi had offered his services as a mediator. He added, “I don’t like all those strangers on the land down there and in the middle of the night they could run away like they did at Oka and leave people there to face the music.”<sup>570</sup> Cecil Bernard George pointed out, however, “Those are our brothers and sisters down there.”<sup>571</sup> Later Chief Bressette stated, “There are a lot of warriors in there”,<sup>572</sup> to which it was asked, “But are they warriors?”<sup>573</sup> Another woman stated, “If it weren’t for those people living there we wouldn’t have got Stony Point back.”<sup>574</sup> It was pointed out by another woman that, “A lot of people were fighting this claim, everyone included, not just about a bunch of people walking on my land down there...I would like those outsiders to be moved from there.”<sup>575</sup> Another man spoke about concerns he had that people who were not from Kettle and Stony Point were running the gates at the army camp.<sup>576</sup> He added, “[W]e can’t have a complete meeting because they won’t join in.”<sup>577</sup>

Carl Tolsma was also at the meeting. He stated in part, “I work with Tom and I’m hated for that, called a traitor...I feel sorry for the people at Stony Point, but I’m not wanted there anymore. People are coming in from other reserves and the States.”<sup>578</sup>

According to notes of the meeting, other people also spoke and voiced concern about the presence of “outsiders”, and not feeling welcome on the Stony Point lands. Chief Bressette announced that Council intended to draft an internal Band Council Resolution, outline and

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<sup>568</sup> Exhibit P-43, comments of Norm Shawnoo, p. 7.

<sup>569</sup> Exhibit P-43, comments of “First Woman”, pp. 7-8.

<sup>570</sup> Exhibit P-43, comments of Chief Bressette, p. 9.

<sup>571</sup> Exhibit P-43, comments of Bernard George, p. 10.

<sup>572</sup> Exhibit P-43, comments of Chief Bressette, p. 15.

<sup>573</sup> Exhibit P-43, comments of Barb Bressette, p. 15.

<sup>574</sup> Exhibit P-43, comments of Marlene Cloud, p. 15.

<sup>575</sup> Exhibit P-43, comments of Angeline Shawkence, p. 16.

<sup>576</sup> Exhibit P-43, comments of Earl Bressette, pp. 16-17.

<sup>577</sup> Exhibit P-43, comments of Earl Bressette, p. 17.

<sup>578</sup> Exhibit P-43, comments of Carl Tolsma, p. 17.

attach to that a residency by-law, and respectfully state by covering letter that KSP appreciated the support of other First Nations people, but those persons should leave CFB Ipperwash.<sup>579</sup>

Chief Bressette testified that on August 3, 1995 he attempted to deliver a large stack of letters to the gatehouse at CFB Ipperwash, and asked to speak to whoever was in charge. According to Bressette:

We were basically told that no one was in charge. And then we were basically told that we weren't wanted there, so we turned around, we left the documents there and we told them this is a letter that we would like you to disseminate and we proceeded to leave. As we were leaving, someone grabbed a stack of letters and one of the councilors were leaving the gate area and they came and they throw them in the back of the truck he was driving and they wouldn't accept the letter.<sup>580</sup>

Rose Manning testified that a KSP councilor threw a stack of letters out of a truck at the main gate of CFB Ipperwash, and that "somebody else grabbed them and threw them back into the truck".<sup>581</sup>

On August 4 the OPP were informed that, "At 1730 hours last night Tom Bressette and Council attended at the Military Base gatehouse to deliver a letter which we're told outlined negotiating proposals for the land. Rose Manning refused to accept the letter and Glenn George did not appear."<sup>582</sup>

An August 28 newspaper article attributed to Chief Bressette a statement that the Park was said to be built on native burial grounds.<sup>583</sup> In his testimony he described this as a "rumour" that was going around.<sup>584</sup> Chief Bressette testified that shortly after the commencement of the occupation of the Park on September 4, he asked a former Chief and his father-in-law, Charles Shawkence, about the allegation of burial grounds in the Park. He said Chief Shawkence did not believe the allegation to be true.<sup>585</sup>

Prior to September 4 Chief Bressette did not think that an occupation of the Park would occur, although he had been informed by band members that it would.<sup>586</sup>

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<sup>579</sup> Exhibit P-43, Chief Bressette, p. 20.

<sup>580</sup> Examination in chief of Tom Bressette, March 2, 2005, p.80. See copy of letter at Exhibit P- 30.

<sup>581</sup> Examination in chief of Rose Manning, April 7, 2005, pp. 64-67. She said, "I never knew what they said...because I didn't read any of them." She could not identify the councillor or the person who threw the letters back into the truck. See also Cross-examination of Rose Manning by Ms. McAleer, April 7, 2005, pp. 141-44.

<sup>582</sup> Exhibit P-1056 (Parkin August 4 12:01 email to Mansell, cc. Fox, Carson, Linton). See Examination in chief of Anthony Parkin, February 6, 2006, pp. 122-24.

<sup>583</sup> Exhibit P-248; Examination in chief of Thomas Bressette, March 2, 2005, pp. 89-90.

<sup>584</sup> Examination in chief of Thomas Bressette, March 2, 2005, p.92.

<sup>585</sup> Examination in chief of Thomas Bressette, March 2, 2005, pp. 92, 95-96.

<sup>586</sup> Examination in chief of Thomas Bressette, March 2, 2005, pp. 89-90; Exhibit P-248.

### **5.03 THE RESPONSE AT QUEEN'S PARK**

#### **(1) THE INTERMINISTERIAL COMMITTEE FOR ABORIGINAL EMERGENCIES**

During the summer of 1995, Julie Jai was the acting director of legal services for the Ontario Native Affairs Secretariat ("ONAS").<sup>587</sup> She had held that position since September of 1994. She described her involvement with aboriginal issues prior to that time as "peripheral", although her experience had included the review of proposed land claim agreements and a government Aboriginal Healing and Wellness Strategy. She had attended meetings regarding aboriginal emergencies.<sup>588</sup>

As the acting legal director of ONAS, Julie Jai chaired the Interministerial Committee for Aboriginal Emergencies ("IMC").<sup>589</sup> Jai had not participated in any of the 1993 IMC meetings regarding the occupation of the ranges and initial allegations about the Park.

The following briefing note prepared in July of 1995 for Attorney General Charles Harnick, who assumed responsibility for ONAS as part of his portfolio, outlined the IMC mandate at that time:

TOPIC: Procedures for dealing with Aboriginal Emergencies

ISSUE: How to ensure that adequate processes are in place so that Aboriginal emergencies, including blockades and other forms of direct action, can be prevented, or if not prevented, resolved as quickly and safely as possible.

#### **CURRENT STATUS:**

- There are procedures in place for responding to Aboriginal emergencies. Under the current process, ONAS coordinates the response to Aboriginal emergencies, although line ministries will take the lead for follow up actions within their jurisdiction. ONAS is responsible for coordinating any corporate communications, and for providing a spokesperson when the issues are multi-ministerial or involve a land claim or self-government negotiation. The main mechanism for coordination is the interministerial officials committee (Ontario's Interministerial Emergency Planning for Aboriginal Issues Committee), chaired by the ONAS Legal Director, with representatives from CO, PO, MAG, CU, MCCR, MIA, MNR, MNDM, MSG, MTO, MOEE and other ministries as needed. This committee is always "on standby" to deal with any emergencies that may arise. Staff from Ministers' offices may also be members of the committee.
- If there is an emergency situation, the committee develops recommendations, may appoint a negotiator, may recommend that legal action be taken, and ensures that adequate communication

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<sup>587</sup> Examination in chief of Julie Jai, August 30, 2005, p. 48. Ms. Jai was the acting director because its director, Yan Lazor, was acting as secretary to ONAS: see p. 50.

<sup>588</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 52, 114, 137-38.

<sup>589</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 50-51.

occurs with all affected groups, including the general public. The committee also ensures that approvals are obtained as needed for the recommended action (for example, Ministerial or Cabinet approval may be required for actions relating to a major disturbance, or which set new policy).

- ONAS, in close liaison with the Ministry of the Solicitor-General and the OPP, monitors all potential emergency situations, and ensures that appropriate steps are taken to avert the emergency, if possible. (Line ministries are instructed to advise ONAS of all possible emergencies). If an emergency situation develops, the OPP (which may include First Nations Constables) are usually the ones on location dealing with the situation, and the OPP, SG, and ONAS are in frequent communication to ensure that the best possible advice is given to try to manage the situation safely and with minimal confrontation.
- The Chair of the Inter-ministerial Emergency Planning for Aboriginal Issues Committee maintains lists of home phone numbers of deputy ministers, ministers and political staff, so that communications can occur without delay when needed. These lists will have to be updated.

#### **BACKGROUND:**

- There have been several Aboriginal emergencies over the last few years in Ontario, including road blockages (e.g. the Beardmore blockade), occupations (e.g. of houses at Tyendinaga, and of the Ipperwash military base when the land it was on was not returned to the First Nation as promised) and a situation in which a First Nation refused to allow access over reserve land to cottagers (e.g. Skerryvore). There are many provincial highways crossing over or near reserve lands, and thus, the potential for road blockages is high. In most cases, a threat to blockade is made before a blockade actually occurs. This can provide an opportunity to negotiate. Often, a blockade can be averted, if the First Nation is given another forum for discussing its concerns with the province. Past blockades or threats of blockades have been caused by things such as inadequate drinking water, threats of environmental contamination (e.g. planned dumping of the Hagersville tire waste near the New Credit reserve), or lack of action on longstanding grievances such as land claims.
- The principles guiding the response to emergencies are:
  - the prevention of violence, property damage or personal injury
  - a timely lifting of the blockade through negotiations
  - a review of the Aboriginal grievances and issues and the establishment of processes to address them; however, no substantive negotiation is to occur until after the blockade is lifted.

The Deputy Solicitor General, Elaine Todres, testified:

Q: And what did you understand the function of that committee to be? And you may well have told us about this already, Dr. Todres, and I apologize if I've asked you --



A: No problem. I understood...there to be...three or four functions, the first of which was to bring together all of the ministerial interests across the broad spectrum of government. So the MNR's and the Solicitor Generals and so on and so forth, first of all to ascertain what...was actually happening on any particular file. And, you know, I remember feeling, even in the early '90's when there was the first blockade, I think in the north, Northern Ontario, a tremendous confidence in the...professional capacity of the individuals who were actually attached to this committee. So information sharing. I understood them also to have some limited operational authority, perhaps to engage in a negotiator to...actually do some things, not just think about things. They would have also had recommendatory responsibility that should something reach a particular level of heat in the sense of...issue management. They would be entrusted by the government as an Interministerial Committee to seek to look at a variety of options. They were only middle level managers and they would have had to take those suggestions both through deputies and eventually to appropriate ministers and/or Interministerial Cabinet Committee should...it be required for approval.<sup>590</sup>

## **(2) RON FOX AND THE IMC**

Ron Fox had begun work in Toronto as the Special Advisor on First Nations matters to the Solicitor General's office six months earlier, in February of 1995. As a Special Advisor to the Solicitor General's office, he was outside the OPP chain of command.<sup>591</sup> The Deputy

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<sup>590</sup> Examination in chief of Elaine Todres, November 29, 2005, pp. 319-20.

<sup>591</sup> Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, pp. 122-23. See also Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 185: "He operated, as I've mentioned many, many times, as a seconded staff person in the context of being a civil servant to me." See also Examination in chief of Elaine Todres, November 29, 2005, pp. 277-79:

So it...became a custom for there to be a representative of Corrections seconded from that division and to have a staff officer seconded from the OPP. In this case it was Barbara Taylor. So, I just want to be clear about my use of words. While Barbara Taylor had been an OPP officer and was retaining her rank and her pensionable rights and so on, with respect to her position, she was fully seconded to my office and took instructions from me alone. That would be the same case for Ron Fox and Scott Patrick who were seconded officers; I wouldn't have even recalled, perhaps, their rank, but seconded officers from the...Ontario Provincial Police. They were attached to the unit called Aboriginal Policing or a title something like that. They would have retained their salary and compensation rights, but they were fully seconded to my office and took instructions from me alone and were not in that sense considered to be OPP officers. Notwithstanding the fact that I'm...not a legal expert, but once sworn in as...an officer I believe that, seconded or not, should they witness a problem they are not absolved of their...oath...to be a peace officer. I may not have gotten the legalities right, but for the...purposes of reporting relationships, authority, and...chains of command, those three staff people, like the Corrections people, reported to me and to me only.

Todres testified that she was unaware that the seconded OPP personnel retained their legal status of "peace officers" in 1995, and that she only became aware of that shortly before her appearance at the Inquiry: see Examination in chief of Elaine Todres, November 29, 2005, p. 279; Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, p. 149; Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 184. See also p. 291:

Q: Did Mr. Fox or other seconded OPP officers have a reporting obligation to anybody else other than you, to your knowledge?

A: No

Solicitor General, Elaine Todres, testified that she was Fox's immediate superior,<sup>592</sup> and that Fox reported to her and her alone.<sup>593</sup> Although Fox retained his rank in the OPP, Todres testified, "I never referred to him as Inspector Fox, he was Mr. Fox to me."<sup>594</sup> In the course of his duties at Queen's Park, Fox dressed in civilian clothes and was not referred to by an OPP rank.<sup>595</sup> Superintendent Parkin testified that at the relevant time he considered Fox to be an OPP officer, but acknowledged in cross-examination that he had no involvement in the terms of Fox's secondment to the Ministry of the Solicitor General and Correctional Services, and that he would not dispute Todres' evidence that while he was seconded Fox reported to her, and that Fox acted as a civil servant during his secondment.<sup>596</sup>

Fox had ample previous policing experience regarding First Nations and the training of First Nations officers at the OPP policing academy.<sup>597</sup> Fox had not previously worked in provincial government, any other government job, or any job of a political nature. As Special Advisor to the Solicitor General on First Nations matters, Fox spent a substantial portion of his time working on issues related to First Nations policing.<sup>598</sup> Fox was also Deputy Solicitor General Todres' designate on the IMC.<sup>599</sup>

Prior to August of 1995 Fox had not been called upon to provide advice regarding a First Nation blockade or occupation.<sup>600</sup> He had never had any direct involvement with KSP or the Stoney Point group.<sup>601</sup>

In his evidence Ron Fox accepted that the IMC was the "first line of response in terms of formulating a potential governmental response and analysis when an aboriginal emergency

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<sup>592</sup> Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, p. 141.

<sup>593</sup> Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, p. 122; see also Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, pp. 148-49. See also Examination in chief of Kathryn Hunt, November 2, 2005, p. 21:

Q: And what was your understanding in the summer of 1995 of the role of Ron Fox and Scott Patrick?

A: That their role was to deal with the OPP contracts...with the First Nations people, in terms of policing.

Q: In term...were they active police officers or members of the Solicitor General's department?

A: They were members of the Deputy Minister's staff.

<sup>594</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 34. She was aware of Fox's rank: see Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, pp. 2-3. Charles Harnick's Executive Assistant, David Moran, testified that, "It was my understanding that...Ron had kind of been seconded away from the OPP and was working for the Ministry which were kind of two different things." See Cross-examination of David Moran by Ms. Perschy, November 1, 2005, pp. 108-09.

<sup>595</sup> Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, pp. 149-50.

<sup>596</sup> Cross-examination of Anthony Parkin by Ms. Twohig, February 7, 2006, pp. 320-21.

<sup>597</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 206.

<sup>598</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 57; see also Examination in chief of Kathryn Hunt, November 2, 2005, p. 21.

<sup>599</sup> Examination in chief of Elaine Todres, November 29, 2005, p. 321.

<sup>600</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 211.

<sup>601</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 210.

arose".<sup>602</sup> Fox accepted that the IMC would meet to discuss an issue facing the government and come to a conclusion as to what recommendation should be made to the next level up, a second level of deputy ministers. The deputies would then brief the ministers. Fox accepted that there was a layered decision making process.<sup>603</sup> He accepted that the IMC constituted an initial level of discussion and review, and that it was appropriate that different points of view and different approaches to the issue be raised, discussed and considered. He agreed that it was vital that the IMC thoroughly review the issues and make an informed decision. He accepted that he might hear views he might not agree with. He would not suggest that people should not express contrary views, and agreed that it was appropriate that where this occurs he would speak up so that there was discussion and debate. He agreed that a recommendation arrived at through discussion and debate is more likely to be a sensible recommendation.<sup>604</sup>

Fox accepted that the IMC "had the powers to deal with the specific crisis as defined by the blockade or protest, but not the power to resolve the underlying disputes that gave rise to that protest".<sup>605</sup> He accepted that as indicated in the IMC's guidelines, the IMC was not to be engaged in substantive negotiations.<sup>606</sup> Fox also accepted that the July 10, 1995 briefing note to the Attorney General made clear that the established rule was that no substantive negotiations would occur until after a blockade was lifted.<sup>607</sup>

Paragraph 14 of the Guidelines states that, "It is preferred that the negotiators be local ministry representatives." Fox accepted that this referred to negotiation of an end to a blockade or occupation, not substantive negotiation of underlying issues. In the summer of 1995 it was Fox's understanding that this was the preference of the IMC.<sup>608</sup> Paragraph 16 of the Guidelines states that, "Efforts will be directed away from agreeing to send cabinet ministers or the Premier to the site to negotiate matters directly." Fox testified that he was aware of this aspect of the Guidelines.<sup>609</sup>

Paragraph 17 of the Guidelines states, "The activities and actions of the OPP are subject to their own operational guidelines." Fox was aware of this principle and accepted that this was clearly the settled guideline when the Harris government came into office.<sup>610</sup>

### **(3) INFORMATION ABOUT POTENTIAL TAKE-OVER**

On August 1, 1995, Superintendent Parkin emailed Nancy Mansell, who was responsible for the preparation of briefing notes in the OPP Commissioner's office, and

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<sup>602</sup> Examination in chief of Ron Fox, July 11, 2005, p. 87.

<sup>603</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 236; Exhibit P-504.

<sup>604</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 238ff.

<sup>605</sup> Examination in chief of Ron Fox, July 11, 2005, p. 43.

<sup>606</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 222.

<sup>607</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 222.

<sup>608</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 223ff.

<sup>609</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 224.

<sup>610</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 224.

reported to the Commissioner.<sup>611</sup> Parkin reported that during the night of July 31/August 1, uniformed patrols in the area surrounding the military base and in the Park heard “minor verbal warnings” to Park campers. He said, “[The] main theme seemed to be that campers would have to pay the natives next year to camp on their land.” Parkin reported that Inspector Dale Linton was scheduled to be briefed and would take over as Incident Commander at Ipperwash during the long weekend. He also reported that the OPP was still trying to establish a meeting with the occupiers, and that there was to be a KSP meeting that evening.<sup>612</sup> The email was copied to Ron Fox. Parkin’s understanding was that Fox would provide the IMC with confirmed, or at least the most accurate, information he could share with the IMC.<sup>613</sup>

A note prepared by Julie Jai on August 1, 1995 indicates that Ron Fox provided her with an update of the information that he had learned that day from John Carson.<sup>614</sup> Fox conveyed to Jai the report he had heard of, “FN people saying, quote, 'Pretty soon you'll be paying us for the use of the park', unquote.” Fox added that, “John has heard this before – its possible that FN feels this is a logical next step.”<sup>615</sup> The note also indicates that Fox informed Jai that:

- It is only a dissident group that is doing this, not the Band. Band does not plan to take over Ipperwash Park
- check re whether the land claim covers Ipperwash Park
- [...]
- OPP is monitoring the situation closely - [?] has people at the park as “campers”
- the fact that this dissident group succeeded in getting the base has given them confidence.

Ron Fox sent an email in response to Superintendent Parkin’s email at 7:37 a.m. the next morning, August 2. In it he reported that he had spoken with John Carson the previous day about information he had received from Julie Jai from the MNR Legal Director, Barry Jones, that:

- (1) Members of the militant faction (Stoney Pointers) had disrupted the water supply to Ipperwash Provincial Park, and
- (2) That there was an unconfirmed threat the militants were planning a take over/occupation of the park<sup>616</sup>.

Fox then relayed to Parkin the information he had learned from Carson with respect to these matters. He continued:

Julie tells me the MNR are concerned about both issues...in my view, “to a greater degree than in probably warranted.” As a result a meeting of the Aboriginal Issues

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<sup>611</sup> Examination in chief of John Carson, May 12, 2005, pp. 116-17. See also Examination in chief of Anthony Parkin, February 6, 2006, pp. 96-97: “[S]he co-ordinated that information for him and wherever it had to go.”

<sup>612</sup> Exhibit P-563 (August 1 Parkin email to Mansell, cc. Fox, Linton); Examination in chief of Anthony Parkin, February 6, 2006, pp. 102-03. Examination in chief of John Carson, May 12, 2005, pp. 114-15.

<sup>613</sup> Cross-examination of Anthony Parkin by Ms. Twohig, February 7, 2006, p. 319.

<sup>614</sup> Exhibit P-500.

<sup>615</sup> Exhibit P-500. See also Cross-Examination of Ron Fox by Mr. Downard, July 12, 2005, p. 247.

<sup>616</sup> Exhibit P-414.

Committee will be convened today (August 2, 1995) at 3:30 pm at ONAS offices. I am a member and will attend to “guide” the discussion in this area. If you or John are available by telephone at this time it may be of assistance should any points arise in the discussion that “may” need further explanation/interpretation.

My sense is that MNR may wish to push the issue of the water supply difficulty irrespective of the in place interim solution and the planned long term remedy.<sup>617</sup>

Julie Jai testified that she and Fox “probably shared a view that they [MNR] were perhaps overly concerned”.<sup>618</sup>

On August 2, Superintendent Parkin sent a follow-up email to Nancy Mansell. He indicated that a meeting had finally been set-up between the OPP and Glenn George, who he identified as a spokesperson for the occupiers. He reported that Glenn George had agreed to talk to others in the Stoney Point group about stopping confrontations of Park campers, although the land was still in dispute. Parkin continued, “They now allege there is a burial ground in the Park boundaries.” Parkin also reported that KSP had a meeting the previous night and was going to pass a Band Council Resolution telling outsiders to leave the military base.<sup>619</sup> This email was again copied to Ron Fox.

On August 2, Julie Jai prepared a note regarding an update she had received from Ron Fox, based on the recent update by Superintendent Parkin.<sup>620</sup> In addition to the points communicated in Parkin’s email, Jai’s note reads, “Ovide Mercredi has offered to mediate this. He has come out with a middle-of-the road view.” Fox testified that he received this information from Parkin and conveyed it to Jai.<sup>621</sup> Jai’s August 2 note also indicates, “Bob Antone (Oneida) has been involved”. Fox testified that he conveyed this to Jai, and would have received this information from Parkin or John Carson.<sup>622</sup>

On August 2 at 11:34 a.m. Ron Fox sent an email to Elaine Todres, Neil McKerrell and Tony Vander Vloet.<sup>623</sup> In the email he indicated that the actions of the Stoney Pointers were not sanctioned by KSP. Fox agreed in cross-examination that people in government would be concerned to know the position of KSP because it would give them a sense of what the elected

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<sup>617</sup> Exhibit P-414. Examination in chief of Ron Fox, July 11, 2005, pp. 70-71. In cross-examination it was put to Mr. Fox that in hindsight he was incorrect. He initially responded by saying he was referring to the water pumping issue, but he then agreed he was referring to both the water issue and prospect of occupation. He then denied his judgment was incorrect when he said the MNR was more concerned about the occupation than was probably warranted. He then concurred, however, that his judgement had been incorrect: see Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, pp. 249-51.

<sup>618</sup> Examination in chief of Julie Jai, August 30, 2005, p. 159.

<sup>619</sup> Examination in chief of Tony Parkin, February 6, 2006, p. 110-12, 114-16; Exhibit P-563.

<sup>620</sup> Exhibit P-505.

<sup>621</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p.261.

<sup>622</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 266.

<sup>623</sup> Exhibit P-502; Neil McKerrell was the Assistant Deputy Minister for Correctional Services; Tony Van der Veet was the Executive Assistant to Elaine Todres.

officials in the community were feeling, or possibly what the elected officials were able to convey about the feelings of the First Nations community generally.<sup>624</sup>

Fox also indicated in his email that the Stoney Pointers had not attended the previous night's meeting of the KSP, which had been held to attempt a resolution between KSP and the occupiers. In cross-examination, Fox said he understood KSP was having difficulty in communicating with the Stoney Point group.<sup>625</sup> Fox continued to advise that the MNR had received information that a takeover of the Park by the "militant faction" was imminent. He conveyed that the source of this information was comments made by militants to non-native campers. He continued:

It should be noted that natives have had and continue to have unencumbered access to a 'sacred site' (the Kettle Point) within the Park and it was during a visit to this site that these comments were made. OPP intelligence would not suggest that there are any overt indications of this. That being said such an occupation cannot, at this time be discounted as a possibility.

After informing Elaine Todres and the others of an IMC meeting scheduled for that afternoon, Fox specified the four most probable future scenarios, none of which included an occupation of the Park.<sup>626</sup> In cross-examination, Fox accepted that his judgement was in error about this.<sup>627</sup>

Near the end of his email, Fox stated, "I caution against any heightened overt action by the police."<sup>628</sup> Fox testified that he understood that as of August 1995, the approach of the Solicitor General to First Nation issues was that if an issue involved policing matters the issue would be left to police. Fox accepted that given the policy, as he understood it, the recipients of this email would not be directing police in any event. On cross-examination it was suggested to Fox that at this point he did not have a very clear understanding of the role of the Deputy Minister as far as policing matters were concerned. Fox responded that he thought he had a good understanding of the Deputy Minister's role and function.<sup>629</sup>

Fox concluded his email by indicating, "Clearly this situation is being closely monitored by both the native and non-native communities."<sup>630</sup> Fox accepted that it was not his role as Special Advisor to provide political advice. He disagreed, however, with the suggestion that this statement was more in the nature of political advice, or that there was any uncertainty in his mind as to the extent to which he should be giving political advice.<sup>631</sup>

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<sup>624</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 255.

<sup>625</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 257; see also Cross Examination of Ron Fox by Mr. Downard, July 13, 2005 p. 64.

<sup>626</sup> Exhibit P-502.

<sup>627</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, pp. 257-58.

<sup>628</sup> Exhibit P-502.

<sup>629</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, pp. 258-260.

<sup>630</sup> Exhibit P-502.

<sup>631</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 260.

#### (4) THE AUGUST 2 IMC MEETING

Julie Jai convened her first meeting as chair of the IMC on August 2 at 3:30 p.m., to discuss the situation at Ipperwash.<sup>632</sup> In her testimony she could not recall whether prior to July 31 she had any knowledge of the situation at Ipperwash.<sup>633</sup>

Fox had suggested to Superintendent Parkin that Parkin and Inspector Carson participate by telephone in the IMC meeting, but Parkin had declined to do so.<sup>634</sup>

Brett Laschinger, an assistant to Deb Hutton,<sup>635</sup> one of the Premier's Executive Assistants, attended on behalf of the Premier's Office.<sup>636</sup>

Julie Jai testified that she had "only the vaguest recollection" of the August 2 IMC meeting.<sup>637</sup> She believed, however, that shortly after the meeting she reviewed and approved detailed notes which document the discussion.<sup>638</sup> She also made detailed handwritten notes in the course of the meeting.<sup>639</sup>

The IMC reviewed the historical issues regarding the sale of the Stony Point beachfront in 1928, the purchase of some of that land for the Park in 1936, and the 1942 federal appropriation of CFB Ipperwash. It was noted that although KSP had filed two land claims and had a lawsuit pending regarding the surrender of the West Ipperwash beachfront lands at Kettle Point, KSP did "not appear to have a claim outstanding" regarding the land on which the Park

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<sup>632</sup> Exhibit P-646; Examination in chief of Julie Jai, August 30, 2005, pp. 113-14, 142-43, 174. Julie Jai believed that the August 2 meeting was her first meeting as chair (pp. 142-43, 174), and did not recall any prior meeting during her tenure as acting legal director, although she did say it was possible the IMC had met before "just to sort of go over generally the procedures" (p. 113).

<sup>633</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 143-44.

<sup>634</sup> Exhibit P-414 (Fox email to Parkin, August 2 1995, 7:37 am). See Examination in chief of Ron Fox, July 11, 2005, pp. 70-71, 131. Ron Fox testified that he had not received any "feedback" from Parkin in response to this email (pp 70-71), but then later indicated in chief that, "It was felt that from an operational perspective things were busy enough; they wouldn't have time" (p. 131). See also Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, pp. 253-55: Fox testified that Parkin said "they would not be participating", and, "They were consumed with other things that needed to be done at the time." In his testimony, Superintendent Parkin explained that "We were busy and I didn't have any desire...to sit in on a teleconference call with a group of individuals who I didn't know. I wouldn't be aware of, perhaps, where the conversation might go." See Examination in chief of Anthony Parkin, February 7, 2006, pp. 107-08. In cross-examination Parkin said he believed he told Fox about being busy, and that this "may have been more of an excuse than fact at that time". He did not recall thinking, however, that he should decline to participate so as to maintain distance between police operational and government policy decisions: see Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 28-29. Julie Jai testified that she thought that prior to August 1, 1995 she had been involved in an IMC meeting in which an OPP officer had participated by telephone: see Examination in chief of Julie Jai, August 31, 2005, p. 118.

<sup>635</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 100.

<sup>636</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 126; see also pp. 130-32.

<sup>637</sup> Examination in chief of Julie Jai, August 30, 1995, p. 173.

<sup>638</sup> Examination in chief of Julie Jai, August 30, 1995, pp. 176, 178, 193-94..

<sup>639</sup> Exhibit P-507.

was located.<sup>640</sup> Julie Jai recalled that at the August 2 meeting, “[W]e felt that our title to the Park was good.”<sup>641</sup> The Executive Assistant to the Minister of Natural Resources, Jeff Bangs, also recalled that there was a historical review at the meeting and, “[I]t was made known to us that the park was under clear title...of the province.”<sup>642</sup>

The takeover of the BUA and the violence that had occurred on July 29 was reviewed, as was the recent information that “some members of the Stoney Point group have implied that they may try to take over” the Park.<sup>643</sup>

The IMC discussed a technical issue that had arisen at the Park as a result of telephone and modem lines having been cut at CFB Ipperwash. These lines were needed to control the water pressure and supply for both the army camp and the Park.<sup>644</sup> The meeting was informed that the problem was expected to have been addressed within a week.<sup>645</sup>

The meeting then turned to the risk of an occupation of the Park. Julie Jai’s handwritten notes of the meeting show that Peter Sturdy of the MNR reported on statements by occupiers at CFB Ipperwash that “Soon you’ll be paying us for the park”, and “You can tell your friends at the park that they are next.”<sup>646</sup> He also reported that Glenn George and Rose Manning had told Inspector Carson that they were “interested...in taking over the Park”, as well as Matheson Drive.<sup>647</sup>

As to whether the risk justified the closure of the Park, the notes show it was said that, “There are risks present in any park, e.g. swimming, boating, and rock-climbing accidents, bears, and confrontations with other campers.”<sup>648</sup> In her testimony Julie Jai attributed this statement to Ron Fox. This is indicated in the handwritten notes she made at the time.<sup>649</sup> She also testified, again corroborated by her notes, that Fox said, “It seems illogical that they would invade the Park. More likely that they would block the road.” Charles Harnick’s Executive Assistant, David Moran, recalled that he did not have a sense at the meeting that an occupation of the Park was likely.<sup>650</sup>

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<sup>640</sup> Exhibit P-506 (Meeting Notes), p. 2.

<sup>641</sup> Examination in chief of Julie Jai, August 30, 2005, p. 198. Charles Harnick’s Executive Assistant, David Moran, also recalled that his understanding on the basis of his attendance at the meeting was that, “[T]he Province of Ontario had clear title to the Park.” See Examination in chief of David Moran, October 31, 2005, p. 178.

<sup>642</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 37.

<sup>643</sup> Exhibit P-506 (Meeting Notes), p. 3.

<sup>644</sup> Exhibit P-506 (Meeting Notes), p. 3.

<sup>645</sup> Exhibit P-506, (Meeting Notes), p. 4.

<sup>646</sup> Exhibit P-507 (Meeting Notes), p. 2.

<sup>647</sup> Exhibit P-507 (Meeting Notes), p. 2. That these notes refer to a statement to Inspector Carson is clarified in the Examination in chief of Julie Jai, August 30, 2005, pp. 182-83.

<sup>648</sup> Exhibit P-506 (Meeting Notes), p. 4.

<sup>649</sup> Examination in chief of Julie Jai, August 30, 2005, p. 188.

<sup>650</sup> Examination in chief of David Moran, October 31, 2005, pp. 179-80.



The meeting notes show that in the course of this discussion it was “agreed that MNR and OPP staff on site at Ipperwash are in the best position to assess the risk”.<sup>651</sup> Julie Jai’s handwritten notes show that Ron Baldwin of the MNR observed that there had been a risk of a Park occupation for the last two years, and that Peter Sturdy of the MNR expressed a concern that there was “a greater risk this year”. Julie Jai’s handwritten notes show that Ron Fox responded to this by stating:

Two years ago the dissident group did occupy the Park in a ceremonial way and eventually just left and...they did not evacuate the Park at that time. Their activities were non-threatening...he would be more concerned if the group was being supported by the Mohawks of Akwesasne.<sup>652</sup>

This statement was reflected in the formal meeting notes, which state, “One must take into account that the Stoney Point group occupied the Park ceremonially two years ago, but there was no confrontation and campers were not evacuated.”<sup>653</sup> Julie Jai testified:

I think MNR was really concerned and as the landowner you can see why they would be concerned, and they're concerned about risks to the public. I think Ron Fox and I were less concerned, especially because we knew that there had been the ceremonial occupations of the Park in the two previous years. And I know that Ron told me. And I don't know if this is on any note or anything that we have here. But that there was, you know, in one of those two previous years an actual occupation, sort of, of the Park right after Labour Day when the Park closes, because the Park normally would close for the season on Labour Day and so that after Labour Day some people went into the Park. So, that that had happened before without any major incident. So, this is something that Ron and I both knew so I think our view was that there could well be an occupation of the Park, but that we felt that the risk to the public was low because the park would be closed at that point.<sup>654</sup>

Jeff Bangs, also recalled that at this meeting there was “not a great sense of urgency” because, “[T]here was this notion that...these threats...have happened before, there have been recurring incidents over the preceding two years.”<sup>655</sup>

In the course of this discussion it was observed that “[T]he Stoney Point group is not recognized as a First Nation by Indian Affairs and they do not have broad support within a First Nation.”<sup>656</sup> The group was described as “a dissident faction whose actions are not supported by the recognized Kettle and Stoney Point First Nation”.<sup>657</sup> Julie Jai’s handwritten notes show that Ron Baldwin of the MNR, who was participating by telephone, commented:

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<sup>651</sup> Exhibit P-506 (Meeting Notes), p. 4. See also p. 5.

<sup>652</sup> Exhibit P-507 (Meeting Notes), p. 4; see also Examination in chief of Julie Jai, August 30, 2005, p. 190.

<sup>653</sup> Exhibit P-506 (Meeting Notes), p. 4.

<sup>654</sup> Examination in chief of Julie Jai, August 30, 2005, p. 202.

<sup>655</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 32. See also p. 35: “...[T]he way it was explained to me, the way I understood it from these briefings, was that there had been a history prior to the summer of '95 where suggestions like these had been made before and not acted upon.”

<sup>656</sup> Exhibit P-506 (Meeting Notes), p. 4.

<sup>657</sup> Exhibit P-506, (Meeting Notes), p. 4.

Chief Bressette and the Band are supportive of government and view the occupation as illegal. If we close the Park Chief Bressette would be upset. It would be recognizing the validity of the dissident group.<sup>658</sup>

The meeting concluded that the primary management of the situation at Ipperwash would be left to MNR staff and OPP officers located there. The meeting notes record a concluding agreement that, “MNR and OPP staff at Ipperwash will monitor the situation closely”, and “MNR and the OPP will respond appropriately in a measured way, should any further problems arise.”<sup>659</sup> No options for further action by the IMC or ONAS were indicated as being under consideration. The meeting notes state, “The options as to how to proceed will depend on what occurs.”<sup>660</sup>

Julie Jai’s testimony, corroborated by her handwritten notes, was that Peter Allen of the MNR had raised a question whether there was “corporate agreement...that the Solicitor General should take any necessary actions required to stop the dissident group”, and that Jai had responded by commenting that there was “support for an appropriate response depending on the situation”.<sup>661</sup> Julie Jai testified that this was “a more moderate view”.<sup>662</sup> She said it was her “attempt to try to show support for his obvious concern, but also to try to bring the group to a consensus around something that I thought was reasonable and not overreacting”.<sup>663</sup>

The meeting notes repeated the view that, “MNR and OPP staff are in the best position to monitor the Stoney Point group’s activities and assess the risks.”<sup>664</sup> It was noted that the MNR and OPP had developed and would continue to develop contingency plans in the event of an emergency, and that “the Committee will reconvene if an actual incident at Ipperwash occurs”.<sup>665</sup> Julie Jai testified, “We didn’t know what the alleged basis for the claim of the Park was...[T]he decision was just to not really do anything, just to monitor the situation until the Park was actually occupied.”<sup>666</sup> The meeting notes stated that in the meantime, OPP and MNR staff at Ipperwash would “not need to wait for the Committee’s approval before taking actions that are necessary to protect public safety”.<sup>667</sup>

Charles Harnick’s Executive Assistant, David Moran, testified that his understanding after the meeting was that there were “no issues that were primarily the focus of the provincial government and...that with regard to the situation the OPP was looking into it”.<sup>668</sup> He also

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<sup>658</sup> Exhibit P-507 (Meeting Notes), p. 4; Examination in chief of Julie Jai, August 30, 2005, pp. 188-89.

<sup>659</sup> Exhibit P-506 (Meeting Notes), p. 5.

<sup>660</sup> Exhibit P-506 (Meeting Notes), p. 5.

<sup>661</sup> Exhibit P-507 (Meeting Notes), p. 5; Examination in chief of Julie Jai, August 30, 2005, pp. 191-92.

<sup>662</sup> Examination in chief of Julie Jai, August 30, 2005, p. 192.

<sup>663</sup> Examination in chief of Julie Jai, August 30, 2005, p. 192.

<sup>664</sup> Exhibit P-506 (Meeting Notes), p. 5.

<sup>665</sup> Exhibit P-506 (Meeting Notes), p. 5.

<sup>666</sup> Examination in chief of Julie Jai, August 30, 2005, p. 203.

<sup>667</sup> Exhibit P-506 (Meeting Notes), p. 5.

<sup>668</sup> Examination in chief of David Moran, October 31, 2005, p. 166.

“vaguely” recalled “that officials at ONAS had been charged with reaching out to the local First Nation to see if they could determine what...the issues were and what was, I believe, the bottom of it”.<sup>669</sup>

Mike Harris testified that he was not aware that a representative of his office had attended the August 2 IMC meeting, and he was not briefed about it.<sup>670</sup>

## **(5) AFTERMATH OF IMC MEETING**

After the August 2 IMC meeting, Julie Jai said, “[W]e were just sort of monitoring the situation”, and “[N]othing actually happened in the next couple of weeks.”<sup>671</sup> Ron Fox said he had “fairly infrequent” contact with Inspector Carson and Superintendent Parkin during this period, although he also testified that between August 2 and September 4 “about 30 per cent” of his time was taken up by monitoring the situation in the Ipperwash area.<sup>672</sup> On August 4 Julie Jai had a discussion with Peter Sturdy in which she was informed that there were “rumours of a burial site in Park but not confirmed”, although it was known that there was a burial site at CFB Ipperwash.<sup>673</sup>

Although Julie Jai in Toronto had informed Fox by August 2 that Ovide Mercredi had offered to mediate at Ipperwash,<sup>674</sup> Fox did not recall being aware of subsequent media coverage indicating Mercredi would not become involved.<sup>675</sup> Julie Jai acknowledged that she was aware of Mercredi’s potential involvement. She did not follow up on this “because the Army Camp occupation was a federal matter”.<sup>676</sup> She did believe, however, that she became aware the Mercredi mediation would not proceed.<sup>677</sup>

Although Ron Fox said he was informed by Julie Jai that Bob Antone had been considered as a potential third party intermediary,<sup>678</sup> he was unaware of the involvement of

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<sup>669</sup> Examination in chief of David Moran, October 31, 2005, pp. 166-67.

<sup>670</sup> Examination in chief of Mike Harris, February 14, 2005, p. 54.

<sup>671</sup> Examination in chief of Julie Jai, August 30, 2005, p. 194.

<sup>672</sup> Examination in chief of Ron Fox, July 11, 2005, pp. 127, 129. See also p. 128: “The situation was indicated by them [Carson and Parkin] to be reasonably stable, and there was nothing particularly overt that had occurred.”

<sup>673</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 197-198.

<sup>674</sup> Exhibit P-505; Examination in chief of Ron Fox, July 11, 2005, pp. 88-89. In cross-examination Mr. Fox said he received this information from Superintendent Parkin: see Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 261. Exhibit P-17 is an August 3, 1995 2:04 p.m. email from Parkin to Nancy Mansell, copied Fox and Linton, which states in part, “Chief Tom Bressette held a press conference this date and indicated that after talking with the band Elders and Grand Chief Ovide Mercredi they would not confront the occupiers of the base or try to evict them. He indicates that Mercredi has offered to assist in this issue as a mediator.” See also Examination in chief of Anthony Parkin, February 6, 2006, pp. 119-21.

<sup>675</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, pp. 265-266. See also Cross-examination of Captain Smith by Ms. McAleer, June 26, 2006, p. 212: Captain Smith testified that he recalled having been advised by August 3, 1995 that Ovide Mercredi had offered to mediate the dispute between KSP and the Stoney Point group, but Glenn George had turned down Mercredi’s offer.

<sup>676</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 96-97.

<sup>677</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 98.

<sup>678</sup> Examination in chief of Ron Fox, July 11, 2005, pp. 87-89.

Bruce Elijah and Robert Antone at Ipperwash either in August of 1995 or prior to the takeover of the BUA.<sup>679</sup> Julie Jai did not recall taking any steps to follow up on Antone's involvement in the matter.<sup>680</sup>

In his testimony Ron Fox was critical of ONAS in the period following the August 2 IMC meeting:

Q: And as you were thinking through the possible implications of such an event, did you consider...possible measures, if you will, to be taken in order to...either prevent or manage such an occupation from the Government's end?

A: I think those discussions were certainly had, and I think that generally Committee Members had turned their minds to that.

Q: All right, and can you give us a sense as to what was being considered?

A: Generally it was to ensure that there was clear title to the park, and that certainly the -- the Ministry's responsibly, in a position, to say that they in fact had clear title to the park.

Q: And as a result of that conclusion, were there any further considerations to other options, or possibilities with respect to preventing or managing the occupation?

A: No, there were not.

Q: All right, and how did you feel about that?

A: As I testified earlier, I think there was an opportunity that was missed in terms of being proactive.

Q: All right, in terms of perhaps selecting a third party intervener, facilitator, or negotiator?

A: That's correct.

Q: Or even perhaps getting the Indian Commission of Ontario involved?

A: The ICO; someone who was in a position to ask those people on the ground what it is that they wanted.<sup>681</sup>

The Minister of Natural Resources, Chris Hodgson, testified that after the takeover of the BUA at CFB Ipperwash "there were rumours that were circulating" that the Park could be subject to an occupation. He said he assumed this was

...being dealt with by ONAS and the Interministerial Barracks Committee [*sic*] that were in charge of the issue and the OPP on the ground. But in terms of proactively trying to avoid a situation, it was our belief that that was ONAS' lead and that's what you would assume they would be doing.<sup>682</sup>

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<sup>679</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2003, pp. 266-70.

<sup>680</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 99-100.

<sup>681</sup> Examination in chief of Ron Fox, July 11, 2005, pp. 139-40.

<sup>682</sup> Examination in chief of Chris Hodgson, January 12, 2006, p. 52.

## 5.04 MARCEL BEAUBIEN

In June of 1995 Marcel Beaubien had been elected the Progressive Conservative Member of Provincial Parliament for the riding of Lambton, which included the Kettle Point and Stony Point lands.<sup>683</sup> An insurance broker for almost 25 years, he had been involved in municipal politics in Petrolia, 38 kilometres away from the Ipperwash area.<sup>684</sup> He served as a councillor from 1976 until 1982, and then as mayor from 1985 until 1994.<sup>685</sup> He had also been a member of the Police Services Board in Petrolia for nine years, including seven years as chairman.<sup>686</sup>

Marcel Beaubien testified that he considered himself a “constituency man”.<sup>687</sup> He “always felt that the people...of Lambton elected me to represent them in Toronto”, and not “the Toronto interests in my riding”.<sup>688</sup> He considered himself “the pipeline between my constituency and Queen’s Park”.<sup>689</sup>

In 1992 KSP commenced an action against the federal Crown, cottagers then owning lands at West Ipperwash Beach and others for a declaration that KSP’s 1927 surrender of that land was void.<sup>690</sup> Marcel Beaubien testified that the West Ipperwash Beach situation was probably the first significant matter he dealt with after he was elected in June.<sup>691</sup> He shared registered landowners’ concerns and frustration that their title to the properties they had purchased and paid taxes on was in question.<sup>692</sup> He received complaints about the financial burden imposed on the registered owners by legal costs,<sup>693</sup> and that the situation had affected the mental and physical health of registered owners and their families.<sup>694</sup> Beaubien believed the registered owners were frustrated that they were receiving no financial help from the province to assist them in dealing with the case.<sup>695</sup>

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<sup>683</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 258.

<sup>684</sup> Examination in chief of Marcel Beaubien, January 19, 2006, p. 13.

<sup>685</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 258-59.

<sup>686</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 258-59.

<sup>687</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 263.

<sup>688</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 263.

<sup>689</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 264; see also Examination in chief of Marcel Beaubien, January 19, 2006, pp. 50-51.

<sup>690</sup> See *Chippewas of Kettle and Stony Point v. Attorney General of Canada et al.* (1996), 31 O.R. (3d) 97, at p. 99, per Laskin J.A. (C.A.), affirming (1995) 24 O.R. (3d) 654 (Gen. Div.), appeal dismissed at [1998] 1 S.C.R. 756.

<sup>691</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 279. Mr. Beaubien had previously been aware of the legal action because, “I had clients that lived there and I had acquaintances, friends, that lived there also.” See pp. 279-80.

<sup>692</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 280-81.

<sup>693</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 282, 288-89.

<sup>694</sup> See the letters from constituents marked as Exhibit P-1023, which Mr. Beaubien described as representing “only a few” of the complaints received: Examination in chief of Marcel Beaubien, January 18, 2006, p. 286. See also pp. 288-89.

<sup>695</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 290-91.

The position of the registered owners at West Ipperwash Beach was to improve on August 18, when the Honourable Mr. Justice Killeen of the Ontario Court (General Division) granted a motion for summary judgment dismissing KSP's claim that the surrender of those lands was invalid.<sup>696</sup> Marcel Beaubien testified that in the period prior to that ruling he had received complaints from some constituents in the area that they were being "harassed" and "threatened", and that there had been break-ins which the constituents linked to native people and the land issue.<sup>697</sup> He said constituents expressed concern to him that the level of policing being provided by the OPP was not adequate.<sup>698</sup>

On July 31 Marcel Beaubien met with Staff Sergeant Wade Lacroix to discuss the West Ipperwash Beach matter. Although Beaubien did not recall specifics of his July 31 discussion with Lacroix,<sup>699</sup> he believed that in response to constituents' complaints he would have inquired as to the adequacy of police resources in the area,<sup>700</sup> so that he could obtain information for his constituents.<sup>701</sup> On July 31 Inspector Carson was informed by Lacroix that Lacroix had met with Beaubien, who was reported to be "supportive of police action".<sup>702</sup>

On July 31, Marcel Beaubien wrote to express concerns to Attorney General Charles Harnick regarding the West Ipperwash Beach situation at Kettle Point.<sup>703</sup> He wrote,

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<sup>696</sup> See *Chippewas of Kettle and Stony Point v. Attorney General of Canada et al.* (1995), 24 O.R. (3d) 654 (Gen. Div.), appeal dismissed at (1996), 31 O.R. (3d) 97 (C.A.), affirmed at [1998] 1 S.C.R. 756. KSP's claims for damages for the alleged breach of the federal government's fiduciary obligation in connection with the surrender were allowed to continue. Marcel Beaubien testified that constituents continued to express concerns to him about legal costs in connection with the action, "but I didn't get anywhere with that in Toronto": see Examination in chief of Marcel Beaubien, January 18, 2006, pp. 309-11.

<sup>697</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 273, 284-85. See also p. 298: "...[I]t was general harassment. I can't recall exactly but I remember, you know, somebody telling me somebody breaking into their house. In some cases where nothing is missing but the tablecloth was moved over and the salt and pepper shakers moved to another location. And you know, a beer bottle sitting...on the table but there's really no damage when they're talking about intimidation I would probably agree with that, you know. So that type of thing was going on in the area at that time."

<sup>698</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 273, 296-97.

<sup>699</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 299; see also Cross-examination of Marcel Beaubien by Ms. Gleitman, January 24, 2006, pp. 63-64.

<sup>700</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 296-97. See also p. 307: "We don't have a Commission at the provincial level, but for me to just play possum and ignore the situation and not knowing what's going on -- I want to know what's going on in my riding; if there's no policing, I want to know. How they enforce the police regulation and legislation, that's not my responsibility, but I want to know -- I want to make sure that there's a proper level of policing in the area." See also pp. 273, 308.

<sup>701</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 297, 308.

<sup>702</sup> Examination in chief of John Carson, May 12, 2005, pp. 92-93. Staff Sergeant Wade Lacroix did not have notes or a recollection of this conversation with Marcel Beaubien, or his conversation with Inspector Carson about it: see Examination in chief of Wade Lacroix, May 8, 2006, pp. 136-38. See also Examination in chief of Marcel Beaubien, January 19, 2006, pp. 17-18.

<sup>703</sup> Exhibit P-534. See also Cross-examination of Marcel Beaubien by Mr. Rosenthal, January 24, 2006, pp. 284-91. Marcel Beaubien did not communicate with KSP regarding the West Ipperwash Beach matter, although he testified that he had met Chief Bressette and had a positive opinion of him: see Examination in chief of Marcel Beaubien, January 18, 2006, pp. 292-93.

My concern is with the residents of Ipperwash Beach that I have met with. They have a unique situation to deal with and honestly, Charles, I need help, advice and direction as this is a difficult and sensitive situation in this Riding.

Tensions have again escalated over this past weekend and my constituents have the following concerns:

1. As of May 1995, the Association has spent two hundred and fourteen thousand dollars (\$214,000) and the Town of Bosanquet sixty-seven thousand dollars (\$67,000) in legal fees to defend the civil action brought on by members of the Kettle and Stony Point Band. The residents are being sued individually, a hundred and fourteen (114) for trespassing, et cetera on native lands.
2. The province has apparently been put on notice that it will also be sued.
3. Residents are faced with a situation whereby they cannot sell their property because of the legal action taken.
4. Residents have to pay property taxes while the ownership of their property is in the hands of the court system.
5. Apparently, this is a unique situation in Canada, as it is the only case where third party action has been taken by the First Nation.
6. There is a lot of intimidation going on at the moment and the residents feel threatened.
7. Law enforcement is basically non-existent and the OPP does not seem too keen in getting involved.
8. Residents are stressed out and the situation is becoming unbearable.

Charles, we need to meet as soon as possible with the residents before this situation becomes even more complex. I need advice on how the province wants to proceed in this matter. There are many other issues which we have to address.

Charles Harnick testified that in July of 1995 he had probably met Marcel Beaubien at a caucus gathering, but he did not know him well.<sup>704</sup> He did not recall ever speaking to Beaubien about the Ipperwash situation,<sup>705</sup> and he would have referred Beaubien's letter to ONAS officials for their information and a response to Beaubien.<sup>706</sup> His Executive Assistant, David Moran, referred the letter to ONAS. ONAS responded that named lawyers in the Attorney General's office were handling the file, but Ontario was not a party to the West Ipperwash action.<sup>707</sup>

According to John Carson's notes, on the afternoon of August 1 he met with Beaubien, who he briefed on issues regarding Ipperwash and a potential occupation of the Park. According to the notes, Beaubien informed him that he had requested information from the Solicitor General and the Attorney General. Carson did not recall the meeting.<sup>708</sup> Carson had not previously met Beaubien.<sup>709</sup>

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<sup>704</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 60-61.

<sup>705</sup> Examination in chief of Charles Harnick, November 24, 2005, p. 62.

<sup>706</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 61-62.

<sup>707</sup> Exhibit P-939.

<sup>708</sup> Examination in chief of John Carson, May 12, 2005, pp. 97-98.

<sup>709</sup> Examination in chief of John Carson, May 12, 2005, p. 19.

On August 11, Marcel Beaubien met with Superintendent Parkin, Inspector Carson, Inspector Linton and Staff-Sergeant Wade Lacroix regarding West Ipperwash Beach, CFB Ipperwash and the Park. The meeting took place at Beaubien's constituency office, located close by the OPP detachment in Petrolia.<sup>710</sup>

Inspector Carson's notes indicate that he and Superintendent Parkin had previously been informed of Marcel Beaubien's July 31 letter to the Attorney General, and in particular the reported concern of constituents that, "Law enforcement is basically non-existent and the OPP does not seem too keen in getting involved."<sup>711</sup>

Marcel Beaubien testified that prior to this meeting he had met informally with people living in the Ipperwash area immediately adjacent to CFB Ipperwash.<sup>712</sup> Beaubien said, "[T]here was talk in the community that people would arm themselves and look after their own property", and he would have passed that on to the OPP.<sup>713</sup> He had also received complaints from area residents that,

if there was an occurrence that the police would be chasing the individuals and as soon as they got to the Army Base gate that the police chase would stop there. And that created an awful lot of frustration with the people because they felt that the law was not being upheld. And it was just like living in a third world that all of a sudden you got to this area and nothing happens.<sup>714</sup>

Beaubien said he considered the situation to be "pretty tense in the area".<sup>715</sup> He said he had received complaints that people were "living in fear", "being intimidated" and "harassed".<sup>716</sup>

Marcel Beaubien did not recall the specifics of his discussion with the OPP representatives on August 11.<sup>717</sup> Superintendent Parkin, the senior OPP officer at the meeting, testified that Beaubien was very concerned about policing in general with respect to the Park and cottage owners, and "was apparently under a lot of pressure from his constituents who were very frustrated and wanted something done".<sup>718</sup> Superintendent Parkin took from the discussion that

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<sup>710</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 130; Examination in chief of Marcel Beaubien, January 18, 2006, p. 270; Examination in chief of John Carson, May 12, 2005, pp. 145-46.

<sup>711</sup> Exhibit P-410, p. 29; Examination in chief of Marcel Beaubien, January 19, 2006, pp. 20-23. Mr. Beaubien said it was possible he provided a copy of his letter to the OPP, and that if he did so he would have provided a copy of his July 31 letter to Staff Sergeant Lacroix, who was his first point of contact. Inspector Carson was informed by Superintendent Parkin on August 8 that the letter expressed this concern about law enforcement: see Examination in chief of John Carson, May 12, 2005, pp. 144-45.

<sup>712</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 314-15.

<sup>713</sup> Examination in chief of Marcel Beaubien, January 19, 2006, pp. 19-20. It is not clear when Marcel Beaubien did this. See also Exhibit P-1025 (constituent's letter to Beaubien referring three times to question whether constituent should take up arms).

<sup>714</sup> Examination in chief of Marcel Beaubien, January 19, 2006, pp. 32-33.

<sup>715</sup> Examination in chief of Marcel Beaubien, January 19, 2006, p. 34.

<sup>716</sup> Examination in chief of Marcel Beaubien, January 19, 2006, p. 34.

<sup>717</sup> Examination in chief of Marcel Beaubien, January 19, 2006, pp. 29-34, 38-40, 40-41, 49; see also Cross-examination of Marcel Beaubien by Mr. Rosenthal, January 24, 2006, pp. 13-16.

<sup>718</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 131: "I think it would be fair to say that there was a lack of satisfaction from some of the residents in the area with the police enforcement or what the police



some of Beaubien's constituents had "great animosity for what they saw as unequal policing...they felt that they were being victimized and they didn't like the situation at the army base".<sup>719</sup> Parkin testified that generally Beaubien was "very opinionated" regarding an occupation of the Park, and a "strong personality" who was "emotional about many issues".<sup>720</sup> Inspector Carson testified that the OPP officers conveyed to Beaubien that they were concerned about and understood the perceptions in the community, and assured him that the OPP were providing the police services required and appropriate:

We were trying to reassure Mr. Beaubien that we were well aware of the issues; we were concerned about the perceptions in the community; understood the concerns and we...believed we were providing the policing services that were required and appropriate for us to do – in regards to each of those incidents.<sup>721</sup>

Marcel Beaubien said he has "always been known as an individual that speaks his mind, that shoots from the hip".<sup>722</sup> On the basis of his meeting with Beaubien, Superintendent Parkin thought Beaubien was frustrated and upset.<sup>723</sup> Although he formed the impression that Beaubien "wasn't enthused with what the police were doing", <sup>724</sup> he said Beaubien also told the OPP officers that he had no specific complaints about policing or OPP".<sup>725</sup> Inspector Carson testified

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were being seen to do. That concerned him." Although he had less recollection of the discussion, Staff Sergeant Lacroix testified that prior to this meeting he had previously explained to Beaubien the "complexities" of colour of right and land claims: see Examination in chief of Wade Lacroix, May 8, 2006, p. 146.

<sup>719</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 132-33; see also 133-34. In cross-examination Parkin accepted that it was made clear to him in this meeting "that the non-native community in the area felt there was a lack of policing going on": see Cross-examination of Anthony Parkin by Mr. Falconer, February 8, 2006, p. 123.

<sup>720</sup> Cross-examination of Anthony Parkin by Mr. Rosenthal, February 9, 2006, pp. 247-48. Parkin did not agree with a suggestion put to him that Marcel Beaubien wanted "aggressive action" to a greater degree than other people. Parkin also testified that after meeting Beaubien, he did not have any concern that Inspector Carson or Staff Sergeant Lacroix would be intimidated by him, or feel pressured to conform to Beaubien's desires. In particular, he had no concern at the time about Carson's ability to withstand any such pressure. He said he has not seen anything since that time which would cause him to change that evaluation. Similarly, he did not have any concern that Lacroix would care about what someone outside the chain of command would want him to do or not do: see Examination of Anthony Parkin by Mr. Sandler, February 13, 2006, pp. 96-98.

<sup>721</sup> Examination in chief of John Carson, May 12, 2005, p. 146. Mr. Beaubien agreed in cross-examination that this occurred: see Cross-examination of Marcel Beaubien by Mr. Sandler, January 24, 2006, pp. 9-10.

<sup>722</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 265. Mr. Beaubien accepted that in this respect he thinks of himself as someone who is blunt and direct: see Cross-examination of Marcel Beaubien by Mr. Zbogar, January 24, 2006, p. 145.

<sup>723</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 131-32, 133.

<sup>724</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 132; see also Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2006, pp. 338-39.

<sup>725</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 134. In an August 14 4:10 p.m. email to Nancy Mansell, copied to Ron Fox (Exhibit P-591), Parkin referred to the meeting as follows:

On Friday Aug. 11 I met with the local MPP Marcel Beaubien, who was satisfied with the actions of the O.P.P. and what we were doing. His concern was more about the frustration of the cottagers and what they might do. He was going to be talking with the Solicitor and Attorney General as well as MNR officials because he wants them to understand the seriousness of the situation and provide him with some direction.

that Beaubien never attempted to give the police officers instructions as to any kind of police operations.<sup>726</sup> Staff Sergeant Lacroix gave evidence to the same effect.<sup>727</sup> Superintendent Parkin testified that at the meeting Beaubien indicated, “[H]e felt he was out there trying to do all this on his own and he wasn’t getting any assistance from his own government.”<sup>728</sup> Beaubien said he would be “pushing Runciman and Harnick and MNR for direction and a position”.<sup>729</sup>

On August 14, 1995 Marcel Beaubien wrote to Attorney General Harnick about his meeting with the OPP officers.<sup>730</sup> He did not provide copies of the letter to any of the OPP officers with whom he had met.<sup>731</sup> His letter stated in part,

The representatives from the OPP and myself have reached the following consensus:

1. As the Ipperwash campground is provincially owned, we should be in a position to legally uphold the property.
2. Enforcement is only a short-term solution.
3. Ministries involved have to give the OPP clear guidelines for law enforcement.
4. The long-term solution is a negotiated settlement.

However, we need to see a clear stand on what Provincial ownership of land means and if the laws of the province will be upheld. This needs to be made very clear without delay.

Please note that the properly elected First Nations officials are supportive of upholding the laws of the land. What we have is a small number of dissidents making a mockery of the system.

As detailed to Ministers Hodgson, Harnick, and Runciman, we will take the following position until further instruction is received from the Ministries. We will be legally prepared to uphold Ipperwash Park. Enforcement is a short-term solution, and we need

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See Examination in chief of Anthony Parkin, February 6, 2006, pp. 140-41, 142; see also the Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2006, pp. 333-36. Parkin also “updated” Deputy Commissioner Boose “re. Meeting with Marcel Beaubien and his concerns over frustration of cottage owners”: see Examination in chief of Anthony Parkin, February 6, 2006, p. 144.

<sup>726</sup> Cross-examination of John Carson by Mr. Sulman, June 2, 2005, p. 127.

<sup>727</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, pp. 144-45: “He gave us no direction. I mean, he just passed on to us...a lot of things we knew from the community, that certain elements of the community were frustrated on, you know, the different land claims and how long they’d been going on. He did not -- there was no direction you know; do this.”

<sup>728</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 131-32, 133.

<sup>729</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 134.

<sup>730</sup> Exhibit P-418. See generally, Cross-examination of Marcel Beaubien by Mr. Rosenthal, January 24, 2006, pp. 301-04, and January 25, 2006, pp. 10-16.

<sup>731</sup> Examination in chief of Marcel Beaubien, January 19, 2006, p. 47.

the Ministries to give clear guidelines to the OPP for enforcement. We would like a negotiated settlement. Failing that, a clear stand on what are provincial matters, and if the law will be upheld. This is an opportune time as election First Nation officials are supportive in upholding the law.<sup>732</sup>

Superintendent Parkin testified that he did not recall reaching a “consensus” at the meeting.<sup>733</sup> Staff Sergeant Lacroix did believe Beaubien was told the OPP did not believe there was any issue as to the validity of Ontario’s title to the Park.<sup>734</sup> Inspector Carson testified in particular that no “consensus” was reached regarding any need for government ministries to “give clear guidelines to the OPP for enforcement”, although there may have been discussion of the need for legal direction regarding the obtaining of an injunction.<sup>735</sup> Similarly, Lacroix testified that he did not recall any discussion about “us getting any direction”.<sup>736</sup> Carson stated, “The OPP doesn’t take guidelines from Ministries in order to do law enforcement.”<sup>737</sup>

Beaubien did not recall the specifics of discussion on this point, but said if Inspector Carson was “not in agreement with me, well I guess I can’t disagree with him”.<sup>738</sup> He also accepted that “maybe I shouldn’t have been speaking on” behalf of the OPP representatives in his letter.<sup>739</sup> In cross-examination Beaubien said that it was his understanding when he wrote the letter that he and the OPP were “on the same wavelength”.<sup>740</sup> He also acknowledged that he did not intend to request government ministries to tell the OPP how to carry out their law enforcement duties,<sup>741</sup> and that the OPP officers never told him they needed guidelines from ministries on how to enforce the law.<sup>742</sup>

Superintendent Parkin testified that he did not know what Marcel Beaubien was referring to when he spoke of ministries having to give the OPP clear guidelines for law enforcement.<sup>743</sup> He testified that the OPP would not have needed any.<sup>744</sup> Parkin testified that he attended the

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<sup>732</sup> Exhibit P-418.

<sup>733</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 135.

<sup>734</sup> Examination in chief of Wade Lacroix, May 8, 2006, pp. 150-51.

<sup>735</sup> Examination in chief of John Carson, May 12, 2005, pp. 147-54.

<sup>736</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, pp. 147-48. See also Examination in chief of Wade Lacroix, May 8, 2006, pp. 152-53; Cross-examination of Wade Lacroix by Mr. Rosenthal, May 10, 2005, pp. 112-13.

<sup>737</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, p. 251. See also p. 252: “...I can assure you there’s no way that any of the people at that meeting would have suggested to Mr. Beaubien that we need some direction of...how we conduct law enforcement. We’re...quite capable of dealing with that within the agency itself.”

<sup>738</sup> Examination in chief of Marcel Beaubien, January 19, 2006, pp. 43-44. Beaubien testified prior to Superintendent Parkin giving his evidence about the August 11, 1995 meeting.

<sup>739</sup> Examination in chief of Marcel Beaubien, January 19, 2006, p. 46. Beaubien also referred to the fact that French is his first language and “my English here...may not be the best”.

<sup>740</sup> Cross-examination of Marcel Beaubien by Mr. Rosenthal, January 25, 2006, p. 12.

<sup>741</sup> Cross-examination of Marcel Beaubien by Mr. Sandler, January 24, 2006, pp. 18, 19, 20-21.

<sup>742</sup> Cross-examination of Marcel Beaubien by Mr. Sandler, January 24, 2006, p. 18.

<sup>743</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 137.

<sup>744</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 137; Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2005, pp. 339-40: “Well, I knew that I didn’t need any direction.”

meeting to meet the local MPP and to become more familiar with the issues, and not for the purpose of seeking or receiving any direction from Beaubien or the government.<sup>745</sup> He said there was no discussion of OPP tactics or strategy at Ipperwash.<sup>746</sup> Parkin also accepted in cross-examination that Beaubien did not tell any of the OPP officers at the meeting how to carry out their duties.<sup>747</sup> During the meeting Superintendent Parkin did not get the impression that Beaubien was seeking to influence the OPP officers' actions.<sup>748</sup> He said he did not feel any pressure about that when he left the meeting.<sup>749</sup>

Charles Harnick testified that he did not recall receiving Marcel Beaubien's August 14 letter. As in the case of Beaubien's July 31 letter, Harnick would have referred it to ONAS for their information and for a response.<sup>750</sup>

Marcel Beaubien testified that he did not receive a response to either his July 31 letter or his letter of August 14. He told the Inquiry:

We had a major situation and I say major situation...in the riding. I don't think that Queen's Park appreciated the seriousness of the issue; that's my personal feeling or personal opinion. I was not getting an awful lot of information from Queen's Park or direction, contrary to popular beliefs.

[...]

[M]y personal opinion was that I'm not getting anything. I don't seem to be getting a...sympathetic ear from anybody at Queen's Park; not only the political side, but the bureaucratic side. Because I think the bureaucratic side should have been more aware of the situation than the political side because you've got to realize the political side had only been there for a couple of months.<sup>751</sup>

Chief Bressette testified that prior to September 4 Beaubien had spoken to him about events at CFB Ipperwash, and that he had told Beaubien, "[T]he council has publicly stated on numerous occasions [that] we don't support what's going on down there."<sup>752</sup>

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<sup>745</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 138; see also p. 141: "I wasn't seeking any direction from any Ministry with respect to policing of the Base."

<sup>746</sup> Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2006, p. 340.

<sup>747</sup> Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2006, pp. 336, 340.

<sup>748</sup> Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2006, pp. 336-37.

<sup>749</sup> Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2006, p. 338, 339. Superintendent Parkin had no further contact with Marcel Beaubien until after September 6: see Cross-examination of Anthony Parkin by Mr. Sulman, February 7, 2006, pp. 340-41. In his testimony Marcel Beaubien stated that he believed he only met with Superintendent Parkin once: see Examination in chief of Marcel Beaubien, January 19, 2006, p. 61.

<sup>750</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 64-65.

<sup>751</sup> Examination in chief of Marcel Beaubien, January 19, 2006, pp. 63-66; see in particular pp. 63-64 and 66.

<sup>752</sup> Examination in chief of Thomas Bressette, March 2, 2005, pp. 87-88.

## 5.05 The OPP

### (1) THE MONTH OF AUGUST

On August 3 at 12:04 p.m., Superintendent Parkin sent an email to Nancy Mansell, copied to Ron Fox, John Carson and Dale Linton, providing an update on events at the Park.<sup>753</sup> Parkin reported that the lock on the new gate at Matheson Drive and Army Camp Road had been cut. He advised that on Friday, August 4, Captain Smith would meet with occupiers to show them how to work water and hydro systems, to discuss posting danger signs indicating unexploded amunition. Parkin reported that the MNR planed to install a bypass valve to deal with the water issue. He also reported, “MNR officials remain firm that there is no land claim dispute with respect to the park property.”<sup>754</sup> He continued:

Environmental evaluation - all sides, Tom Bressette for Kettle Point, Glenn George for the occupiers and the military, are in agreement that it is necessary. Problem is that Military will only negotiate with Bressette as they do not recognize occupiers. Bressette had not recognized occupiers in past however is now saying that while he didn’t condone their actions he understood the frustration. He wants the outsiders to leave the base (American et al) and he will negotiate on behalf of the special interests of the occupiers.<sup>755</sup>

Superintendent Parkin sent a second email later that day, at 2:04 p.m. He said Chief Bressette had held a press conference indicating that after speaking with the elders and Grand Chief Mercredi, KSP would not confront the occupiers of the base or try to evict them. He indicated that Mercredi had offered to assist as a mediator. A lawyer for the occupiers was also reported to have said the occupiers wanted to negotiate the land issue.<sup>756</sup>

On August 4, Pete Lawlor of OPP General Headquarters Intelligence informed Inspector Carson of reports on three outsiders at the CFB Ipperwash: Les Jewell, Russ Jewell and Buck Doxtator. Russ Jewell was reported to have military and explosives experience. It was reported that Glenn George has “some new-found importance in recent days”.<sup>757</sup>

On August 9, Carson spoke to Constable George Speck, who reported gunshots in the air on a recent night, and David George yelling at campers from the dunes. Speck also reported that Glenn George was believed to have a handgun.<sup>758</sup>

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<sup>753</sup> Exhibit P-416; Examination in chief of John Carson, May 12, 2005, pp. 134-37.

<sup>754</sup> Exhibit P-416.

<sup>755</sup> Exhibit P-416.

<sup>756</sup> Exhibit P-417.

<sup>757</sup> Examination in chief of John Carson, May 12, 2005, pp. 140-41.

<sup>758</sup> Examination in chief of John Carson, May 12, 2005, pp. 142-43.

On August 9 Inspector Carson provided a written report to the Commissioner's office. He indicated that, "The interministerial committee on First Nation issues (Blockade Committee) has been consulted and advised of the current status of Ipperwash."<sup>759</sup>

For the month of August, OPP undercover officers posed as campers in the Park, to be the OPP's "eyes and ears".<sup>760</sup> Inspector Carson continued 24-hour uniformed patrols in the area, in order to "have a constant uniform presence within the Park or very close by".<sup>761</sup>

On August 15, Inspector Carson was informed that Staff Sergeant Bouwman had met with Glenn George, who "continues to state that Ipperwash Park, Matheson Drive, Pinery Park and the land between Kettle Point and Ipperwash Base are Native lands".<sup>762</sup>

On August 16, Staff Sergeant Bouwman informed Inspector Carson of incidents near the Park, and that, "Bert Manning advised some of the members of our ERT personnel that the Park will belong to them after Labour Day." Carson said this continued to reaffirm information that had been flowing in for the last couple of weeks, particularly since the takeover of the BUA.<sup>763</sup> Superintendent Parkin's notes show that on August 16 he was informed by Inspector Linton that, "Glenn George has again said that after Labour Day the Park will be theirs."<sup>764</sup> Parkin testified that around this time this reinforced "what seemed to be becoming somewhat common knowledge", that "there was a potential for an occupation of the Ipperwash Provincial Park sometime around the Labour Day weekend".<sup>765</sup>

On August 17, Superintendent Parkin reported to Inspector Carson that at a meeting the previous night at Kettle Point, people had been "upset" about "the lack of action by the government in removing the people from CFB Ipperwash". Cecil Bernard George informed Chief Bressette that people from Kettle Point would be blocking Highway 21.<sup>766</sup> Later that morning Carson received information that it had been decided this would not occur.<sup>767</sup> On August 17 Carson also received information from Parkin that Chief Superintendent Coles was to call Ron Baldwin of the MNR and get written direction of the MNR position in the event of an occupation of the Park.<sup>768</sup> Carson testified that there was "some sense" that some people in MNR felt either that they did not need an injunction, or did not need to produce documentation of title.<sup>769</sup>

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<sup>759</sup> Exhibit P-415.

<sup>760</sup> Examination in chief of John Carson, May 12, 2005, pp. 104, 106-08.

<sup>761</sup> Examination in chief of John Carson, May 12, 2005, pp. 108-09.

<sup>762</sup> Examination in chief of John Carson, May 12, 2005, pp. 156-57.

<sup>763</sup> Examination in chief of John Carson, May 12, 2005, pp. 158-59.

<sup>764</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 142-43.

<sup>765</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 146.

<sup>766</sup> Examination in chief of John Carson, May 12, 2005, pp. 158-59.

<sup>767</sup> Examination in chief of John Carson, May 12, 2005, p. 160.

<sup>768</sup> Examination in chief of John Carson, May 12, 2005, pp. 160-61.

<sup>769</sup> Examination in chief of John Carson, May 12, 2005, p. 161.

On August 17 Inspector Carson also received information from Constable Speck that he had spoken with Glenn George on August 11. George was reported to have indicated that there had been a meeting the past weekend at the base with “warriors”, and that Highway 21, the Park and Pinery Park belonged to native people.<sup>770</sup> Later on August 17, Carson received information from Inspector Linton that the event would not take place. The plan to blockade Highway 21 had involved dumping sand and felling trees. On August 18 information was again received that there were plans to block the highway.<sup>771</sup> Carson discussed the possibility and the strategy to be followed with Chief Superintendent Coles.<sup>772</sup>

On August 17 John Carson updated Ron Fox. Carson was informed there were no outstanding land claims on the Park.<sup>773</sup>

On August 18 John Carson emailed Nancy Mansell, with a copy to Chief Superintendent Coles, indicating that Kettle Point residents were planning to commence a blockade, but discussions with Chief Bressette resulted in it being prevented. He also reported the frustrations expressed at the August 16 band meeting, and that there may be a blockade in the future.<sup>774</sup> Carson testified that there was “a very high level of frustration” and negotiations were slow.<sup>775</sup> He said uncertainty caused by the occupation about who to negotiate with was aggravating the situation.<sup>776</sup> Carson considered the discussion of blockades to be an attempt to heighten awareness or heighten the frustration level, and accepted that it may have been an attempt to get government attention regarding the negotiations.<sup>777</sup>

Later on August 18, Inspector Carson received further information from Inspector Linton that the KSP council was frustrated with the occupiers and would not tolerate radicals. It was reported that KSP would blockade Highway 21 if Chief Bressette was unable to get action.<sup>778</sup> At the end of the day on August 18 Carson updated Chief Superintendent Coles and Ron Fox about a potential blockade. Carson noted that Fox was to contact MNR to ensure a process was in place regarding an injunction.<sup>779</sup>

On August 18 John Carson also discussed with Chris Coles that there was no land claim on the Park, and that Ron Fox had researched the point. Carson made a note reading, “[P]ressure MNR legal for documentation for file.”<sup>780</sup>

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<sup>770</sup> Examination in chief of John Carson, May 12, 2005, p. 163.

<sup>771</sup> Examination in chief of John Carson, May 12, 2005, p. 166.

<sup>772</sup> Examination in chief of John Carson, May 12, 2005, pp. 166-67.

<sup>773</sup> Examination in chief of John Carson, May 12, 2005, pp. 164-65.

<sup>774</sup> Exhibit P-419; Examination in chief of John Carson, May 12, 2005, pp. 167-69.

<sup>775</sup> Examination in chief of John Carson, May 12, 2005, pp. 169-71.

<sup>776</sup> Examination in chief of John Carson, May 12, 2005, pp. 169-71.

<sup>777</sup> Examination in chief of John Carson, May 12, 2005, pp. 169-71.

<sup>778</sup> Examination in chief of John Carson, May 12, 2005, pp. 171-72.

<sup>779</sup> Examination in chief of John Carson, May 12, 2005, pp. 172-73.

<sup>780</sup> Examination in chief of John Carson, May 12, 2005, pp. 173-74.

On August 22 Marcel Beaubien met again with Staff Sergeant Lacroix. Marcel Beaubien relayed to Staff Sergeant Lacroix discussions he had with municipal councillors regarding concerns from residents in the area.<sup>781</sup>

On August 24 Peter Sturdy of the MNR informed Inspector Carson that documentation regarding the province's ownership of the Park would be ready by Monday, August 27.<sup>782</sup>

On August 27 Inspector Carson met with Chief Superintendent Coles, Superintendent Parkin, Inspector Hutchinson and acting Sergeant Ken Deane<sup>783</sup> in Coles' office.<sup>784</sup> The meeting reviewed possible tactics at Ipperwash, including ERT and Tactics and Rescue Unit ("TRU") capabilities.<sup>785</sup> It was agreed that Carson would lead a meeting at OPP District Headquarters in London to "prepare plans for the potential of an extended stand off" in the event of an occupation of the Park.<sup>786</sup>

## **(2) THE AUGUST 29 OPP PLANNING MEETING**

The planning meeting in London was held on August 29. It was attended by Inspector Carson, Staff Sergeant Wright as being responsible for criminal investigations,<sup>787</sup> Sergeant Stan Korosec as a representative of the ERT, acting Sergeant Deane as a representative of the TRU, and Sergeant D.J. Grant from the OPP's training unit in London,<sup>788</sup> who was responsible for logistics.<sup>789</sup> Carson described that the meeting was held to "literally brainstorm the various options and scenarios" in the event of a takeover of the Park, which was anticipated to occur after Labour Day.<sup>790</sup> The situation at a current First Nations incident at Gustafsen Lake in British Columbia was discussed.<sup>791</sup> The meeting also discussed differences between the West Ipperwash situation and the Park. Inspector Carson testified:

[T]he difference being, you know, rather simply being that...the issue in West Ipperwash was a civil dispute between the elected Band at...Kettle Point and the cottage owners over surrender of land years ago, and the issue of the potential occupation of Ipperwash Provincial Park was an illegal occupation.<sup>792</sup>

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<sup>781</sup> Examination in chief of Marcel Beaubien, January 19, 2006, p. 59.

<sup>782</sup> Examination in chief of John Carson, May 12, 2005, pp. 174-75.

<sup>783</sup> Referred to in Inspector Carson's notes as "Tex": Examination in chief of John Carson, May 12, 2005, pp. 175-76.

<sup>784</sup> Examination in chief of John Carson, May 12, 2005, pp. 175-76.

<sup>785</sup> Examination in chief of John Carson, May 12, 2005, p. 176.

<sup>786</sup> Examination in chief of John Carson, May 12, 2005, pp. 176-77.

<sup>787</sup> Examination in chief of John Carson, May 16, 2005, p. 10.

<sup>788</sup> Examination in chief of John Carson, May 12, 2005, pp. 176-77, 187.

<sup>789</sup> Examination in chief of John Carson, May 16, 2005, p. 10.

<sup>790</sup> Examination in chief of John Carson, May 12, 2005, p. 188. See generally, pp. 188-94. See also Examination in chief of John Carson, May 16, 2005, p. 10.

<sup>791</sup> Examination in chief of John Carson, May 12, 2005, p. 191.

<sup>792</sup> Examination in chief of John Carson, May 12, 2005, p. 192.



Inspector Carson's notes show the meeting discussed that a land claim at the Park was "not an issue legally".<sup>793</sup> This had been the view of the OPP officers at the time of their meeting with Marcel Beaubien on August 11. Superintendent Parkin testified that it was "certainly" the belief of the group at that time that title to the Park was not in controversy.<sup>794</sup>

The general plan discussed at the August 29 meeting in the event of a takeover of the Park was to maintain OPP officers in the Park. If OPP personnel had to withdraw from the Park, they were to secure the area and control the Park's outer perimeter.<sup>795</sup> In either of these scenarios it was planned that the MNR would proceed to apply for a court injunction against the occupation.<sup>796</sup>

The possibility of attempting to prevent occupiers from entering the Park was considered not to be viable. In his testimony Inspector Carson said, "[O]nce the Park is closed, we have 109 acres of property that is literally pine trees, and at what point in time do we determine it's no longer necessary to protect 109 acres of pine trees?"<sup>797</sup>

On August 29 Inspector Carson spoke to Inspector Dave Guy of the RCMP in British Columbia at Gustafsen Lake. The RCMP had encountered gunfire there.<sup>798</sup> Carson was aware of the incident, which had been covered in the national media. Carson stated, "[I]t would certainly be easy to believe that there could be communication or people moving back and forth across the country that would have some intimate knowledge...[W]e wanted to take advantage of whatever they were learning."<sup>799</sup> Inspector Carson also testified:

The potential concern was the behaviour in Gustafsen Lake, if it was seen to have brought a successful outcome from the perception of the occupiers, may be something that could be emulated at Ipperwash. And what concerned me, there was clearly in Gustafsen Lake in...the days just proceeding Labour Day weekend, clearly the RCMP had come under fire from...the occupiers in Gustafsen Lake and that was certainly something I was very mindful of.<sup>800</sup>

On August 31 at 8:00 a.m., Inspector Carson held a meeting at OPP District Headquarters to discuss an OPP contingency plan with Superintendent Parkin.<sup>801</sup>

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<sup>793</sup> Examination in chief of John Carson, May 12, 2005, p. 192.

<sup>794</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 136; see also Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, pp. 44-45.

<sup>795</sup> Examination in chief of John Carson, May 16, 2005, pp. 11-12. A third scenario of an 'occupation' by a very small number of persons was also considered, with the OPP intention being to arrest any such persons for trespass and remove them from the site.

<sup>796</sup> Examination in chief of John Carson, May 16, 2005, pp. 11-12. See at p. 12: "It was always the position of the Provincial Police that the Ministry of Natural Resources would be required to proceed with an injunction application."

<sup>797</sup> Examination in chief of John Carson, May 16, 2005, pp. 12-13.

<sup>798</sup> Examination in chief of John Carson, May 12, 2005, pp. 178-80.

<sup>799</sup> Examination in chief of John Carson, May 12, 2005, pp. 180-81.

<sup>800</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, p. 188; see also Cross-examination of John Carson by Mr. Falconer, June 29, 2005, pp. 132-38.

<sup>801</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 150-51.

Superintendent Parkin testified that as Inspector Carson had been the Incident Commander regarding events at Ipperwash since 1993, he was “the perfect fit, if you will, to continue in that role”.<sup>802</sup> Carson was given the assignment of preparing a contingency plan.<sup>803</sup> Parkin said that although he was Carson’s “immediate supervisor”, Carson as Incident Commander had “full decision making authority” with respect to police operational matters at Ipperwash.<sup>804</sup> He continued:

...[I]t’s a very tough position to be in as an incident commander; you have to rely on your instincts and the information that you’re provided and make the best decisions that you can. After you make those decisions...we...live with the outcomes, but it’s not for me as a superintendent sitting in my house to try and second-guess decisions that are being made at the front line, because I’m not there.<sup>805</sup>

Parkin added:

[A]t every incident something happens that you have absolutely no expectation of happening; be it communications breaking down. And when I’m talking communications it could be as simple as phone systems or radios in the field. And you have to adapt, you have to use your knowledge and skills to...work around some of those situations. So...while you try and handle all the occurrences the same way, I think you...have to always be prepared that nothing is ever going to go smoothly. There’s always going to be some problems. It’s the nature of the business.<sup>806</sup>

### **(3) THE SEPTEMBER 1 OPP PLANNING MEETING**

By September 1 it was Superintendent Parkin’s view that there was a “50/50” chance that an occupation of the Park would occur.<sup>807</sup> On that date Inspector Carson held another planning meeting at District Headquarters in London.<sup>808</sup> It was attended by the participants in the August 29 meeting and numerous other OPP personnel, including Sergeant Brad Seltzer, a negotiator,

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<sup>802</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 151.

<sup>803</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 151.

<sup>804</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 152.

<sup>805</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 153.

<sup>806</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 154-55.

<sup>807</sup> Examination in chief of Anthony Parkin, February 6, 2006, p. 159. See also Cross-examination of Anthony Parkin by Mr. Falconer, February 8 2006, p. 90:

It was a possibility that had to be taken seriously from a police perspective because clearly we had a community in the area that was not pleased in general with the situation at the Military Base and what the OPP was doing for their safety. And having his information so far in advance of...the Labour Day weekend, the reliability was untested but we couldn’t overlook it and we could not - afford to be prepared [*sic*]. So that’s why all these procedures were done and this is why we had Operation Maple.

<sup>808</sup> Examination in chief of John Carson, May 12, 2005, p. 214-15.

and Sergeant Doug Babbitt, the media relations co-ordinator for the Western Ontario region of the OPP.<sup>809</sup>

The meeting reviewed matters previously discussed and then broke into groups, with each being responsible for the preparation of part of an overall OPP plan.<sup>810</sup> Superintendent Parkin testified that the 'Project Maple' plan ultimately compiled was "basically the standard operation type of plan which could be put together and fit into any or many similar types of occurrences".<sup>811</sup>

Inspector Carson stated at the beginning of the meeting that the OPP's objective would be to "contain and negotiate a peaceful solution".<sup>812</sup> He chose this objective and this wording.<sup>813</sup> Carson explained that this was "typical of the expectation we would have of our people", in "any barricaded or armed type situation that we would normally encounter".<sup>814</sup> In the event of an occupation of the Park by a significant number of people, they would be asked by MNR officials, and if necessary OPP officers, to leave peaceably.<sup>815</sup> If the occupiers did not comply the MNR would seek a court injunction to have the occupiers removed.<sup>816</sup> It was discussed in the September 1 meeting that:

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.<sup>817</sup>

Detective Sergeant Mark Wright testified that at this meeting, "[T]here was absolutely no doubt in my mind in any way that that Park belonged to the Province of Ontario."<sup>818</sup> He believed the Park was to be distinguished from CFB Ipperwash, where there was "no doubt in my mind...that they had ownership and that during World War II it had been

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<sup>809</sup> Exhibit P-421; Examination in chief of John Carson, May 16, 2005, pp. 13-18.

<sup>810</sup> Examination in chief of John Carson, May 16, 2005, pp. 18-19, 47-48, 83-84.

<sup>811</sup> Cross-examination of Anthony Parkin by Mr. Falconer, February 8, 2006, p. 91.

<sup>812</sup> Exhibit P-421; Examination in chief of John Carson, May 16, 2005, p. 19. This was also stated at the outset of the OPP's binder of its written operational plan prepared on September 2, entitled 'Project Maple': see Exhibit P-424; see also Examination in chief of Mark Wright, February 11, 2006, pp. 182-83, 209-10.

<sup>813</sup> Cross-examination of John Carson by Mr. Klippenstein, June 7, 2005, p. 197.

<sup>814</sup> Examination in chief of John Carson, May 16, 2005, p. 20. Reference to this objective was also included in the portion of the OPP's ultimate written operational plan, Project Maple, in the portion of it prepared by the Tactics and Rescue Unit with respect to its functions. See Exhibit P-424. Inspector Carson explained that this would be standard to any TRU assignment: see Examination in chief of John Carson, May 16, 2005, pp. 124-25.

<sup>815</sup> Exhibit P-421; Examination in chief of John Carson, May 16, 2005, p. 22.

<sup>816</sup> Exhibit P-421; Examination in chief of John Carson, May 16, 2005, p. 22; Examination in chief of Mark Wright, February 21, 2006, pp. 178, 187. In a telephone conversation with Inspector Robertson at 10:42 a.m. on the morning of September 5, Wright said, "There's no doubt that we've had this researched, that Park belongs to...the Province of Ontario...Absolutely no doubt whatsoever about that." See Examination in chief of Mark Wright, February 22, 2006, pp. 121-22. Notwithstanding this belief he added, "[W]e weren't going to do anything until we got an injunction": see p. 123. In cross-examination Carson accepted that all of the Project Maple planning was "predicated on the province getting an injunction": see Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 22.

<sup>817</sup> Exhibit P-431, p. 5; Examination in chief of John Carson, May 16, 2005, pp. 80-81.

<sup>818</sup> Examination in chief of Mark Wright, February 21, 2006, p. 178.

expropriated...[T]hey had, at the very least, colour of right to the property”.<sup>819</sup> Similarly, the TRU leader, Sergeant Kent Skinner, testified it was his understanding that the Park belonged to the Province of Ontario, and that Inspector Carson regarded any occupation of the Park as being illegal.<sup>820</sup>

Inspector Carson considered that “the best we could hope for is to see a court order 24 hours later”.<sup>821</sup> The OPP operational manual for a possible occupation of the Park included a schedule of criminal charges that could be laid in the event that an injunction was resisted, and in other circumstances.<sup>822</sup>

It was discussed in the September 1 meeting that pending the determination of the injunction application, “The problem is to keep the people out, rather than trying to get them out.”<sup>823</sup> Inspector Carson explained that this referred to trying to “manage the area to prevent additional people [coming in] after the fact”.<sup>824</sup> It was discussed that the OPP had “to maintain security of the fence line around the Park”, and control vehicular traffic on the roads bordering the Park on the west and south.<sup>825</sup> Provision was made for the establishment of four checkpoints at various points on roads around the Park.<sup>826</sup> Provision was made for a marine boat to monitor potential access to the Park by water.<sup>827</sup> It remained the intention of the OPP to keep officers in the Park, who would “stay close by” and maintain “visibility”.<sup>828</sup>

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<sup>819</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 67-68.

<sup>820</sup> Cross-examination of Kent Skinner by Ms. Perschy, April 19, 2006, p. 306.

<sup>821</sup> Exhibit P-421; Examination in chief of John Carson, May 16, 2005, p. 22.

<sup>822</sup> Exhibit P-424, p. 32. See also Examination in chief of John Carson, May 16, 2005, pp. 136-37.

<sup>823</sup> Exhibit P-421; see also Examination in chief of Mark Wright, February 11, 2006, pp. 183-84.

<sup>824</sup> Examination in chief of John Carson, May 16, 2005, pp. 22, 75-76, 97-98; see also Exhibit P-421, pp. 4, 6.

<sup>825</sup> Exhibit P-421.

<sup>826</sup> Exhibit P-424, p. 6.

<sup>827</sup> Examination in chief of John Carson, May 16, 2005, pp. 79-80.

<sup>828</sup> Exhibit P-421. Examination in chief of John Carson, May 16, 2005, p. 32, 33. Exhibit P-421 indicates at p. 6 that Carson stated, “When we approach the natives to leave, we always stay in their face.” In his evidence Carson did not dispute this. He said he wanted officers to “cohabit” with the occupiers so that they could be “up close and being interacting [*sic*] with them and trying to keep this thing as calm as we could”. This also involved the prospect of maintaining “dialogue” with the occupiers. See Examination in chief of John Carson, May 16, 2005, pp. 95-97. Similarly, Exhibit P-421 refers at p. 7 to Carson stating in the September 1 meeting, “Does not want to be in a verbal barrage when they are sitting in there. You can cohabitate if you want, without any major problems, that would be fine. The more in the face you are, the less risk you are.” See Examination in chief of John Carson, May 16, 2005, pp. 100-01. Detective Sergeant Wright testified, “My recollection...is that Inspector Carson wanted us – if we were going to be in the Park and this was going to take place, then he didn’t want the officers at one corner of the Park and the occupiers at another corner of the Park. He wanted them in and amongst them, if at all possible, and to engage in conversation and...try to open up this communication so we...could deal with the situation.” See Examination in chief of Mark Wright, February 21, 2006, pp. 199-200; see also pp. 201-02.

Mark Wright also raised the option of arresting occupiers on sight when they came into the Park: see Exhibit P-421, p. 7, and Examination in chief of John Carson, May 16, 2005, pp. 102-03. Carson accepted that this was on the assumption that such persons had been asked to leave and refused. In his testimony Wright initially did not recall anything further about this, but subsequently stated that he believed this referred to a scenario in which a small number of persons entered the Park: see Examination in chief of Mark Wright, February 21, 2006, pp. 202-03, 219-20, 177-78.

Inspector Carson understood that it would be “difficult” to prevent people from entering the Park via CFB Ipperwash. He believed the OPP did not have authority to prevent people from entering CFB Ipperwash.<sup>829</sup> Carson testified that the OPP viewed the Park as “a distinctly separate issue”.<sup>830</sup>

Inspector Carson did not know how long the occupation would continue.<sup>831</sup> Project Maple indicated that OPP officers should expect to stay in Forest for at least a week once the occupation commenced.<sup>832</sup>

It was made clear that occupiers of the military base had weapons. Although there had “never been any situation where the OPP have been challenged with a firearm”, it was stated that “outsiders” were a concern, and there was a potential for violence.<sup>833</sup> Inspector Carson said he “really didn’t believe” that occupiers who had long resided in the area would use firearms against OPP officers, since this “certainly had not been our experience”.<sup>834</sup> Intelligence information suggested there were other persons with various backgrounds at the base “that we couldn’t be so confident of”.<sup>835</sup> Carson testified:

[Y]ou have less ability to know the individuals or...have enough information on the individuals to really rely on any level of predictability of behaviour given some of the new influence. It certainly...was starting to change.<sup>836</sup>

John Carson said the OPP’s apprehension of a potential for violence was based on the possible behaviour of these outsiders, the violence involved in the takeover of the BUA, and “some of the behaviours with vehicles that had occurred over the ongoing period between the military and the occupiers”.<sup>837</sup> As of September 1 the OPP’s planning including provisions for canine units, ambulances<sup>838</sup> and the availability of semi-automatic rifles in the trunks of ERT

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<sup>829</sup> Examination in chief of John Carson, May 16, 2005, pp. 77-78. See also Examination in chief of John Carson, May 17, 2005, pp. 189-90.

<sup>830</sup> Examination in chief of John Carson, May 17, 2005, pp. 190-91.

<sup>831</sup> Examination in chief of John Carson, May 16, 2005, p. 66.

<sup>832</sup> Examination in chief of John Carson, May 16, 2005, p. 139. The next morning Inspector Carson stated the officers should “plan on being here a few days”, which he testified was “optimistic”: see p. 241.

<sup>833</sup> Exhibit P-421; see generally, Examination in chief of John Carson, May 16, 2005, pp. 23-27. Detective Sergeant Wright expressed a concern about “outsiders” in the September 1 meeting: see Exhibit P-421, p. 6, and Examination in chief of John Carson, May 16, 2005, p. 97; see also Examination in chief of Mark Wright, February 21, 2006, pp. 201-02. Wright testified that in contrast to people coming from outside the area, “[W]e had had a reasonable working relationship with the people on CFB Ipperwash.”

<sup>834</sup> Examination in chief of John Carson, May 16, 2005, pp. 25-26; see also Cross-examination of John Carson by Ms. Jones, June 1, 2005, pp. 143-45; Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, pp. 147-48.

<sup>835</sup> Examination in chief of John Carson, May 16, 2005, pp. 26, 70.

<sup>836</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, p. 147.

<sup>837</sup> Examination in chief of John Carson, May 16, 2005, pp. 26-27.

<sup>838</sup> Examination in chief of John Carson, May 16, 2005, pp. 78-79. As to canine units, see also Exhibit P-424, p. 5 (reference to “K-9”). With respect to ambulance service, see also Exhibit P-424, p. 4.

vehicles.<sup>839</sup> Provision was also made for arrest teams, prisoner vans and cameras for photographing prisoners.<sup>840</sup> It was also discussed, and subsequently arranged, for Forest Community Centre to be used to process a number of prisoners in excess of the physical capacity of the Forest OPP Detachment.<sup>841</sup>

The OPP's intention was to deploy four Emergency Response Teams, comprised of 15 officers each, to address a Park occupation.<sup>842</sup> The ERT's would report to Sergeant Korosec.<sup>843</sup> It was intended that two ERT's would be deployed within the Park, to "cohabit" with the occupiers.<sup>844</sup> Officers would work 12 hours shifts and stay in the Forest area.<sup>845</sup> All ERT members were to report first to Forest Detachment for a briefing, and not the incident site.<sup>846</sup>

Members of the ERT and TRU were to report directly to their team leaders, Sergeant Korosec<sup>847</sup> and Sergeant Kent Skinner,<sup>848</sup> respectively. The officers responsible for the ERT and TRU would report directly to Inspector Carson, or to Carson through his assistant, Detective

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<sup>839</sup> Exhibit P-421, p. 6; Examination in chief of John Carson, May 16, 2005, pp. 94-95. See also Exhibit P-424 at p.4. There was also discussion on September 1 that Matheson Drive could be a "tunnel" in which OPP officers might be unable to escape if "they were confronted or found themselves under fire": see Examination in chief of John Carson, May 16, 2005, p. 102, and Exhibit P-421, p. 7.

<sup>840</sup> Examination in chief of John Carson, May 16, 2005, pp. 105-06, and Exhibit P-421, p. 7. See also Exhibit P-424, pp. 7, 28-29, 31.

<sup>841</sup> Exhibit P-421, p. 5. See also Exhibit P-424, at p. 27; Examination in chief of John Carson, May 16, 2005, pp. 137-38.

<sup>842</sup> Examination in chief of John Carson, May 16, 2005, pp. 51-52, 54-55, 104. Carson hoped it would not be necessary to deploy local police resources since they "already [had] a detachment to run": see pp. 54-55. It is indicated in Exhibit P-424, at p. 7, that the maximum number of ERT officers available was 58. Carson explained that some officers may not have been available because of vacations, other assignments, or other reasons: see Examination in chief of John Carson, May 16, 2005, pp. 123-24.

<sup>843</sup> Examination in chief of Mark Wright, February 21, 2006, pp. 193, 195.

<sup>844</sup> Exhibit P-421; Examination in chief of John Carson, May 16, 2005, pp. 74-76. It was also discussed, however, that two ERT teams of 12 officers each would be deployed to maintain an inner perimeter around the Park: see Exhibit P-421, p. 6, and Examination in chief of John Carson, May 16, 2005, pp. 87-88. Exhibit P-424, at p. 4, refers to a total of 24 officers maintaining the inner perimeter. See also Examination in chief of John Carson, May 16, 2005, p. 113.

<sup>845</sup> Exhibit P-421, p. 5; Examination in chief of John Carson, May 16, 2005, pp. 82-83. See also Project Maple, Exhibit P-424, p. 7.

<sup>846</sup> Exhibit P-421, at p. 6, reads:

No one should assume that this incident will occur a certain way. There may be many variables that could change any situation. There is no hurry to contain the Park when and if the natives take over the Park. All ERT members will be reporting to Forest Detachment in the beginning for a briefing, not the incident sight [*sic*]. When they report to Forest Detachment an information sheet will be completed prior the officers leaving Forest Detachment. If it is the worse place [*sic*] scenario, then the logistics can be obtained on the run.

See Examination in chief of John Carson, May 16, 2006, p. 86. As to preparing for both less and more serious scenarios, see also See Examination in chief of John Carson, May 16, 2005, p. 101. As to the initial attendance at Forest Detachment, see also Project Maple, Exhibit P-424, p. 4.

<sup>847</sup> Examination in chief of Mark Wright, February 21, 2006, pp. 195-96.

<sup>848</sup> Examination in chief of Mark Wright, February 22, 2006, p. 136.

Sergeant Wright.<sup>849</sup> Carson was to report to Superintendent Parkin and Chief Superintendent Coles.<sup>850</sup>

It was also discussed that the OPP's London TRU would be deployed immediately in the event of an occupation, but kept at Pinery Park on standby.<sup>851</sup> Acting Staff Sergeant Kent Skinner was to be the TRU Incident Commander, and his second in command was to be acting Sergeant Kenneth Deane.<sup>852</sup> The group considered having a second team available to relieve the first. This was provided for in the OPP's ultimate operational plan.<sup>853</sup>

The OPP Forest Detachment was to be used exclusively for the purposes of OPP operations regarding an occupation of the Park, with policing in the area administered from the OPP Grand Bend detachment.<sup>854</sup> A Command Post would be established in a mobile command trailer to be taken to Forest from District General Headquarters in London.<sup>855</sup> A Tactical Operations Centre ("TOC") was to be established at a Ministry of Natural Resources parking lot a short distance to the west of the Park.<sup>856</sup> That location included separate radio facilities for the ERT and TRU.<sup>857</sup>

A separate room and telephone line was to be put in place for Seltzer's purposes as the assigned negotiator.<sup>858</sup> Arrangements were made for two negotiating teams to be available on 12 hour rotations.<sup>859</sup>

Inspector Carson held a short meeting for MNR personnel on September 1. According to Peter Sturdy, the meeting was held at the OPP detachment in London. He understood the purpose of the meeting was to give the MNR a briefing on what the OPP's expectations were, and to discuss the roles of the MNR and OPP in the event of an occupation.<sup>860</sup> Sturdy recalled that Ron Baldwin, Ed Vervoort and Les Kobayashi were also present.<sup>861</sup> Sturdy testified that what struck him upon entering the meeting room was a blackboard with the words on it –

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<sup>849</sup> Examination in chief of Mark Wright, February 21, 2006, pp. 193, 195.

<sup>850</sup> Examination in chief of Mark Wright, February 21, 2006, pp. 190-91.

<sup>851</sup> Exhibit P-421, pp. 2, 5; Examination in chief of John Carson, May 16, 2005, pp. 29-32, 84; Examination in chief of Mark Wright, February 22, 2006, p. 136.

<sup>852</sup> Examination in chief of John Carson, May 16, 2005, p. 126.

<sup>853</sup> Examination in chief of John Carson, May 16, 2005, p. 31; Project Maple, Exhibit P-424.

<sup>854</sup> Exhibit P-421; Examination in chief of John Carson, May 16, 2005, pp. 21, 228.

<sup>855</sup> Exhibit P-421, p. 5; Examination in chief of John Carson, May 16, 2005, p. 82.

<sup>856</sup> Examination in chief of John Carson, May 16, 2005, pp. 113-15.

<sup>857</sup> Examination in chief of John Carson, May 16, 2005, pp. 126-27.

<sup>858</sup> Exhibit P-421, p. 6; Examination in chief of John Carson, May 16, 2005, pp. 86-87, 138.

<sup>859</sup> Examination in chief of John Carson, May 16, 2005, pp. 128-30.

<sup>860</sup> Examination in chief of Peter Sturdy, October 18, 2005, p. 278ff, see also Exhibit P-782: "Inspector Carson made it clear that the OPP sees this as a policing matter and it's the MNR's role to be one of assisting with the obtaining of the injunction..."

<sup>861</sup> Examination in chief of Peter Sturdy, October 18, 2005, p. 279. Marcel Beaubien testified that he was never informed of this meeting: see Examination in chief of Marcel Beaubien, January 19, 2006, pp. 68-69.

“something to the effect of resolution through peaceful negotiations”.<sup>862</sup> Sturdy also said, “[T]hey seemed to have pretty good information or intelligence information that there was a strong likelihood the Park would be occupied either Monday or Tuesday and this meeting was occurring Friday.”<sup>863</sup> Peter Sturdy said Inspector Carson described the occupation as a “policing matter”, and that the MNR role was in a “support capacity”. Sturdy understood Carson’s expectations to be as follows:

He’d be looking at us for instance, I think the injunction came up again, to secure an injunction, to assist with communications certainly if an occupation took place there would be media and questions around the Park. And the Park facts and figures and things. And I think it was also to help with, sort of, logistical support and information about the Park and what type of equipment we might have had stored there and so on and so forth, accommodation, food, things like that.<sup>864</sup>

On Saturday, September 2, Inspector Carson assembled a binder of the OPP’s written operational plans, entitled ‘Project Maple’.<sup>865</sup> Inspector Carson said the name “was a pretty simple concept”, having to do with “all the maple trees in the area”.<sup>866</sup> Carson prepared 15 copies and kept control of the written plan’s distribution.<sup>867</sup>

In addition to the operational matters referred to above, Project Maple provided for consultation with “area stakeholders...throughout the operation of the plan”.<sup>868</sup> These “stakeholders” were to include local municipal officials and the Kettle and Stony Point First Nation.<sup>869</sup>

On the evening of September 3, Inspector Carson called Chief Superintendent Coles to update him.<sup>870</sup> He arranged for video cameras to be installed in two buildings in the Park for surveillance purposes.<sup>871</sup> Carson spoke to Detective Inspector Hutchinson at Gustafsen Lake in British Columbia.<sup>872</sup> Carson also spoke to Peter Harding, the superintendent for St. John Ambulance in London.<sup>873</sup> Carson sought to obtain a trailer he could use to provide shelter for ERT officers at the TOC. Harding agreed to provide it.<sup>874</sup> Carson also received a report from

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<sup>862</sup> Examination in chief of Peter Sturdy, October 18, 2005, p. 280.

<sup>863</sup> Examination in chief of Peter Sturdy, October 18, 2005, p. 281.

<sup>864</sup> Examination in chief of Peter Sturdy, October 18, 2005, p. 281.

<sup>865</sup> Examination in chief of John Carson, May 16, 2005, pp. 108-09; Detective Sergeant Wright was also involved in its preparation: see Examination in chief of Mark Wright, February 21, 2006, pp. 203-04.

<sup>866</sup> Examination in chief of John Carson, May 12, 2005, p. 216.

<sup>867</sup> Examination in chief of John Carson, May 16, 2005, pp. 106, 109-10, 140-43; Exhibit P-425.

<sup>868</sup> Exhibit P-424, p. 4.

<sup>869</sup> Examination in chief of John Carson, May 16, 2005, pp. 112-13.

<sup>870</sup> Examination in chief of John Carson, May 16, 2005, pp. 110, 144-46.

<sup>871</sup> Examination in chief of John Carson, May 16, 2005, pp. 146-48.

<sup>872</sup> Examination in chief of John Carson, May 16, 2005, pp. 148-50.

<sup>873</sup> Examination in chief of John Carson, May 16, 2005, p. 150.

<sup>874</sup> Examination in chief of John Carson, May 16, 2005, pp. 151-53, 154.



Sergeant Korosec that native people were piling pallets on Matheson Drive, and appeared to be preparing for a bonfire.<sup>875</sup>

On September 4 at 12:45 p.m. Inspector Carson spoke with Sergeant Richardson. Richardson informed him of an assault on the beach, and an occurrence in which OPP officers had been surrounded.<sup>876</sup> On the afternoon of September 4 Carson also began initiating arrangements to have the use of an armoured military vehicle for use in the event that a rescue of OPP personnel was necessary.<sup>877</sup> Carson had been informed by Inspector Hutchinson at Gustafsen Lake that it had been necessary for police to use such vehicles there to remove equipment and people safely.<sup>878</sup>

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<sup>875</sup> Examination in chief of John Carson, May 16, 2005, p. 153.

<sup>876</sup> Examination in chief of John Carson, May 16, 2005, pp. 154-55.

<sup>877</sup> Examination in chief of John Carson, May 16, 2005, pp. 156-57.

<sup>878</sup> Examination in chief of John Carson, May 16, 2005, pp. 157-58.

## CHAPTER 6

# TAKING BY FORCE II: THE TAKING OF THE PARK

*From the examination in chief of David George:*<sup>879</sup>

Q: And so you stayed overnight in the Park and what happened on the morning of September 5th? Where did you stay actually when you stayed in the Park?

A: Stayed by the fire.

Q: By the Park store?

A: Yeah.

Q: Okay.

A: In the morning time I -- I remember knocking down some more signs and stuff. I knocked down a couple of signs.

Q: What kind of signs did you knock down?

A: Just -- just park signs.

Q: And why did you knock down the park signs?

A: Because it -- it wasn't a park no more.

### 6.01 IPPERWASH PROVINCIAL PARK

Ipperwash Provincial Park is Ontario's fourth oldest provincial park.<sup>880</sup> It was operated by the province for the public benefit for 57 years, from 1938 to 1995. Prior to its closure in 1995, it was one of Ontario's most popular provincial parks.<sup>881</sup> The Park provided camping for

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<sup>879</sup> October 19, 2004, pp. 175-76.

<sup>880</sup> Examination in chief of Les Kobayashi, October 25, 2005, p. 148; Examination in chief of Ron Vrancart, October 27, 2005, p. 28.

<sup>881</sup> Examination in chief of Les Kobayashi, October 25, 2005, p. 148.

over 50,000 persons annually, and day use for approximately 16,000 additional persons each year.<sup>882</sup>

In his testimony in this Inquiry, the Park's former Superintendent, Les Kobayashi, accepted that the Park had over many years become an established seasonal community that could be likened to a village or hamlet.<sup>883</sup> He provided a 'guestimate' that 20 to 30 per cent of campers were persons who used the Park repeatedly on a long term basis during the camping season.<sup>884</sup> Following Labour Day, permits for camping were no longer sold but the Park continued to be extensively used by the public on a casual basis.<sup>885</sup> The Superintendent said that on a fine fall weekend up to 300 people might use the Park, and approximately 5,000 people would use it between Labour Day and the end of November.<sup>886</sup> This level of fall day use of the Park had continued throughout his time at Ipperwash.<sup>887</sup>

In the economic dimension, the Park's assets were valued by Ontario in 1995 at approximately 4.1 million. Revenues by the end of August 1995 were \$194,652.91 for that season. The Park also generated substantial employment and provided a market for numerous area businesses.<sup>888</sup>

## 6.02 THE LATE AFTERNOON CONFRONTATION

Constable Jacklin testified that on the afternoon of September 4 at approximately 4:00 p.m., he and his partner, Constable Myers, attended at the end of Matheson Drive. Jacklin indicated that there had been a large gathering of First Nations people there the night before, and a large bonfire. In Jacklin's opinion the bonfire had created "a bit of a hazard". He and Myers attended at the location and began removing "pieces of burned wood, with nails and that sort of thing."<sup>889</sup> Jacklin indicated that they had been at the location for a very short period of time when a black Trans-Am automobile operated by Roderick George arrived. Roderick George was commonly known by the nickname 'Judas'. Stewart George, commonly known by the nickname "Worm", was a passenger in the vehicle. Jacklin described the encounter:

The vehicle came down the beach at a high rate of speed, went between the concrete blocks that were kind of separating Matheson Drive from the Army Camp. The vehicle came to a sliding stop in front of our cruiser. The passenger in the vehicle who I later recognised or identified as Stuart, or Worm George, he's occupying the right front

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<sup>882</sup> Examination in chief of Les Kobayashi, October 25, 2005, p. 150; Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, pp. 147-48.

<sup>883</sup> Examination in chief of Les Kobayashi, October 20, 2005, pp. 283-84; see also Examination in chief of Les Kobayashi, October 24, 2005, pp. 106-07: "...[W]e were dealing with a small village or hamlet with a couple of thousand or three thousand people at times there..."

<sup>884</sup> Peter Sturdy gave evidence to the same effect: see Examination in chief of Peter Sturdy, October 18, 2005, p. 200.

<sup>885</sup> Examination in chief of Peter Sturdy, October 18, 2005, p. 259ff.

<sup>886</sup> Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, pp. 157-58; Examination in chief of Les Kobayashi, October 20, 2005, p. 285.

<sup>887</sup> Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, p. 158.

<sup>888</sup> Exhibit P-796; Cross-examination of Peter Sturdy by Ms. McAleer, October 19, 2005, pp 198-199.

<sup>889</sup> Examination in chief of Wayne Jacklin, April 25, 2006, pp. 85-86.

passenger seat. As they come to a stop, he takes his door, slams it against the front end of the cruiser and then Judas George and Worm George both exit the vehicle.<sup>890</sup>

Constable Jacklin said some minor damage was caused to the left front corner of the OPP cruiser's bumper. He observed that there were also two females in the back of the car. He described the group as "highly intoxicated".<sup>891</sup> Jacklin said the occupants immediately started yelling at the officers that the officers were on "their land", and ordered them off Matheson Drive. Jacklin said he tried to talk to them and "use as much diplomacy as I could under the circumstances", to no avail. He also said a number of other First Nations people started to gather around. "The situation started to escalate for potential for violence and called for some back-up," he said.<sup>892</sup>

At approximately 4:00 pm Constable Myers contacted Sergeant Korosec by radio and requested assistance. When Korosec arrived he had a conversation with Roderick George.<sup>893</sup> Sergeant Korosec observed a police cruiser very close to another vehicle. He also observed that the cruiser had a dent in its door.<sup>894</sup> Korosec said Roderick George did most of the talking.<sup>895</sup> According to Korosec:

Roderick was very very agitated at the time. We were very close together. If I recall we're almost within a couple of feet of each other - nose to nose, and he was very loud and yelling at me. I don't know - I think maybe at one point I tried to calm him down and says, you know, I'm right here. There's no need to yell.<sup>896</sup>

Sergeant Korosec said Roderick George indicated that both Matheson Drive and the Park belonged to the Stoney Point group, and that the police had no jurisdiction. Korosec tried to explain that Matheson Drive was a township road subject to the provisions of the *Highway Traffic Act*. George requested a meeting with Korosec's superiors. Korosec gave him Inspector Carson's card and indicated that, "[W]e'd be willing to meet at any time." George replied that he would contact Sergeant Bouwman and set up a meeting.<sup>897</sup>

Constable Jacklin testified that he spoke with Stewart George while Sergeant Korosec was speaking with Roderick George. Jacklin said Stewart George said to him, "[H]ow many

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<sup>890</sup> Examination in chief of Wayne Jacklin, April 25, 2006, p. 87. See Examination in chief of Stewart George, November 2, 2004, p. 50, with reference to the allegation that the car door hit the OPP cruiser: "They said it did, but I don't think it did." Roderick George testified that Stewart George's door had hit the cruiser, "I think on the front bumper if I'm not mistaken, and almost hit another, like an officer." Roderick George explained that the latches on the door were defective, causing it to fly open: Examination in chief of Roderick George, November 23, 2004, pp. 108-109.

<sup>891</sup> Examination in chief of Wayne Jacklin, April 25, 2006, p. 87. Roderick George admitted he was intoxicated that afternoon: see Examination in chief of Roderick George, November 23, 2004, p.113. Stewart George also admitted that he had been drinking on September 4, to the extent that he still had a hangover on September 6: see Cross-examination of Stewart George by Mr. Downard, November 24, 2004, pp. 213-214.

<sup>892</sup> Examination in chief of Wayne Jacklin, April 25, 2006, pp. 87-88.

<sup>893</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 16-17.

<sup>894</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 17.

<sup>895</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 17.

<sup>896</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 20.

<sup>897</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 17-18.

rifle sights do you think you're in", and referred to the sand dunes. Jacklin said he tried to make light of the situation and said, "I hope they're a good shot because your head is between mine and theirs". Jacklin thought his comment defused the situation a little bit.<sup>898</sup> Stewart George denied having made the statement.<sup>899</sup>

Constable Neil Whelan testified that on the afternoon of September 4 he and Constable Japp were dispatched to assist a cruiser attending at the beach area of Matheson Drive. He said, "[T]here was quite a commotion when we got down there." He saw other officers around a car, dealing with the occupants.<sup>900</sup> He and Japp provided security for the other officers. He said many people were arriving from the CFB Ipperwash, and a crowd was starting to build. People from the Park also started to gather, watching the activity with the car.<sup>901</sup> Whelan then observed a vehicle backing up very slowly to his position. He described what happened next as follows:

Then there were two First Nations, they were males, one was alongside the trunk, the other was right at the back of the trunk. He opened up the trunk and he reached in and he started to bring out something. And that's when I first got a glimpse of, whether it was a butt or the stock of what I believed to be a firearm. At the same point he was bringing it out, he turned around and looked at me, 'cause I was staring right at him. And we sort of stared at each other for, well, it seemed like a long time, but it was probably only seconds. Then he quickly dropped it into the trunk and took his hands out of the trunk. The other First Nations person that was standing along side the trunk motioned with his hands in a downward motion. I took it from that [*sic*] was to leave it in the trunk.<sup>902</sup>

Constable Whelan indicated that after the individual closed the car trunk, he and his partner remained at the scene for approximately 15 to 20 minutes. According to his notes, he notified Sergeant Korosec of the incident at approximately 4:45 p.m. Whelan and his partner then returned to patrolling the Park.<sup>903</sup>

Constable Mike Dougan and Constable Mark Gransden had also responded to Constable Jacklin's request for back-up. Gransden testified that when they arrived they observed several native persons in a verbal confrontation with OPP officers. Gransden also observed Sergeant Korosec speaking with Roderick George.<sup>904</sup> Gransden said, "[I]t appeared Judas George was taking a leadership role from the native side."<sup>905</sup>

Constable Jacklin testified that while the officers had grounds to arrest the driver of the vehicle for impaired driving and the passenger for mischief for damaging the cruiser, "The way things were escalating at the time it was more prudent to disengage."<sup>906</sup>

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<sup>898</sup> Examination in chief of Wayde Jacklin, April 25, 2006, p. 89.

<sup>899</sup> Examination in chief of Stewart George, November 2, 2004, p. 52: "I know that would have gotten me a charge of uttering threats and possibly uttering death threats."

<sup>900</sup> Examination in chief of Neil Whelan, March 29, 2006, p. 113.

<sup>901</sup> Examination in chief of Neil Whelan, March 29, 2006, p. 114.

<sup>902</sup> Examination in chief of Neil Whelan, March 29, 2006, pp. 114-115.

<sup>903</sup> Examination in chief of Neal Whelan, March 29, 2006, p. 116.

<sup>904</sup> Examination in chief of Mark Gransden, March 30, 2006, pp 67-68

<sup>905</sup> Examination in chief of Mark Gransden, March 30, 2006, p. 70.

<sup>906</sup> Examination in chief of Wayde Jacklin, April 25, 2006, p. 93.

Sergeant Korosec testified that after he finished speaking with Roderick George he spoke with Constable Whelan, who informed him that he had observed what appeared to be the butt of a long gun in the trunk of a car.<sup>907</sup> Korosec remained at the scene for approximately 15 minutes after speaking to Roderick George, and then called Inspector Carson to report on the event.<sup>908</sup> Carson said that at 4:45 p.m. Korosec reported that he had been involved in a verbal confrontation with Roderick George on Matheson Drive, which included an exchange about ownership of the road.<sup>909</sup>

Detective Sergeant Mark Wright testified that he was informed by OPP officers on September 5 that a rifle butt had been spotted in the trunk of a First Nations person's vehicle, that a First Nations person had reached for it, and that this went no further after an officer reached for the handle of his handgun.<sup>910</sup> Wright was also aware of reports "throughout the summer from our campers that they'd heard firearms going off" within CFB Ipperwash.<sup>911</sup> Although he appreciated that "a firearm going off is nothing more than a firearm going off", he said he was concerned that, "[T]here were obviously weapons down in the area of the Park", and, "[T]here was a willingness to use those, potentially."<sup>912</sup> Although he did not "want to overstate this", he said that at the time this resulted in consideration being given to the TRU team being deployed "in and around the area".<sup>913</sup>

Soon after leaving the incident at Matheson Drive, Sergeant Korosec was informed that the gate at the intersection of Matheson Drive and Army Camp Road had been locked, and that a tree had been cut down across Matheson Drive near the maintenance building.<sup>914</sup>

### **6.03 THE DECISION TO TAKE THE PARK**

Marlin Simon testified that Labour Day was chosen for the commencement of the occupation, because:

It was -- I don't know it was just closed down for the year and we wouldn't have any problems with the -- like say campers or putting the -- I don't know it just seemed that it made -- it was like less...of a chance of a violent confrontation happening if it was done when the park was closed and nobody was in there.<sup>915</sup>

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<sup>907</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 19, 20-21.

<sup>908</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 18, 21.

<sup>909</sup> Examination in chief of John Carson, May 16, 2005, p. 158.

<sup>910</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 76-81. In a 10:42 a.m. telephone conversation with Inspector Robertson, Wright said, "Well...there was a confrontation about 4 o'clock yesterday afternoon. There was a guy - a native, started to bring a rifle out of the trunk of a car but...one of our ERT guys grabbed - went for his 40 cal and...they put the gun back in. So there's no doubt they've got guns."

<sup>911</sup> Examination in chief of Mark Wright, February 22, 2006, p. 81.

<sup>912</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 81-82.

<sup>913</sup> Examination in chief of Mark Wright, February 22, 2006, p. 82.

<sup>914</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 21-22.

<sup>915</sup> Examination in chief of Marlin Simon, September 28, 2004, pp. 210-11. Similarly, Stacey George testified, "From what I was told, I guess, it was like the end of summer, the end of the holiday season and it would be probably about the best time to actually do it because there'd be no one - no one else around." See Examination in chief of Stacey George, November 22, 2004, pp. 63-64.

Warren George testified that Labour Day was chosen because “the Park was closing for the season and there would be no...campers in there, and they don’t have no use for it during the winter”.<sup>916</sup>

Marlin Simon testified that he participated in the takeover of the park because his grandfather had told him there was a burial ground there.<sup>917</sup> He said that during the occupation of CFB Ipperwash, “it kind of come out that...there was...a burial ground inside there and it was supposed to be set aside and marked and it wasn’t”.<sup>918</sup> He said the takeover of the entire park was the only way they could draw attention to the concerns they had that “the burial ground in there was not set aside and marked out and that people were camping, partying and drinking and having all kinds of whatever...on a place that we consider kind of...pretty sacred”.<sup>919</sup> He also said a reason for the takeover was the existence of the water plant for CFB Ipperwash being located in the park.<sup>920</sup> Warren George, who at the time of the Inquiry’s hearings was responsible for maintaining the water plant, testified that if CFB Ipperwash had not had the benefit of that facility there would be no running water or sewage treatment.<sup>921</sup>

Warren George testified that the Park was being taken over because burial grounds in the Park “had been desecrated and...that was part of the original Aazhoodena”.<sup>922</sup> He said that his grandfather, Dan George, Sr. had told him there was a burial ground in the Park “and the government was supposed to erect a fence around it and keep care of it”.<sup>923</sup> Warren George did not know where the burial ground was located.<sup>924</sup>

Stacey George testified that there were burial grounds located in the Park. He believed he had been told this by Maynard T. George, but he was unsure whether this occurred during the occupation of CFB Ipperwash or of the Park. He also stated that his understanding was that the

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<sup>916</sup> Examination in chief of Warren George, December 8, 2004, pp. 130-31.

<sup>917</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 214. Leland White, who was 14 when the occupation of the Park, testified that he had heard his grandfather “talking about it, that it’s a sacred burial ground”. He said this was a reason why it was important for him to be in the Park, and added, “And I don’t know, because everybody else was there too”. See Examination in chief of Leland White, January 10, 2005, p. 19.

<sup>918</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 214.

<sup>919</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 216.

<sup>920</sup> Examination in chief of Marlin Simon, September 28, 2004, p. 215.

<sup>921</sup> Cross-examination of Warren George by Mr. Downard, December 9, 2004, pp. 133-37. For his part he testified, however, that while this “could have been” a reason for the takeover of the Park, “I didn’t think about it until now.”

<sup>922</sup> Examination in chief of Warren George, December 8, 2004, pp. 127-28.

<sup>923</sup> Examination in chief of Warren George, December 8, 2004, p. 128.

<sup>924</sup> Examination in chief of Warren George, December 8, 2004, p. 128; Cross-examination of Warren George by Mr. Sulman, December 9, 2004, pp. 147-48. Warren George testified that the OPP were previously informed orally, in the summer of 1995 at the Argument Hall, that people intended to come into the Park because of burial grounds there, but he was unable to say who provided this information to the OPP. He said Constable George Speck may have attended on that occasion on behalf of the OPP, but he was not sure about that: see Examination in chief of Warren George, December 8, 2004, pp. 128-30.

burial grounds were located on land on the other side of Army Camp Road outside the northwest boundary of the Park, where he believed the “original Park” had been located.<sup>925</sup>

Harley George testified that during the summer of 1995, prior to the takeover of the BUA on July 29, he went into the Park with some other people who informed him that burial sites existed right behind the Park’s water treatment facility.<sup>926</sup> Elwood George explained his participation in the occupation by saying that “I guess some of it is to do with protection of the burial sites. Some of it would be to simply take my father there...Some of it would be...I guess it - would be a way of getting attention to land issues.”<sup>927</sup>

Roderick George recalled informal discussions prior to the takeover of the Park,

About it is, in fact, part of our territory. It is -- it doesn’t matter how it was sold or how it was bought...it’s still part of Aazhoojena, no matter what’s on it, because...it was part of unceded territory and it still is, today.<sup>928</sup>

Similarly, Stacey George said that in connection with the occupation he chopped down an ‘Ippeewash Provincial Park’ sign on Highway 21 because “that Park is part of Stoney Point and it was going to...become part of Stoney Point”.<sup>929</sup> Warren George testified that because in his view the Park formed part of the Stoney Point people’s traditional territory it was his view in September 1995 that the Park should not only be occupied on the Labour Day weekend but kept by Stoney Point people forever.<sup>930</sup> Warren George acknowledged that a desire to get media attention could have been a reason for the occupation of the Park, because the Stoney Point occupiers were not getting enough media attention as a result of their occupation of the BUA.<sup>931</sup>

Marlin Simon testified that the takeover the Park was a “spur of the moment thing”.<sup>932</sup> Similarly, Roderick George testified, “I kind of remember something about after the campers

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<sup>925</sup> Examination in chief of Stacey George, November 22, 2004, pp. 60-62; see also Cross-examination of Stacey George by Mr. McGilp, November 22, 2004, pp. 172-73 (Stacey George did not know of any burial sites within the Park boundaries in 1995). Similarly, Warren George referred to the Park having been located west of Army Camp Road and south of East Parkway Drive in the past: see Examination in chief of Warren George, December 8, 2004, pp. 138-39.

<sup>926</sup> Examination in chief of Harley George, January 20, 2005, pp. 180-83.

<sup>927</sup> Examination in chief of Elwood George, November 3, 2004, pp. 63-64.

<sup>928</sup> Examination in chief of Roderick George, November 23, 2004, p. 104; see also Examination in chief of Roderick George, November 23, 2004, p. 78: “it was a true fact that it is our land”..See also the Cross-examination of Roderick George by Mr. Klippenstein, November 24, 2004, at pp. 14-17; see also pp. 20-21 (as to his disagreement with the validity of the 1928 surrender of shoreline at Stony Point, including the land upon which the Park is located).

<sup>929</sup> Cross-examination of Stacey George by Mr. Orkin, November 22, 2004, p. 135; see also Examination in Chief of Stacey George, November 22, 2004, p. 124.

<sup>930</sup> Cross-examination of Warren George by Mr. Downard, December 9, 2004, pp. 142-43.

<sup>931</sup> Cross-examination of Warren George by Mr. Sulman, December 9, 2004, pp. 149-50.

<sup>932</sup> Cross-examination of Marlin Simon by Ms. Jones, October 12, 2004, p. 181. See also Examination in chief of Roderick George, November 23, 2004, p. 117.



have left...that might have been the day, but...to me it was never agreed upon or finalized that that would indeed be...the day”.<sup>933</sup>

## 6.04 THE ENTRY INTO THE PARK

At 7:30 p.m. Sergeant Korosec received a call from Constable Whelan requesting assistance at the east gate to the Park.<sup>934</sup> Korosec attended and had a conversation with Bert Manning, who he knew from his prior experience in the area. According to Korosec, Manning informed him that they occupiers were concerned about the water filtration system and wanted to check it out. Manning also indicated that they were going to occupy the Park. Korosec said he informed Manning that unless the occupiers had some official document the Park was still a provincial park, and that after 10:00 pm they would be trespassing.<sup>935</sup> According to Korosec, Manning informed him that the Park was their land. Korosec said, “Bert was very, very calm, and as was I.”<sup>936</sup> Korosec asked Manning “what’s the hurry?” and advised him that they needed to sit down and talk.<sup>937</sup> Korosec said words to the effect of “[W]hy don’t we get together”, and “I’ll get you who you want to talk with”.<sup>938</sup> Korosec said Manning agreed, and replied that the occupiers weren’t in any hurry. A decision was reached to have a meeting Tuesday at 10:00 a.m.<sup>939</sup>

Sergeant Korosec testified that at this point he was quite happy, but a short time later Glenn George appeared with a number of other people and vehicles. Korosec described George, who he also knew, as quite agitated, “yelling and swearing at us”, and claiming the Park. “He told me tell all the people who lived west of the Park to Ravenswood that they would be taking their land next,” Korosec said. The group then began to cut the chain on the fence and said they were taking the Park.<sup>940</sup> Korosec said Manning attempted to speak to Glenn George about the meeting and Glenn George replied, “No Meeting”.<sup>941</sup>

Marlin Simon held a chain securing the east gate to the park, and Nicholas Cottrelle cut the chain with bolt cutters.<sup>942</sup> Simon testified that a line of six or seven cars followed him into the park.<sup>943</sup> He said the initial occupying group numbered 15 to 20 people.<sup>944</sup> Warren George

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<sup>933</sup> Examination in chief of Roderick George, November 23, 2004, pp. 104-05.

<sup>934</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 23.

<sup>935</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 25.

<sup>936</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 26-28.

<sup>937</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 26-28.

<sup>938</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 26-28.

<sup>939</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 26-28.

<sup>940</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 28. See also the Examination in Chief of Neil Whelan, March 29, 2006, pp 126-128. See also Examination in chief of Mark Gransden, March 30, 2006, p. 77: “Sergeant Korosec was on the scene and he was trying to dissuade them from cutting the lock off.”

<sup>941</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 29.

<sup>942</sup> Examination in chief of Marlin Simon, September 29, 2004, pp. 9-10; Cross-examination of Marlin Simon by Mr. Klippenstein, September 30, 2004, pp. 106-07; see also Examination in chief of Warren George, December 8, 2004, p. 122.

<sup>943</sup> Examination in chief of Marlin Simon, September 29, 2004, p. 10.

<sup>944</sup> Examination in chief of Marlin Simon, September 29, 2004, p. 11.

testified that the persons initially entering the Park including himself, Simon, Kevin Simon, Roderick George, Cottrelle and Dudley George.<sup>945</sup> Simon said a police officer said something to him when the chain was cut, but he could not remember what it was.<sup>946</sup>

Sergeant Korosec instructed the ERT members to clear the park of the remaining day users as quickly and safely as possible, given that in his view the situation had escalated and gotten a lot more tense.<sup>947</sup>

Marlin Simon testified that he walked around the park looking to see if people were there, “to inform them that something was going on and they should leave, I guess”.<sup>948</sup> According to Marlin, the police arranged for remaining day visitors in the park to leave, without incident.<sup>949</sup>

According to some of the occupiers, two park officials handed over keys to park buildings.<sup>950</sup> Warren George testified that although he had heard that this occurred, he knew that the Park authorities and the Ontario government were not consenting to the occupation.<sup>951</sup>

At 7:35 pm, Korosec called the Communications Centre to advise Detective Cst Speck and Sergeant Wright that the occupation was taking place.<sup>952</sup> Korosec noted that approximately 20-40 Native peoples, including women and children, were in the Park.<sup>953</sup>

At 7:40 p.m. Inspector Carson was informed that a group of First Nations persons had cut the fence and entered the Park, together with a dozen vehicles. It was reported to Inspector Carson that the group had indicated that they were staying in the Park.<sup>954</sup> Inspector Carson alerted Detective Sergeant Wright, requested that two ERT teams be put on standby, and traveled to Forest.<sup>955</sup> Project Maple became operational.<sup>956</sup>

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<sup>945</sup> Examination in chief of Warren George, December 8, 2004, p. 121. Note that according to Roderick George he was not present at this point; see Examination in chief of Roderick George, November 23, 2004, p. 112.

<sup>946</sup> Examination in chief of Marlin Simon, September 29, 2004, p. 13.

<sup>947</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 29.

<sup>948</sup> Examination in chief of Marlin Simon, September 29, 2004, p. 21.

<sup>949</sup> Examination in chief of Marlin Simon, September 29, 2004, p. 16.

<sup>950</sup> Examination in chief of Marlin Simon, September 29, 2004, p. 16-17. Marlin Simon thought the keys may have been handed to Les Jewell. See also Cross-examination of Marlin Simon by Mr. Klippenstein, September 30, 2004, pp. 109-11. David George said he saw an MNR official hand over the keys and describe what they were for, and that he thought they were handed to Les Jewell: see Examination in chief of David George, October 19, 2004, pp. 157-58.

<sup>951</sup> Cross-examination of Warren George by Mr. Downard, December 9, 2004, pp. 145-46.

<sup>952</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 29-30.

<sup>953</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 30.

<sup>954</sup> Examination in chief of John Carson, May 16, 2005, pp. 159-60.

<sup>955</sup> Examination in chief of John Carson, May 16, 2005, p. 160.

<sup>956</sup> Examination in chief of John Carson, May 16, 2005, pp. 160-61.

## 6.05 RODERICK GEORGE CONFRONTS THE OPP

At 8:56 p.m. Inspector Carson provided direction to Sergeant Korosec by telephone to keep control of the bridge and maintenance building in the Park.<sup>957</sup> Carson instructed Korosec to have ERT officers hold their positions in the Park. He added that if their safety was threatened they should leave.<sup>958</sup> Korosec informed Carson that the OPP officers were busy evacuating the Park of visitors.<sup>959</sup>

Sergeant Korosec testified that once the officers had evacuated the park, he and the other officers assembled at the Park's entry kiosk. Korosec noted that the entrance to the Park was being blocked by "the batmobile", belonging to the occupiers.<sup>960</sup> Korosec noted that at this time it was dark.<sup>961</sup> He believed that there were 12 officers present, plus Les Kobayashi.<sup>962</sup>

At this point one or more of the occupiers began to throw flares in the direction of the police officers. Sergeant Korosec described them as white phosphorous flares, similar to those used in traffic accidents.<sup>963</sup> Constable Parks testified that one of the flares barely flew by him, and he was concerned that he was wearing a nylon jacket that might catch fire.<sup>964</sup> Elwood George testified that at least one small flare was thrown at the police, although he did not see one hit an officer.<sup>965</sup> George testified that he had given the flares to his son, Wesley George.<sup>966</sup>

Sergeant Korosec next noted that, "Judas George appeared out of nowhere." According to Korosec, George immediately started yelling something like, "I thought I told you fuckers to get off our land. Now, get off."<sup>967</sup> Les Kobayashi testified that Judas was "hollering and screaming, Get out of our Park, this type of thing", and began counting down time.<sup>968</sup> According

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<sup>957</sup> Examination in chief of John Carson, May 16, 2006, pp. 165, 168.

<sup>958</sup> Examination in chief of John Carson, May 16, 2006, pp. 168-69. Inspector Carson instructed Sergeant Korosec that if the officers' safety was threatened they should "literally ram through a gate" to leave the Park if necessary. See also pp. 226-27.

<sup>959</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 30-31. Note that Korosec indicates this phone call was at 7:45 p.m. Regarding presence of people in the park at the time of the occupation, see also Examination in chief of Neil Whelan, March 29, 2006, p. 137.

<sup>960</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 31.

<sup>961</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 33.

<sup>962</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 34; See also Examination in chief of Neil Whelan, March 29, 2006, p. 128. Whelan estimated there were approximately 15 officers present.

<sup>963</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 33. See also Examination in chief of Neil Whelan, March 29, 2006, p. 132-133. Whelan described seeing a phosphorous flare shaped like a globe. Whelan assumed the flare had been left by the military. See also Examination in Chief of Mark Gransden, March 30, 2006, p.85. Gransden also described the flares as phosphorous.

<sup>964</sup> Examination in chief of Larry Parks, March 28, 2006, p. 226.

<sup>965</sup> Examination in chief of Elwood George, November 3, 2004, pp. 43-44.

<sup>966</sup> Examination in chief of Elwood George, November 3, 2004, pp. 34-36.

<sup>967</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 35. Roderick George was also described as "coming out of the shadows": see Examination in chief of Mark Gransden, March 30, 2006, p. 86.

<sup>968</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 218-19.

to Kobayashi, Roderick George was yelling a couple of feet away from Korosec's face.<sup>969</sup> Elwood George testified that his brother Roderick appeared to be under the influence of alcohol.<sup>970</sup>

Sergeant Korosec observed that Roderick George appeared to be carrying a large stick.<sup>971</sup> Roderick George struck the back windshield of a parked OPP cruiser, smashing it.<sup>972</sup> Les Kobayashi testified that Roderick George smashed the cruiser window with a large staff or stick about six feet in length.<sup>973</sup>

Roderick George testified that his father, Abraham George, had asked him to get the police to leave the park. He said that when the police refused to leave, he grabbed part of a crutch from his car and told the officers they had 20 seconds to leave. He then started counting down. "[W]hen I got down to one they didn't leave so I smashed the back window in. Everybody started hollering and they got out," he said.<sup>974</sup>

Elwood George testified that while Roderick George and the police were "having a few words" before the window was broken, "I jumped up and asked the guys to come and stand behind Judas...to let him know that that he wasn't alone".<sup>975</sup> Les Kobayashi testified that the occupying group outnumbered MNR and OPP personnel by about four to one.<sup>976</sup> During this event it appeared to him that the portion of the occupying group milling around the MNR and OPP representatives was getting "bigger and...tighter".<sup>977</sup> Kobayashi said the OPP officers were backing up, and appeared to be trying to ensure that they had a method of leaving the Park.<sup>978</sup> Kobayashi was concerned that there would be violence, and that that OPP and MNR personnel would be removed by force if they did not leave voluntarily.<sup>979</sup>

Sergeant Korosec testified:

Now I'm really concerned. We have flares being thrown at us, we got the windshield, we got women and children in the Park, our officers in the park; it was not a good spot to be and I'm the one in charge. So I had some real concerns...A lot of things were running through my mind at the time. I didn't want to escalate things any more or get anyone

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<sup>969</sup> Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, p. 178.

<sup>970</sup> Examination in chief of Elwood George, November 3, 2004, p. 46.

<sup>971</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 35.

<sup>972</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 35.

<sup>973</sup> Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, pp. 180-81; see also Examination in chief of Les Kobayashi, October 24, 2005, pp. 216-17. See also Examination in chief of Neil Whelan, March 29, 2006, p. 131. Whelan described Roderick George as having a piece of wood, "maybe 4 or 5 feet long". Constable Mark Grandsen described the stick as three feet in length: see Examination in chief of Mark Grandsen, March 30, 2006, p. 88.

<sup>974</sup> Examination in chief of Roderick George, November 23, 2004, pp. 118-120. George admitted that he was still "a bit" intoxicated at this stage: see p. 121.

<sup>975</sup> Examination in chief of Elwood George, November 3, 2004, pp. 41-42.

<sup>976</sup> Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, p. 181.

<sup>977</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 218-19.

<sup>978</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 218-19.

<sup>979</sup> Cross-examination of Les Kobayashi by Mr. Downard, October 25, 2005, p. 182.

hurt on either side. If we were going to take some action against Judas, there probably would have been a fight. To effect a proper arrest would require several officers and I'm thinking, well, what if some of the women and children get involved in this too, or innocent bystanders, and whatever would have occurred.<sup>980</sup>

At 9:28 p.m. Inspector Carson spoke to Sergeant Korosec, who had advised by radio that he needed assistance.<sup>981</sup> Korosec informed Carson that there had been a confrontation at the Park, an OPP cruiser had been damaged, and a flare thrown at the officers.<sup>982</sup> Carson instructed Korosec, "[W]e don't want anybody hurt, back off, do what's safe, have everybody report to Forest."<sup>983</sup> Korosec testified, "I was very happy to do so."<sup>984</sup>

Marlin Simon testified that after the police left the Park, "everybody kind of hollered and cheered, Yay, the cops are gone".<sup>985</sup> Roderick George confirmed that after he smashed the window other members of the occupying group were "hooting and hollering".<sup>986</sup> There is no evidence that any member of the group of First Nations people taking over the Park expressed any concern to Roderick George about what he had done, or that any member of the group had any such concern.<sup>987</sup>

Inspector Carson testified that to the best of his recollection, there had never before been an incident in connection with the occupation of CFB Ipperwash in which an OPP vehicle had been damaged by a First Nations person.<sup>988</sup> In his experience this was also the first time the OPP had been unable to open a dialogue with the occupiers.<sup>989</sup> At 9:33 p.m. Carson and Detective Sergeant Mark Wright discussed that, "We have to find who spokesperson is."<sup>990</sup>

## **6.06 THE NIGHT OF SEPTEMBER 4**

At 9:40 p.m. Carson and Wright discussed putting OPP officers back into the Park to control a bridge there, so that the occupation would be confined to the area between the bridge and CFB Ipperwash. They took no steps to do that.<sup>991</sup> At 9:45 p.m. Les Kobayashi arrived at the

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<sup>980</sup> Examination in chief of Stan Korosec, April 6, 2006, pp. 35-36.

<sup>981</sup> Examination in chief of John Carson, May 16, 2006, p. 171.

<sup>982</sup> Examination in chief of John Carson, May 16, 2006, p. 172.

<sup>983</sup> Examination in chief of John Carson, May 16, 2006, p. 172; see also generally, Examination in chief of Mark Wright, February 21, 2006, pp. 214-16, 224.

<sup>984</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 37.

<sup>985</sup> Cross-examination of Marlin Simon by Mr. Downard, October 18, 2004, pp. 142-43.

<sup>986</sup> Cross-examination of Roderick George by Mr. Downard, November 25, 2004, p. 26; Examination in chief of Roderick George, November 23, 2004, p. 120.

<sup>987</sup> Cross-examination of Roderick George by Mr. Downard, November 25, 2004, p. 26.

<sup>988</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, pp. 189-90.

<sup>989</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, p. 190; Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 208.

<sup>990</sup> Examination in chief of John Carson, May 16, 2006, pp. 173-74.

<sup>991</sup> Examination in chief of John Carson, May 16, 2006, pp. 175-76; see also Examination in chief of Mark Wright, February 21, 2006, pp. 225-26.

Forest Detachment.<sup>992</sup> Carson and Wright discussed with Kobayashi posting signs that the Park was closed, and serving notice on the occupiers that they were trespassing.<sup>993</sup> It was discussed that it would then be necessary for the MNR to seek a court injunction against the occupation.<sup>994</sup> Carson said he did not want anyone to be hurt.<sup>995</sup>

Les Kobayashi said that Roderick George had been “just uncontrollable” when the OPP cruiser’s window was smashed.<sup>996</sup> Kobayashi said 1,000 gallons of gas were in the storage tank at the maintenance building in the Park.<sup>997</sup> Inspector Carson observed that the OPP might only be able to maintain perimeter security outside of the Park, instead of putting OPP personnel back into the Park.<sup>998</sup> Carson also discussed issuing a media release early the following morning.<sup>999</sup> Later in the evening he said he wanted to let “everybody know we’re doing the best we can and we are being gentlemen about this”.<sup>1000</sup> Carson also indicated that he wanted to establish dialogue with the occupiers so he could determine what their intentions were, and “what we could expect”.<sup>1001</sup>

At 9:56 p.m. Inspector Carson distributed the ‘Project Maple’ binders at the Command Post.<sup>1002</sup> At 10:18 p.m. Inspector Carson called Ron Fox at his residence and informed him that approximately 40 First Nations people had entered the Park, and were “setting up camp”.<sup>1003</sup> Carson informed Fox of what had been experienced to date, with the intention that Fox would use this information to assist the MNR in preparing its injunction application.<sup>1004</sup> The OPP officers continued to discuss the possibility of OPP officers being put back into the Park, and that “public safety is number one”.<sup>1005</sup> Detective Sergeant Wright informed Inspector Carson that ERT members “felt comfortable” with taking control of the kiosk near the main entrance to the Park.<sup>1006</sup> Carson testified that he wanted to make sure everyone understood “that we’re not going to sacrifice anybody’s safety in order to move inside the Park”.<sup>1007</sup> At 10:26 p.m. Les

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<sup>992</sup> Examination in chief of John Carson, May 16, 2006, p. 176.

<sup>993</sup> Examination in chief of John Carson, May 16, 2006, pp. 177-78. The signs were to be in addition to signs ordinarily posted after the Park had closed to overnight campers.

<sup>994</sup> Examination in chief of John Carson, May 16, 2006, pp. 178-79.

<sup>995</sup> Examination in chief of John Carson, May 16, 2006, pp. 178-79.

<sup>996</sup> Examination in chief of John Carson, May 16, 2006, pp. 178-79. Later in the evening Sergeant Korosec stated that “if we deal with Judas there will be problems”: see Examination in chief of John Carson, May 16, 2006, pp. 196-97.

<sup>997</sup> Examination in chief of John Carson, May 16, 2006, pp. 178-79.

<sup>998</sup> Examination in chief of John Carson, May 16, 2006, pp. 179-80.

<sup>999</sup> Examination in chief of John Carson, May 16, 2006, pp. 179-80.

<sup>1000</sup> Examination in chief of John Carson, May 16, 2006, p. 197.

<sup>1001</sup> Examination in chief of John Carson, May 16, 2006, p. 181.

<sup>1002</sup> Examination in chief of Mark Wright, February 22, 2006, p. 11.

<sup>1003</sup> Examination in chief of John Carson, May 16, 2006, p. 184. Later that night Inspector Carson informed an OPP officer that there were “25 to 40” people in the Park”: see pp. 211-12.

<sup>1004</sup> Examination in chief of John Carson, May 16, 2006, pp. 185-86.

<sup>1005</sup> Examination in chief of John Carson, May 16, 2006, pp. 187-88.

<sup>1006</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 11-12.

<sup>1007</sup> Examination in chief of John Carson, May 16, 2006, p. 188. See also p. 195.

Kobayashi displayed a sign to Inspector Carson which read, "Park closed, no unauthorized person permitted beyond this point."<sup>1008</sup>

At 10:34 p.m. Sergeant Korosec arrived at Forest Detachment and provided a briefing on the incident involving Roderick George. He also reported that the Park maintenance building had been "broken into".<sup>1009</sup> Korosec indicated that "it was unsafe as people were coming from everywhere".<sup>1010</sup> He reported that First Nations people had told OPP officers they would "confronted" and arrested if they stepped into the Park.<sup>1011</sup> Inspector Carson gave instructions for OPP officers to maintain a "perimeter patrol" overnight on Army Camp Road, on the west side of the Park.<sup>1012</sup>

At 10:38 p.m. OPP officers discussed the service of a trespass notice on the occupiers.<sup>1013</sup> It was suggested that the notice might be served on Bert Manning, "as he seems receptive".<sup>1014</sup> Sergeant Korosec expressed concern that Roderick George or another occupier might "arrest" "one of our guys", "as they said they would".<sup>1015</sup> Inspector Carson expressed concern that a trespass notice had to be served "so by daylight we are operational".<sup>1016</sup> Carson testified that he wanted notification to be given so the injunction process could proceed.<sup>1017</sup>

At 10:38 p.m. Sergeant Korosec informed Inspector Carson that occupiers had said the First Nations people in the Park would meet with the OPP the next day at 10:00 a.m.<sup>1018</sup> Mark Wright advised that Constable Vince George, a son of the late Robert George, Sr., a prominent Stoney Point person, was comfortable with going to the Park with Les Kobayashi to serve the trespass notice.<sup>1019</sup> Korosec informed Carson that, "[W]e should be okay" in taking steps to serve the notice.<sup>1020</sup> Arrangements were made for additional OPP officers to accompany Kobayashi and George to ensure their safety.<sup>1021</sup> Carson indicated that he wanted two OPP vehicles with two officers each to be on either side of the Park entrance in case help was needed when Kobayashi and George attempted to serve the trespass notice.<sup>1022</sup>

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<sup>1008</sup> Examination in chief of John Carson, May 16, 2006, pp. 188-89.

<sup>1009</sup> Examination in chief of John Carson, May 16, 2006, pp. 189-90; Examination in chief of Stan Korosec, April 6, 2006, pp. 41-42.

<sup>1010</sup> Examination in chief of John Carson, May 16, 2006, p. 190.

<sup>1011</sup> Examination in chief of John Carson, May 16, 2006, p. 190.

<sup>1012</sup> Examination in chief of John Carson, May 16, 2006, pp. 190-91. See also pp. 214, 215-16.

<sup>1013</sup> Examination in chief of John Carson, May 16, 2006, p. 191.

<sup>1014</sup> Examination in chief of John Carson, May 16, 2006, p. 191.

<sup>1015</sup> Examination in chief of John Carson, May 16, 2006, p. 191. See also Cross-examination of John Carson by Mr. Downard, June 2, 2005, pp. 72-73.

<sup>1016</sup> Examination in chief of John Carson, May 16, 2006, p. 192.

<sup>1017</sup> Examination in chief of John Carson, May 16, 2006, p. 192.

<sup>1018</sup> Examination in chief of John Carson, May 16, 2006, p. 193.

<sup>1019</sup> Examination in chief of John Carson, May 16, 2006, p. 194. See also pp. 195-96. See also Examination in chief of Mark Wright, February 21, 2006, pp. 216-17, and February 22, 2006, pp. 15-16.

<sup>1020</sup> Examination in chief of John Carson, May 16, 2006, pp. 194-95.

<sup>1021</sup> Examination in chief of Mark Wright, February 21, 2006, p. 217, and February 22, 2006, pp. 17-18. See also Cross-examination of John Carson by Ms. Twohig, June 2, 2005, p. 23.

<sup>1022</sup> Examination in chief of John Carson, May 16, 2006, p. 196.

Sergeant Korosec informed Inspector Carson that at the outset of the occupation Glenn George had appeared and threatened “that they are going to take Ravenswood next”.<sup>1023</sup> Inspector Carson testified that to this point a number of members of the Stoney Point group had said land west of the Park belonged to them.<sup>1024</sup>

At 10:54 p.m. federal Member of Parliament Rosemary Ur called Inspector Carson. He assured her that “adequate resources are being used and we are working with MNR to address the issues”.<sup>1025</sup> Detective Sergeant Mark Wright was assigned responsibility to speak with municipal authorities.<sup>1026</sup>

At 11:01 p.m. Carson called Chief Superintendent Coles to brief him on the situation.<sup>1027</sup> Carson informed him of his discussion with Rosemary Ur.<sup>1028</sup> He also informed Coles that the trespass notice was in the process of being served, and that perimeter checks would be carried out overnight.<sup>1029</sup> He informed Coles of Glenn George’s reference to the occupiers owning land west of the Park.<sup>1030</sup> Coles was to inform OPP Deputy Commissioner Gerry Boose of the situation.<sup>1031</sup>

At 11:14 p.m. Inspector Carson directed that two ERT teams should be on duty overnight, and two other ERT teams on duty the following day.<sup>1032</sup> Four ERT teams involved a complement of approximately 60 officers,<sup>1033</sup> as previously contemplated in the OPP’s planning. Carson testified:

[T]hirty officers during the day may sound like a lot of officers, but by the time you put two or four on one checkpoint, for instance...there’s 16 officers. And that doesn’t provide someone being assigned to handle the communications for them, for logistics for them, for someone to provide relief for them and a number of other duties that they may be so assigned. So, 30 people at first blush sounds

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<sup>1023</sup> Examination in chief of John Carson, May 16, 2006, pp. 194-95.

<sup>1024</sup> Examination in chief of John Carson, May 16, 2006, p. 203.

<sup>1025</sup> Examination in chief of John Carson, May 16, 2006, p. 198.

<sup>1026</sup> Examination in chief of John Carson, May 16, 2006, pp. 204-05. Detective Sergeant Wright did not talk to any municipal authorities until the evening of September 6, when he spoke to Mayor Fred Thomas of Bosanquet at the MNR parking lot where the TOC was located, on the north side of East Parkway Drive to the west of the Park: see Examination in chief of Mark Wright, February 22, 2006, p. 20.

<sup>1027</sup> Examination in chief of John Carson, May 16, 2006, p. 201.

<sup>1028</sup> Examination in chief of John Carson, May 16, 2006, pp. 201, 203.

<sup>1029</sup> Examination in chief of John Carson, May 16, 2006, pp. 201-02. Shortly after midnight Carson stated to Mark Wright that “we are not going in tonight”: see pp. 212-13. See also Examination in chief of Mark Wright, February 22, 2006, pp. 24-25.

<sup>1030</sup> Examination in chief of John Carson, May 16, 2006, p. 203.

<sup>1031</sup> Examination in chief of John Carson, May 16, 2006, pp. 203-04.

<sup>1032</sup> Examination in chief of John Carson, May 16, 2006, p. 206; see also Examination in chief of Mark Wright, February 22, 2006, p. 23.

<sup>1033</sup> Examination in chief of John Carson, May 16, 2006, pp. 208-09. Mark Wright testified that this many ERT officers were deployed at Ipperwash on September 5, although they would have been arriving over the course of the day: see Examination in chief of Mark Wright, February 22, 2006, pp. 115-17, 131-32.



like a lot when you have them all in one spot, but when you have them assigned doing various tasks in any given day, it may not be near so many.<sup>1034</sup>

Later that night Carson stated he would “rather have 10 guys too many...than one not enough”.<sup>1035</sup>

At approximately 11:14 p.m. a call was placed to St. John’s Ambulance in London to “have them set up their command post”.<sup>1036</sup> Later that night arrangements were made for the St. John’s Ambulance communication trailer to be transported to the MNR parking lot west of the Park, where it was to serve as the TOC.<sup>1037</sup>

Shortly before midnight Sergeant Seltzer informed Inspector Carson that he would have additional OPP negotiators available the next day.<sup>1038</sup>

## **6.07 ATTEMPTING SERVICE**

Late on the evening of September 4<sup>th</sup> Sergeant Korosec, Constable Vince George and Les Kobayashi attended at the Park to serve a trespass notice on the occupiers. Korosec positioned his cruiser at the MNR parking lot on East Parkway Drive to monitor the situation. He did not physically attempt to serve the papers.<sup>1039</sup> From the MNR parking lot, Kobayashi and George, flanked by an ERT team, walked down East Parkway Drive to Army Camp Road. They entered the Park at the main entrance and began to walk down the road.<sup>1040</sup>

Kobayashi testified that it was extremely dark. About one hundred yards down the road he and George met Bert Manning and some other occupiers in a half ton truck. They attempted to serve Manning with the notice, but Manning said he was not the group’s spokesman. Manning said he would try and find a spokesman, and left. Kobayashi said they waited 10 or 15 minutes. Manning returned and told them to “leave his f’ing land” and that there wasn’t a spokesperson available. Kobayashi believed Manning indicated there would be a spokesperson in the morning.<sup>1041</sup> Kobayashi recalled that Manning had indicated that the elders for the occupying group had not yet been appointed.<sup>1042</sup>

Les Kobayashi’s group decided they would walk down Matheson Drive and attempt to serve the notice. While waiting at the gate, an individual on an ATV came up. They attempted to serve notice on him, but the individual would not accept the notice. According to Kobayashi, the individual then, “started hollering at us and once again told us to get off their land.” The

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<sup>1034</sup> Examination in chief of John Carson, May 16, 2006, p. 209. See also pp. 209-10.

<sup>1035</sup> Examination in chief of John Carson, May 16, 2006, p. 226.

<sup>1036</sup> Examination in chief of John Carson, May 16, 2006, p. 207.

<sup>1037</sup> Examination in chief of John Carson, May 16, 2006, pp. 214-15.

<sup>1038</sup> Examination in chief of John Carson, May 16, 2006, p. 212.

<sup>1039</sup> Examination in chief of Stan Korosec, April 6, 2006, p. 46.

<sup>1040</sup> Examination in chief of Les Kobayashi, October 24, 2005, p. 229.

<sup>1041</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 229-230.

<sup>1042</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 234-235.

individual said, “We don’t do business at night.”<sup>1043</sup> At 12:38 a.m. Sergeant Korosec reported to Inspector Carson via radio that it had not been possible to effect service of a trespass notice.<sup>1044</sup> Korosec was directed to return to Forest Detachment.<sup>1045</sup>

At 1:10 a.m. Constable Vince George reported to Inspector Carson that Bert Manning and another male had advised they would not speak, but would meet tomorrow around noon.<sup>1046</sup> Vince George said that Manning had been intoxicated.<sup>1047</sup> George said he also saw David George, and that he was going to serve him with the notice, but David George “backed up” and refused to be served.<sup>1048</sup> Carson indicated that given the refusal to accept service, “[W]e will get on with the paperwork” for the MNR to obtain an injunction against the occupation.<sup>1049</sup>

Between 1:10 and 1:13 a.m. Detective Sergeant Wright raised the question whether OPP officers should consider going into the Park, given that access points to the Park were now open.<sup>1050</sup> Inspector Carson indicated that his direction was to establish a checkpoint, and that “[W]e were simply going to hold tight over night and we’ll take a look at it in the morning.”<sup>1051</sup> Carson then went about putting in place checkpoints around the Park area.<sup>1052</sup> He gave a direction that a checkpoint should not be set up directly in front of the Park.<sup>1053</sup> The checkpoints were established to check whether persons traveling through the area “had business to be there...and then they’d be allowed on”.<sup>1054</sup>

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<sup>1043</sup> Examination in chief of Les Kobayashi, October 24, 2005, pp. 231-232.

<sup>1044</sup> Examination in chief of John Carson, May 16, 2006, pp. 217-18. See also Examination in chief of Mark Wright, February 22, 2006, p. 28.

<sup>1045</sup> Examination in chief of John Carson, May 16, 2006, p. 217.

<sup>1046</sup> Examination in chief of John Carson, May 16, 2006, pp. 221-22. See also Examination in chief of Mark Wright, February 21, 2006, p. 217.

<sup>1047</sup> Examination in chief of John Carson, May 16, 2006, pp. 221-22. See also Examination in chief of Mark Wright, February 21, 2006, p. 218.

<sup>1048</sup> Examination in chief of John Carson, May 16, 2006, pp. 221-22.

<sup>1049</sup> Examination in chief of John Carson, May 16, 2006, pp. 222-23. See also Exhibit 44A, Tab 5, p. 30 for Inspector Carson’s description to Deputy Superintendent Parkin the following morning of the attempt to serve notice.

<sup>1050</sup> Examination in chief of John Carson, May 16, 2006, pp. 221-22; see also Examination in chief of Mark Wright, February 22, 2006, pp. 29-31.

<sup>1051</sup> Examination in chief of John Carson, May 16, 2006, p. 222.

<sup>1052</sup> Examination in chief of John Carson, May 16, 2006, pp. 223-25.

<sup>1053</sup> Examination in chief of John Carson, May 16, 2006, p. 224.

<sup>1054</sup> Examination in chief of John Carson, May 16, 2006, p. 229.

## CHAPTER 7

# SEPTEMBER 5

### 7.01 CONTAINMENT

The OPP checkpoints were in place by the following morning.<sup>1055</sup> The mobile command centre had arrived at Forest Detachment, which was established as the OPP Command Post.<sup>1056</sup> At 7:40 a.m. Inspector Carson briefed ERT officers that OPP officers were to contain and control movement in the Park area.<sup>1057</sup> Detective Sergeant Wright said it was explained that “we didn’t want to aggravate the situation”, and that the OPP, “just wanted to control the situation and get, basically, things organized”.<sup>1058</sup> Carson directed that no officer should be in a patrol car alone, for safety reasons.<sup>1059</sup> Carson had the objective “to contain and negotiate a peaceful resolution” printed on a two by four foot sign and posted in a briefing room at Forest Detachment.<sup>1060</sup> He testified that he wanted every officer to “have a clear understanding and reminder of what the objective was”.<sup>1061</sup>

### 7.02 CHIEF BRESSETTE’S VIEW

Early on the morning of Tuesday, September 5, at about 7:43 a.m., Inspector Carson spoke to Chief Tom Bressette. Bressette assured Carson that the Kettle & Stony Point First Nation did not have any sort of land claim pending against the Park lands.<sup>1062</sup> Bressette

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<sup>1055</sup> Examination in chief of John Carson, May 17, 2005, p. 35.

<sup>1056</sup> See Examination in chief of John Carson, May 16, 2006, pp. 234-37 for a physical description of the mobile command centre, its communication facilities, and authorized personnel.

<sup>1057</sup> Examination in chief of John Carson, May 16, 2006, pp. 239-40.

<sup>1058</sup> Examination in chief of Mark Wright, February 22, 2006, p. 53.

<sup>1059</sup> Examination in chief of John Carson, May 16, 2006, p. 240. Detective Sergeant Wright testified that Inspector Carson was concerned about officer safety: see Examination in chief of Mark Wright, February 22, 2006, p. 53.

<sup>1060</sup> Examination in chief of John Carson, May 16, 2005, pp. 110-11; Examination in chief of John Carson, May 18, 2005, pp. 37-38.

<sup>1061</sup> Examination in chief of John Carson, May 18, 2005, p. 37.

<sup>1062</sup> The relevant passage of the conversation as recorded on tape, is as follows:

Carson: As far as we are concerned, it is my understanding there is no land claim issue with Ipperwash Park. Is that fair to say from the Band’s point of view?

Bressette: Well, no, not right now, no.

Carson: Alright. There has been no claim by the Band or anybody else that I am aware of that, you know, that’s before any Court or lodged in any formal sense of it?

Bressette: No, we haven’t any issue with any kind of land claim down there.

encouraged Carson to take action to remove the occupiers from the Park. He told Carson, “I think you’re going to continue to have problems with that group until somebody enforces a law against them.”<sup>1063</sup> He continued:

Bressette: Well, to be honest with you, John, the Counsellors here are tired of those folks there.

Carson: Is that right, eh

Bressette: There is a lot of them who are not even members here that are giving us a bad name and a bad reputation around the part of where we live. They don’t even live around here some of them.

Carson: Right, right.

Bressette: I think mainly the Manning family were involved in what went down there from what I understand.

Carson: Okay

Bressette: And they haven’t lived here their whole lives.

Carson: Right, we’d I know, they’ve, yeah – well, they’ve – yeah. But if there’s anything you have questions about or Council has concerns like I’m going to be here in Forest for the duration I guess until we get this sorted out, and we’ll like to keep the lines open between Council and ourselves to – you know – any concerns or whatever so they have an idea of what’s going on.

Bressette: Yeah, well I’ve never had any concerns. The only concerns I always had like I told ya, I don’t know how come those people get away with running in somewhere and saying this is our land. The land at Ipperwash even itself its for the whole Band, not for those few individuals down there.

Carson: That’s right.

Bressette: And they’ve been allowed to flaunt that they walk in there and took over and nobody did anything, they’re just going to keep on with that attitude.

[...]

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Carson: So as far as we are concerned at this point, it is clearly a trespassing issue.

Bressette: I think if you check the records, that particular park was sold by 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 in 1936 if I’m not mistaken or 38 or 36 or 38 it was sold to the province and made a provincial park at that time?

Bressette: Well, that’s my understanding. I have not really checked all the records or anything.

Carson: Yeah, well Natural Resources have done that and we have the documentation for that – that seems to be pretty accurate.

Bressette: I’ll tell you where things started from, John. There was some archaeologist who went down there and told those people that these people desecrated a burial ground here by building this park here and he told them that they could get millions of dollars from the province as a result of that.

Carson: Ah, is that right.

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

<sup>1063</sup> Exhibit 444A, Tab 3 (Transcript), p. 3.

- Bressette: Well, you know, its too bad, you guys and in the Defence or Federal people couldn't get together and try and clean this mess out because that's what's causing all this trouble. That they've been allowed to overstep their boundaries in many ways and they're just using that as a method and its sort of building an enthusiasm in them to continue on what they're doing.
- Carson: Right.
- Bressette: And I don't know, I kinda warned people that I had heard that something was going to happen this weekend and that's as much as I can do whenever I hear rumbling, I let Indian Affairs know that there's gonna be trouble. I don't know whether they told you or not, but.
- Carson: Well, we had the same information. That we had heard that too. So it's really not a major surprise quite frankly, unfortunately. Anyway well try and deal with it the best we can. And like I say, I'll like to keep the communication open. If there's anything we can do to answer any questions for you, like don't be afraid to call – you know, that type of thing, and eh.
- Bressette: Yeah, well I don't think we have any concerns. We – I-I don't know as far as I am concerned myself, I think those people would have to be dealt with somehow.
- Carson: Well, I agree. And we have to do it the best we can
- Bressette: Treating them with kid gloves isn't something I don't think that they understand.<sup>1064</sup>

Detective Sergeant Wright recalled being informed after this telephone conversation that there appeared to be “no support from the Council of Kettle Point for the actions that had taken place at the Provincial Park”.<sup>1065</sup> He said the position of Chief Bressette “was fairly important” to him because,

...we were obviously in a difficult situation there, and again I was of the...mind-set that that property belonged to the Province of Ontario; that property being the Park. And...that information from the Chief of the Band, of the local band there, was important to me because that, in my mind, solidified the information that I had received from Inspector Carson that there was no issue with respect to ownership of Ipperwash Provincial Park. And...that was important to me to understand that issue, because I felt that was somewhat the crux of the...problem or the issue.<sup>1066</sup>

### **7.03 WADE LACROIX AND MARCEL BEAUBIEN**

At approximately 8:20 a.m.<sup>1067</sup> Inspector Carson spoke to Staff Sergeant Wade Lacroix. Lacroix reported to Carson that he had just received a telephone call from Marcel Beaubien, who was “quite irate, not at us”.<sup>1068</sup> Lacroix continued,

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<sup>1064</sup> Exhibit 444A, Tab 3 (Transcript), pp. 4-5.

<sup>1065</sup> Examination in chief of Mark Wright, February 22, 2006, p. 55.

<sup>1066</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 65-66.

<sup>1067</sup> There are discrepancies between times recorded in contemporary ‘logger notes’ of conversations and times registered by the device recording telephone conversations. Inspector Carson testified that he believes the time

Lacroix: He wants me to brief him, he's going to call the Premier and say this is ridiculous.

Carson: Yes.

Lacroix: And I want something done.

[...]

Lacroix: I guess he was up all last night and he's already got several phone calls. He called me and he just let me know that he's calling the Premiers and [unintelligible].

Carson: Yep.

Lacroix: I guess he met with West Ipperwash<sup>1069</sup> again on Saturday.

Carson: Oh, okay.

Lacroix: So he wants to call and say, look, what we've got to do something and.

Carson: Yeah.<sup>1070</sup>

Inspector Carson told Staff Sergeant Lacroix he would prefer it if Lacroix spoke to Marcel Beaubien.<sup>1071</sup> Lacroix testified that in making this call, he “was offering to be a buffer”.<sup>1072</sup> Although Carson had no problem with speaking to Beaubien, he preferred to have “some idea of what he’s looking for so we can be prepared with that”.<sup>1073</sup> Carson said he did not get any impression that Beaubien was trying to give Lacroix instructions as to how to carry out police operations.<sup>1074</sup> He asked Lacroix to “let me know how you make out with him”, as Carson was “interested...in his feelings about this”.<sup>1075</sup> Carson mentioned that he was “already getting calls last night from Rosemary Ur”, the local federal Member of Parliament.<sup>1076</sup>

In this conversation Carson also informed Lacroix that the OPP had four ERT teams on the ground at Ipperwash. He told him, “[O]ur objective here is to contain and negotiate a

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registered by the recording device is probably more accurate: see Examination in chief of John Carson, May 17, 2005, p. 18.

<sup>1068</sup> Exhibit 444A, Tab 4 (Transcript), p. 8.

<sup>1069</sup> Examination in chief of Wade Lacroix, May 8, 2006, p. 171.

<sup>1070</sup> Exhibit 444A, Tab 4 (Transcript), pp. 9, 12-13.

<sup>1071</sup> Exhibit 444A, Tab 4 (Transcript), p. 12. See also Examination in chief of John Carson, May 17, 2005, p. 21.

<sup>1072</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, p. 155.

<sup>1073</sup> Exhibit 444A, Tab 4 (Transcript), p. 12. See also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 14-15:

Q: I see. Now, sir, I gather from your previous evidence that you felt there was nothing improper about you, as Incident Commander, discussing operational matters with politicians such as Mr. Beaubien, is that correct?

A: That's not exactly how I -- I put it. I don't think there's any problem with having a discussion with the Member of Parliament to assure him that we are doing everything that we can. When you talk about operational matters, there's no way that I would discuss with him the strategy or exactly what we may or may not do.

<sup>1074</sup> Cross-examination of John Carson by Mr. Sulman, June 2, 2005, p. 129.

<sup>1075</sup> Exhibit 444A, Tab 4 (Transcript), p. 13.

<sup>1076</sup> Exhibit 444A, Tab 4 (Transcript), p. 12.

peaceful solution with this whatever that may be.”<sup>1077</sup> He told Lacroix the OPP had adequate resources to address all public concerns, that no one in the community was in danger, and the OPP would maintain its level of service as long as required.<sup>1078</sup> Carson said the MNR was addressing the matter of an injunction “as we speak”.<sup>1079</sup>

Inspector Carson and Staff Sergeant Lacroix also discussed the possible use of ERT officers as a Crowd Management Unit, which is composed of two ERT teams commanded by a Staff Sergeant such as Lacroix.<sup>1080</sup> Carson informed Lacroix that he “did not intend to go into that mode”, and that all ERT officers were doing was “perimeter security”.<sup>1081</sup>

Wade Lacroix testified that he believed he passed on to Marcel Beaubien what Inspector Carson had said about the OPP having adequate resources to deal with the situation, and that public safety was not in issue “right now”.<sup>1082</sup> He intended that Beaubien pass on the information to constituents so as to communicate there was “no need to panic”, and “help us put down fear”.<sup>1083</sup>

Detective Sergeant Wright testified that at this time he became aware that “the Premier’s Office or something along that line -- was obviously aware of what was going on in this part of Ontario”.<sup>1084</sup> He did not recall any discussion about the report that Marcel Beaubien was calling the Premier, or any reaction to it by anyone.<sup>1085</sup> He continued,

I – sir, I can tell you, if it’s any assistance to you, that that sort of thing wouldn’t have been of any concern to me...because it didn’t have anything to do with the duties that I was required to do. I was tasked with...in my view, numerous things and I was dealing with the moment to moment situations and...minor details...that go with running an operation such as this. So that was, as I’ve said, spoke to yesterday, as far as I was concerned, the bigger picture and, frankly, I was of the opinion then that, you know, if it didn’t have anything to do with me, I didn’t need to know about it because, frankly, I had enough to do at the time.<sup>1086</sup>

Staff Sergeant Lacroix testified that Marcel Beaubien “may have said I’m going to call the Premier’s Office” rather than the Premier himself,<sup>1087</sup> and that in any event this is what he

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<sup>1077</sup> Exhibit 444A, Tab 4 (Transcript), p. 9.

<sup>1078</sup> Exhibit 444A, Tab 4 (Transcript), p. 9.

<sup>1079</sup> Exhibit 444A, Tab 4 (Transcript), p. 9.

<sup>1080</sup> Exhibit 444A, Tab 4 (Transcript), pp. 9-10.

<sup>1081</sup> Exhibit 444A, Tab 4 (Transcript), p. 10. See also Examination in chief of John Carson, May 17, 2005, pp. 21-22.

<sup>1082</sup> Examination in chief of Wade Lacroix, May 8, 2006, pp. 172-73.

<sup>1083</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, p. 156.

<sup>1084</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 55-57, 60-61, 68-69. He initially did not recall when he became aware of this.

<sup>1085</sup> Examination in chief of Mark Wright, February 22, 2006, p. 69.

<sup>1086</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 57-58.

<sup>1087</sup> Examination in chief of Wade Lacroix, May 8, 2006, p. 165.

had taken from Beaubien's words.<sup>1088</sup> Asked what he thought about Beaubien's statement that he intended to make the call, Lacroix said,

I thought it would be no different than if I said I was going to call the Commissioner...I don't normally call the Commissioner directly, but if I call the Commissioner's office, you know, that deals with...media relations is there. I just passed on that he's going to call the...Premier's Office so he's going to call down and express his displeasure that I guess the Park was taken.<sup>1089</sup>

A contemporary scribe note also refers to Lacroix's telephone conversation with Carson:

Marcel Beaubien calling Premier; that's fine, sit tight. Get intelligence info. Get ERT guys working in Park. Get discussions. Some people have to be arrested. Crime guys take care of this.<sup>1090</sup>

Carson testified that the reference to "that's fine" was,

...a comment that I made and I guess what I'm reflecting there is, That's fine so he's calling the Premier and we're going to move forward getting more intelligence information what our work plans will be...the reference to, "that's fine" is – is, I guess more than anything else, is probably more indifference than anything else.<sup>1091</sup>

## 7.04 THE LOCAL AUTHORITIES

At about this time of the morning it was also discussed that, "Tom Bressette agrees with what we're doing."<sup>1092</sup> At 8:50 a.m. the Bosanquet Administrator, Ken Williams, arrived at the Command Post.<sup>1093</sup> He discussed the prospect of the municipality getting an injunction regarding blockage of Matheson Drive, and that the municipal council supported doing so.<sup>1094</sup> Inspector Carson also assured him that the Park area was cordoned off and there were ample OPP officers to deal with the situation.<sup>1095</sup> Carson told him the occupiers "won't be outside of [the] Park".<sup>1096</sup> He considered that "the focus was on the Park side" rather than Matheson Drive, which ran between the Park's south and east boundaries and CFB Ipperwash.<sup>1097</sup> As to an

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<sup>1088</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, p. 151.

<sup>1089</sup> Examination in chief of Wade Lacroix, May 8, 2006, p. 166.

<sup>1090</sup> Examination in chief of John Carson, May 17, 2005, pp. 25-26.

<sup>1091</sup> Examination in chief of John Carson, May 17, 2005, pp. 26-27; see also Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 204-07.

<sup>1092</sup> Examination in chief of John Carson, May 17, 2005, p. 27.

<sup>1093</sup> Examination in chief of John Carson, May 17, 2005, p. 28.

<sup>1094</sup> Examination in chief of John Carson, May 17, 2005, p. 31. Detective Sergeant Wright did not recall ever being aware of the possibility that the municipality might seek an injunction regarding Matheson Drive: see Examination in chief of Mark Wright, February 22, 2006, pp. 62, 65.

<sup>1095</sup> Examination in chief of John Carson, May 17, 2005, pp. 32-34.

<sup>1096</sup> Examination in chief of John Carson, May 17, 2005, p. 34.

<sup>1097</sup> Examination in chief of John Carson, May 17, 2005, pp. 35-36.



injunction regarding the Park, Carson informed Williams that the “MNR probably won’t get an injunction today”, and that his preference would be “to negotiate them out of the Park”.<sup>1098</sup>

Ken Williams raised the option of declaring a “state of emergency”, but John Carson discouraged this. Carson testified that Williams was “somewhat animated about the situation that was occurring”, and he was trying to “calm him down”.<sup>1099</sup>

## 7.05 THE QUESTION OF A BURIAL GROUND

At 9:04 a.m. Inspector Carson spoke by telephone to Sergeant Doug Babbitt, who was responsible for media relations. Babbitt reported to Carson that he had received inquiries as to the reason for the occupation of the Park. Babbitt had been replying that the OPP had not been “officially” told. He said media people had been saying “we hear it’s an Indian burial ground”. The discussion continued:

Babbitt: I said well maybe, maybe that’s what they are saying but they haven’t told us anything officially.

Carson: That’s right they just say it’s their land.

Babbitt: Yeah okay.

Carson: Okay.

Babbitt: Alright I just wondered if maybe there is something there I didn’t know but that’s good.

Carson: Right we have we have to try and arrange some meetings and discuss those issues.

Babbitt: Okay.

Carson: Okay.

Babbitt: [unintelligible] that’s the other thing you know, I’m telling him that we’re going to be meeting with the Ministry of Natural Resources officials sometime this morning. Is that not true.

Carson: Yeah, I already have. They’ve been here.

Babbitt: Okay.

Carson: Yeah.

Babbitt: Um and they’re asking you know what was the outcome of that meeting. I said I don’t know cause they haven’t had it.

Carson: Right. Well, we’re ah working towards a court injunction.

Babbitt: Okay.

Carson: Okay. The Ministry...is...going to...pursue...a court injunction to...

Babbitt: Okay.

Carson: Against the natives.

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<sup>1098</sup> Examination in chief of John Carson, May 17, 2005, p. 36.

<sup>1099</sup> Examination in chief of John Carson, May 17, 2005, p. 40. Inspector Carson also testified about this as follows: “[T]here certainly was a – a heightened anxiety level from the administrators of the township or the town office. And I felt it was important that we make every effort to try to keep the community, at large, informed and reduce the anxiety level to the degree we possibly could.”

Babbitt: Is that is that okay to ah to say that now.

Carson: Yep, yep, yep.

Babbitt: Okay.

Carson: It's no secret.<sup>1100</sup>

Inspector Carson testified that since the beginning of the occupation he had not been told anything by anyone about a burial ground in the Park.<sup>1101</sup> He had previously heard some "commentary to that effect", made by "some of the occupiers", "but there was no indication that, in fact, that was the case".<sup>1102</sup> It was significant to him that Chief Bressette had not given him any reason to believe this "commentary" had merit.<sup>1103</sup>

Detective Sergeant Wright testified that as of the morning of September 5 he had not received any information or had any discussions about a burial ground in the Park.<sup>1104</sup> He recalled a conversation with Glenn George and Les Jewell in which they told him they felt "particular parcels of land belonged to them", but he did not recall them saying "it was because there was a burial ground there".<sup>1105</sup>

## 7.06 MANAGING THE OCCUPATION

At a 9:25 a.m. briefing of OPP officers it was discussed that warrants were being prepared for the arrest of Roderick George, David George and Stewart George as a result of the incidents of September 4.<sup>1106</sup> Later in the briefing Inspector Carson directed the officers, "If we get an opportunity to get in, arrest suspects, get in and get out with them."<sup>1107</sup>

Inspector Carson also informed the group that, "Tom Bressette's on board. Agrees, thinks they're criminals."<sup>1108</sup> He discussed his conversation with Ken Williams.<sup>1109</sup> He told Williams the MNR was "working on an injunction", although he was "doubtful it will happen today".<sup>1110</sup> He informed the group that Staff Sergeant Lacroix had been in contact with Marcel Beaubien, and that Beaubien was "updating the Premier on the situation".<sup>1111</sup> He said he wanted

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<sup>1100</sup> Exhibit 444A, Tab 5 (Transcript), pp. 15-16.

<sup>1101</sup> Examination in chief of John Carson, May 17, 2005, p. 50.

<sup>1102</sup> Examination in chief of John Carson, May 17, 2005, p. 50.

<sup>1103</sup> Examination in chief of John Carson, May 17, 2005, pp. 50-51.

<sup>1104</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 66-67.

<sup>1105</sup> Examination in chief of Mark Wright, February 22, 2006, p. 68.

<sup>1106</sup> Examination in chief of John Carson, May 17, 2005, pp. 52-53; see also pp. 136-37, 138-39; see also Examination in chief of Mark Wright, February 22, 2006, pp. 136-37.

<sup>1107</sup> Examination in chief of John Carson, May 17, 2005, p. 62.

<sup>1108</sup> Examination in chief of John Carson, May 17, 2005, p. 53; see also Examination in chief of Mark Wright, February 22, 2006, p. 64.

<sup>1109</sup> Examination in chief of John Carson, May 17, 2005, p. 53.

<sup>1110</sup> Examination in chief of John Carson, May 17, 2005, p. 54.

<sup>1111</sup> Examination in chief of John Carson, May 17, 2005, p. 55.

the group to understand “this is a serious event...so that’s the level of attention this is getting”.<sup>1112</sup> He also reported that the federal MP, Rosemary Ur, had called him.<sup>1113</sup>

During this briefing Inspector Carson directed that preparation be undertaken for a meeting with the occupants. He wanted Brad Seltzer, a “crisis negotiator” with a “very high ability to establish relationships” and “speak to people”, to be involved.<sup>1114</sup> He also wished to involve Lorne Smith, a retired Staff Sergeant from Pinery Detachment<sup>1115</sup> who had a high degree of knowledge about the area and the people involved.<sup>1116</sup> Carson testified that his goal was to “establish some dialogue...And the way negotiations usually work is someone tries to find out what the issue is, they bring it back and then we’ll see how we can address those concerns”.<sup>1117</sup>

Inspector Carson also sought information about “what’s going on in the Park”, and “whether we can [get] people in there”, and “keep them there”.<sup>1118</sup> This was in accordance with his earlier intention to maintain an OPP presence within the Park.<sup>1119</sup> Detective Sergeant Wright testified that the OPP officers discussed putting as many officers as possible in the Park with the occupiers.<sup>1120</sup> He considered this “a real potential”.<sup>1121</sup>

Detective Sergeant Wright initiated arrangements for helicopter surveillance with videotape recording.<sup>1122</sup> Inspector Carson testified that he wished to observe the people in the Park from the air and determine how many were in the Park at any given time.<sup>1123</sup>

Detective Sergeant Wright suggested that an MNR representative attend the OPP’s hourly meetings on the situation.<sup>1124</sup> He testified that, “[A]gain my mindset was that the Province of Ontario was the lawful owner...[T]he complainant, if you will, was MNR”.<sup>1125</sup> At the time he thought it reasonable for Les Kobayashi of the MNR to attend the briefings, where

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<sup>1112</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 20.

<sup>1113</sup> Examination in chief of John Carson, May 17, 2005, p. 55. Inspector Carson testified that he had never before been involved in an incident during which he had received calls from either the local MP or MPP. It was not unusual in the case of an incident on First Nations territory to have a member of the local council involved, or to have a municipal representative involved in other situations: see pp. 55-56.

<sup>1114</sup> Examination in chief of John Carson, May 17, 2005, p. 58; see also Examination in chief of Mark Wright, February 22, 2006, pp. 69-70.

<sup>1115</sup> Examination in chief of Mark Wright, February 21, 2006, p. 210; February 22, 2006, p. 71.

<sup>1116</sup> Examination in chief of John Carson, May 17, 2005, p. 58; Examination in chief of Mark Wright, February 22, 2006, p. 71. See also Cross-examination of John Carson by Mr. Falconer, June 27, 2005, p. 117.

<sup>1117</sup> Examination in chief of John Carson, May 17, 2005, pp. 58-59. See also pp. 68, 119-20.

<sup>1118</sup> Examination in chief of John Carson, May 17, 2005, p. 59. See also p. 65.

<sup>1119</sup> Examination in chief of John Carson, May 17, 2005, p. 59. See also p. 65.

<sup>1120</sup> Examination in chief of Mark Wright, February 22, 2006, p. 74; and see generally, pp. 71-74.

<sup>1121</sup> Examination in chief of Mark Wright, February 22, 2006, p. 74; and see generally, pp. 71-74.

<sup>1122</sup> Examination in chief of Mark Wright, February 22, 2006, p. 75.

<sup>1123</sup> Examination in chief of John Carson, May 17, 2005, pp. 65-66; Examination in chief of Mark Wright, February 22, 2006, pp. 75-76.

<sup>1124</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 83-84.

<sup>1125</sup> Examination in chief of Mark Wright, February 22, 2006, p. 84.

he would give the OPP information with respect to the obtaining of the injunction.<sup>1126</sup> Carson agreed that Kobayashi should attend the hourly meetings.<sup>1127</sup> He testified that Kobayashi attended subsequent meetings “pretty regularly”, so he could “provide input as he knew it”, and “keep his superiors informed as to the status of the ongoing occupation”.<sup>1128</sup> Carson said Kobayashi never attempted to interfere with police discretion or police operations.<sup>1129</sup>

## **7.07 INSPECTOR CARSON AND SUPERINTENDENT PARKIN**

At 9:43 a.m., Deputy Superintendent Parkin called Inspector Carson. They arranged for Carson to call Parkin to provide status reports every two hours.<sup>1130</sup> Carson advised that the ‘Project Maple’ operational plan would be delivered to Chief Superintendent Chris Coles that day.<sup>1131</sup> Parkin informed Carson that Parkin and Coles might visit him later that day, “to show support and then leave”.<sup>1132</sup> Parkin indicated that Coles would deal with any reporting to OPP Deputy Commissioner Gerry Boose.<sup>1133</sup>

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<sup>1126</sup> See also Cross-examination of John Carson by Ms. Twohig, June 2, 2005, p. 57:

I knew Mr. Kobayashi for a number of years and I knew his role as a superintendent of the Provincial Parks in this area. And the events taking place certainly were clearly -- he had a vested interest in what was taking place.

And my intent was to provide him with as much information as possible to assist him with his part of the business in regards to the injunction to -- to attempt to keep him well informed and for him, likewise, to keep me well informed of the activities that he was trying to deal with.

So, it was really more of a communication and a -- professional courtesy that he be involved and I certainly at the front end, I didn't -- I didn't see that having any negative effect on -- on the operations. It could only contribute to smoother communications.

The idea being is if you can have a group together, have a discussion as a whole, you only have to discuss it once, and everybody gets the same information.”

See also Examination in chief of Mark Wright, February 22, 2006, pp. 84, 90-91: Wright said that “in hindsight” he “was not so confident that that was an appropriate decision” (see p. 84). He said the OPP are “not in the habit of bringing the complainant into the investigative team meetings or...the planning meetings with regards to what it is we’re going to do”. He said:

...[W]hat we should have done was obtained relevant information from Mr. Kobayashi with regards to what it was they were doing as it...dealt with the injunction. But then we should have him leave and conducted our...business by ourselves because it was a police function and it just -- well, I know now that there was some confusion as far as information leaving the command post and going to places where it perhaps shouldn't have and...it's just probably not the best way of doing business.

<sup>1127</sup> Examination in chief of John Carson, May 17, 2005, p. 67.

<sup>1128</sup> Examination in chief of John Carson, May 17, 2005, pp. 67-68; Examination in chief of Anthony Parkin, February 6, 2006, pp. 168-69.

<sup>1129</sup> Cross-examination of John Carson by Ms. Twohig, June 2, 2005, pp. 58-59.

<sup>1130</sup> Exhibit 444A, Tab 6 (Transcript), p. 25; see also Examination in chief of Anthony Parkin, February 6, 2006, pp. 162-63; see also Examination in chief of Anthony Parkin, February 7, p. 17.

<sup>1131</sup> Exhibit 444A, Tab 6 (Transcript), p. 26; Examination in chief of Anthony Parkin, February 6, 2006, pp. 163, 171-72.

<sup>1132</sup> Exhibit 444A, Tab 6 (Transcript), p. 41; Examination in chief of John Carson, May 17, 2005, p. 94. Superintendent Parkin testified:

“...I called John to ask if it was all right if the Chief and I came down -- and the reason that I -- I ran that by him first is it can be problematic to have senior officers showing up on the scene

Superintendent Parkin asked about a spokesperson for the occupying group. Inspector Carson told him “it looks like...Bert Manning”, but “that seems to change”.<sup>1134</sup> Carson reported, “We spoke to them last night to some degree tried to serve them a notice and they said they would talk to us at noon today.”<sup>1135</sup> Parkin asked whether the occupiers had made demands. Carson replied, “Ah none ah it's just it's their land.”<sup>1136</sup> He also told Parkin he had spoken with Chief Bressette and, “[T]here's absolutely no support whatsoever from the elected community.”<sup>1137</sup>

Inspector Carson provided Deputy Superintendent Parkin with the “Readers Digest version of what happened last night”. He reported that at about 7:30 p.m.:

[T]hey swarmed in there and they got into a verbal barrage. A back window of a cruiser was...smashed out...and there was a flare thrown at one of our guys...[W]e were just in there and they wanted us out basically...[T]hey just confronted our people who were there and got into a barrage to get off their land.<sup>1138</sup>

Carson said no OPP officers had been hurt. He reported that at the time some day users remained in the Park, but they were evacuated by MNR representatives and OPP officers. He advised that the occupiers had been told they were trespassing, and described the unsuccessful effort to serve a trespass notice on the occupiers later that night.

Inspector Carson also confirmed to Superintendent Parkin that the MNR was pursuing an injunction.<sup>1139</sup> Carson informed Parkin that he had spoken to Ken Williams that morning, and the township would be pursuing an injunction regarding Matheson Drive if that was necessary.<sup>1140</sup> Parkin advised, “We’ve been talking to [Marcel] Beaubien this morning.”<sup>1141</sup>

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without the Incident Commander having some prior knowledge of that because you get people wondering what's going on. So we wanted to make sure that he understood the rationale for our visit and that the constables and the other people that would be around and see us, understood that we were simply going down to -- I think the expression is 'wave the flag' to be seen. To be seen as supportive of our people. They were out under a very stressful situation and as the leaders in the region, it's important to -- to show that support.”

See Examination in chief of Anthony Parkin, February 7, 2006, p. 97.

<sup>1133</sup> Exhibit 444A, Tab 6 (Transcript), p. 23; See also Examination in chief of John Carson, May 17, 2005, p. 108; Examination in chief of Anthony Parkin, February 6, 2006, pp. 169-70.

<sup>1134</sup> Exhibit 444A, Tab 6 (Transcript), p. 27.

<sup>1135</sup> Exhibit 444A, Tab 6 (Transcript), p. 27; see Examination in chief of Anthony Parkin, February 6, 2006, pp. 172-73, 184-86..

<sup>1136</sup> Exhibit 444A, Tab 6 (Transcript), p. 28; see also Examination in chief of Anthony Parkin, February 6, 2006, p. 163.

<sup>1137</sup> Exhibit 444A, Tab 6 (Transcript), p. 28; see also Examination in chief of Anthony Parkin, February 6, 2006, p. 163.

<sup>1138</sup> Exhibit 444A, Tab 6 (Transcript), p. 28; see Examination in chief of Anthony Parkin, February 6, 2006, p. 173.

<sup>1139</sup> Exhibit 444A, Tab 6 (Transcript), p. 30.

<sup>1140</sup> Exhibit 444A, Tab 6 (Transcript), p. 37.

<sup>1141</sup> Exhibit 444A, Tab 6 (Transcript), p. 38. In his testimony Superintendent Parkin did not recall talking to Marcel Beaubien on September 5. He stated that either he or Chief Superintendent Coles may have had the

Carson reported that Beaubien had called Staff Sergeant Lacroix, who “handled that”, and who was running “interference for us that way”.<sup>1142</sup> Parkin testified that he did not have any concern that Lacroix was talking to Beaubien, since he knew the MPP was “very, very concerned”, and Parkin was sure Beaubien “was receiving many calls from his constituents”.<sup>1143</sup>

Inspector Carson and Superintendent Parkin reviewed the checkpoints that had been established, the effort to obtain a helicopter and a marine boat for surveillance, video surveillance equipment in the Park, and the obtaining of warrants for the three persons involved in incidents the previous day. They also discussed that the OPP did not have “containment”, in the sense that the occupiers could “go in between the park and the grounds without us being aware”.<sup>1144</sup> Carson observed that the OPP had no way of effectively containing CFB Ipperwash.

Superintendent Parkin asked further about the exit of OPP officers from the Park on the evening of September 4:

- Parkin: Ah ah I'm only going to ask this question because I'm sure that the Chief is probably going to ask it. How did we ah given the fact we have people there when this all happened. How did we lose containment? [Unintelligible]
- Carson: Ah well it was a matter of safety. Like somebody is going to get their head caved in if we'd of stayed in there.
- Parkin: Okay.
- Carson: Cause they were really getting getting irate with our guys and ah ah I would suggest the damage to the cruiser was you know indicative of what more we were going to get into.
- Parkin: What was the damage to the cruiser done by?
- Carson: Who.
- Parkin: What did they use to do the damage?
- Carson: Um. I [Unintelligible]
- Parkin: Kept booting the doors.
- Carson: No no they smashed the back window out of it.
- Parkin: Uh huh.
- Carson: I'm not sure what what you know device they used but somehow or another they smashed [Unintelligible] through a rock through it or a baseball bat or something. But they they were prepared to to take us on at that point and we just didn't have the numbers to do it. Because all we had was the one (1)

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conversation referred to in this passage: see Cross-examination of Anthony Parkin by Mr. Rosenthal, February 9, 2006, pp. 235-40.

<sup>1142</sup> Exhibit 444A, Tab 6 (Transcript), p. 38; see Examination in chief of Anthony Parkin, February 6, 2006, pp. 186-

<sup>1143</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 186-87. Superintendent Parkin did not want “pressure” on Inspector Carson from “outside sources”: see Cross-examination of Anthony Parkin by Mr. Rosenthal, February 9, 2006, pp. 235-40.

<sup>1144</sup> Exhibit 444A, Tab 6 (Transcript), p. 34. The speaker is Superintendent Parkin.

District ERT at that time with ah, with ah eight (8) in one (1), you know...

Parkin: How many how many people do we think we are dealing with?

Carson: Well there was up to 40...I would suggest at the height of it there for a while and the the women and the kids are in there too of course.<sup>1145</sup>

Later in the conversation Carson and Parkin returned to this subject:

Parkin: Yeah I'm just um I guess it's it's unfortunate we couldn't maintain the park.

Carson: Well huh.

Parkin: But that's a decision that has to be made by the people that ah we you say. I mean if ah we're going to get beat up for [Unintelligible] that reason.

Carson: Well that's right and we we could have maintained the park if we had every you know the numbers that people have here now. At that time we probably could of maintained it but you know it would have it would have meant somebody getting hurt last night.

Parkin: Ah they're going to say we got caught by surprise. Is that accurate?

Carson: Ahhh not.

Parkin: They're going to say that well we knew this this was going to happen.<sup>1146</sup>

Carson: Well we anticipated it and we anticipated that it would happen when we weren't there at all is what we anticipated. So the fact that we were there is is a bonus. (Laughs) I guess from a public safety point of view. We really expected it to happen today after our presence had had left, but they chose to do it when we were still around so ah you know we had anticipated em doing it, ah you know we just didn't know when.<sup>1147</sup>

Superintendent Parkin testified that in this conversation he “wasn’t being critical at all”.<sup>1148</sup> In cross-examination Inspector Carson said that he “totally” disagreed with suggestions that his superior officers were critical of him,<sup>1149</sup> and that he was “the person who had the egg on

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<sup>1145</sup> Exhibit 444A, Tab 6 (Transcript), pp. 35-37.

<sup>1146</sup> Superintendent Parkin testified that in referring to “they” in this passage he was referring to the community at large: see Cross-examination of Anthony Parkin by Mr. Falconer, February 8, 2006, pp. 94-95; see also p. 112.. In the course of this passage it was also put to Parkin that he was “commenting on your view that they, being the non-Native community in the area, are going to be critical because the Park was taken over, right?”, and Superintendent Parkin answered, “Correct.”

<sup>1147</sup> Exhibit 444A, Tab 6 (Transcript), p. 42.

<sup>1148</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 179; see also the Cross-examination of Anthony Parkin by Mr. Falconer, February 8, 2006, pp. 98-100, 105-11, 121-22.

<sup>1149</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 218, 233-35. See also p. 238: “And at no time did I ever feel I was being criticized in any way for the -- my involvement in this incident.” See also Cross-examination of John Carson by Mr. Falconer, June 28, 2005, pp. 257-72, and June 29, 2005, p. 17.

their face”.<sup>1150</sup> Parkin said he supported the decision of the OPP to withdraw from the Park in the circumstances.<sup>1151</sup> He said the OPP had to adapt to the “type of containment that we had”,<sup>1152</sup> given that it was not possible to control access to the Park from CFB Ipperwash. Parkin testified that even with the benefit of hindsight, it would not have made sense for Carson to have deployed sufficient officers in the Park for an indefinite time in order to prevent a takeover of the Park:

We could have been there for months. With no timeframe you wouldn’t have the resources to simply sit and wait and you could have put all the resources you wanted in there and then it would have simply been a matter of being outwaited until the resources left. And then if that was still the intent they could have moved into the Park at any time.<sup>1153</sup>

Chief Superintendent Chris Coles testified that the decision to remove the OPP officers from the Park did not concern him.<sup>1154</sup> He said,

The person made the decision, there had been a plan in place, events changed some direction short-term, more people than officers were there, and the decision was made to leave. It did not concern me and I...understand some of the things and I read some of the transcripts of this...Commission, but it did not concern me. I think they made the right decision to move. No one was hurt on either side, and there was a plan in place to go and seek an injunction. And, as far as I was concerned, that was the path that I wanted in any event because of the ambiguities that surround some of these issues.<sup>1155</sup>

Coles said he never criticized Carson regarding that decision, or thought of doing so.<sup>1156</sup>

Inspector Carson informed Superintendent Parkin that he was considering putting “the ERT right back inside the park if we can get access”. He said, “[W]hat I would like to do...if we can achieve it is get ERT inserted into the Park so at least we’re just in there and in their face even you know, not...to physically scoop ‘em and drag them out but just just to be in there and keep an eye on their activities.” Parkin testified that at the time he thought there was an issue whether it would be “problematic to try and put anybody in there”.<sup>1157</sup>

At 10:10 a.m. Inspector Carson spoke to Inspector Dale Linton regarding Linton’s pending arrival as night Incident Commander. Carson informed Linton of arrangements at the scene. He also described the events of the previous evening:

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<sup>1150</sup> Cross-examination of John Carson by Mr. Falconer, June 28, 2005, pp. 293-94; see also June 29, 2005, p. 180 (“two days after you had egg on your face”). See also Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 234-35.

<sup>1151</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 179-80, 182-84; see also Cross-examination of Anthony Parkin by Mr. Roland, February 7, 2006, pp. 317-18.

<sup>1152</sup> Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, pp. 52-54.

<sup>1153</sup> Examination of Anthony Parkin by Mr. Sandler, February 13, 2006, pp. 122-23.

<sup>1154</sup> Examination in chief of Christopher Coles, August 16, 2005, p. 18.

<sup>1155</sup> Examination in chief of Christopher Coles, August 16, 2005, pp. 18-19.

<sup>1156</sup> Cross-examination of Christopher Coles by Ms. McAleer, August 16, 2005, p. 256.

<sup>1157</sup> Examination in chief of Anthony Parkin, February 6, 2006, pp. 180-82.



All I'm going to try to do is hold the line. Ah we lost the park last night. We're not in the park at all. We've got ah more or less ah lack of a better term run out before somebody got hurt. A cruiser rear window smashed out of it and there was a nose to nose and it wasn't good for a little while and we didn't have enough ERT guys. We only had eight there, so we just didn't have the horses to do it.

Linton: Uhum.

Carson: ...[S]o rather than get somebody into a confrontation and get hurt we...chose plan B and just maintained the area outside of the park.<sup>1158</sup>

Carson also informed Linton that at Gustafsen Lake in British Columbia, the "RCMP are raiding 100 mile house as we speak".<sup>1159</sup> Linton remarked, "that could work in our favour".<sup>1160</sup> Linton reported that the military had been brought in at Gustafsen Lake, although it was unclear "[w]hether they were going to do the raid or whether they were going to do the perimeter or what".<sup>1161</sup>

## 7.08 THE PROSPECT OF AN INJUNCTION

At 10:42 a.m. Detective Sergeant Wright spoke to Inspector Robertson, who was responsible within the OPP for providing equipment in support of police operations.<sup>1162</sup> He described the incident involving the sighting of a rifle butt in the trunk of a First Nations person's car, the "major confrontation" the previous evening that led to the OPP leaving the Park, and the attempt to serve a trespass notice.<sup>1163</sup> He said there was "no doubt" the Park belonged to the Province, and continued:

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.<sup>1164</sup>

Wright testified that at this point he believed the injunction was "imminent".<sup>1165</sup> He thought, "[W]hen we get that injunction we're going to go back into the Park and we're going to act on that injunction".<sup>1166</sup> He qualified this by stating that enforcement of the injunction would depend

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<sup>1158</sup> Exhibit 444A, Tab 7 (Transcript), p. 46.

<sup>1159</sup> Exhibit 444A, Tab 7 (Transcript), p. 48.

<sup>1160</sup> Exhibit 444A, Tab 7 (Transcript), p. 48.

<sup>1161</sup> Exhibit 444A, Tab 7 (Transcript), p. 48 This was also discussed in a telephone conversation at 10:38 a.m. between Inspector Carson and municipal administrator Ken Williams. Inspector Carson remarked, "'Well it won't help us any.'" See Exhibit 444A, Tab 8.

<sup>1162</sup> Examination in chief of John Carson, May 17, 2006, p. 156.

<sup>1163</sup> Exhibit P-1072 (Transcript).

<sup>1164</sup> Exhibit P-1072 (Transcript), p. 2.

<sup>1165</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 107-08.

<sup>1166</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 107-08.

on “whatever Inspector Carson decided how we were going to do that”.<sup>1167</sup> Wright said he had given Robertson “the Readers’ Digest version, as it were, as to what I anticipated was going to happen”.<sup>1168</sup> Wright had not had any discussions with Carson as to what would happen when an injunction was obtained, but his understanding was that “we would move on that court order”.<sup>1169</sup> Carson testified,

Quite frankly...I really couldn’t tell you what we would do once we secured the injunction...because I had no idea what the injunction was going to direct us. So, I mean, that would be, at very best, speculation of how we would be best able to address it.<sup>1170</sup>

In speaking to Inspector Robertson, Mark Wright said two intelligence officers had reported that the occupiers were “cutting down trees and startin’ to barricade the front of the Park”. Wright and Robertson discussed the provision to the OPP of weaponry,<sup>1171</sup> and arrangements for a helicopter. Wright said he thought there was “real potential for one of our guys to get hit”. Wright described how undercover officers had camped in the Park, and that “we’ve had ERT on the ground here 24 hours of the day for the last month”:

And basically what happens is, they start rockin' and rollin'...around 2, 3, 4 o'clock and it gets busy for us, like really busy for us between four and two o'clock in the morning 'cause they're out of the sack and they're out to cause trouble. So what we'd like to do is, we'd like to get our people back into the Park prior to that, before they start moseying around and start bringing - you know people start wandering back into the Camp and we're really uncomfortable, sending our guys in there, without somebody overhead.<sup>1172</sup>

Wright testified that this passage referred to his discussions with Carson and others “about repopulating the Park”.<sup>1173</sup>

At 10:45 a.m. Les Kobayashi informed Inspector Carson that the “blockade committee was meeting at eleven o’clock to discuss the injunction”.<sup>1174</sup> Carson passed this on to other OPP officers during an 11:00 a.m. meeting.<sup>1175</sup> At a briefing shortly after 11:00 a.m., Carson advised

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<sup>1167</sup> Examination in chief of Mark Wright, February 22, 2006, p. 110.

<sup>1168</sup> Examination in chief of Mark Wright, February 22, 2006, p. 110.

<sup>1169</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 110-11.

<sup>1170</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 32.

<sup>1171</sup> At one point the conversation on this subject, Wright asked someone else in the Command Post while he was on the phone, “What about when we start bringing the Road Warriors down here? We going to have enough guns and everything for them? Do we need more guns down here?” Wright testified that, “Road warriors are a commonly referred term describing officers. I mean it was used back then and it’s still used today. There’s no connotation in that other than -- and I don’t know where that originated from, but it’s a commonly referred term amongst police officers referring to officers.” See Examination in chief of Mark Wright, February 22, 2006, p. 115. See also pp. 118-21.

<sup>1172</sup> Exhibit P-1072 (Transcript), p. 4.

<sup>1173</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 113-14.

<sup>1174</sup> Examination in chief of John Carson, May 17, 2005, p. 115; see also Examination in chief of Mark Wright, February 22, 2006, pp. 89-90

<sup>1175</sup> Examination in chief of John Carson, May 17, 2005, p. 121.

those present that the “Blockade Committee” was “meeting for a consensus on the injunction”.<sup>1176</sup>

At 11:10 a.m. Detective-Sergeant Wright spoke to Inspector Robertson again. Robertson informed Wright that an MNR helicopter was in transit to Ipperwash, and that he had sought to obtain the use of armoured personnel carriers.<sup>1177</sup> At 11:24 a.m. Inspector Carson made telephone calls for the purpose of obtaining the use of an armoured vehicle.<sup>1178</sup>

## 7.09 ATTEMPTING DIALOGUE

Earlier that morning Detective-Sergeant Wright had initiated the involvement of Constable Vince George in an attempt to establish contact with the occupiers.<sup>1179</sup> The negotiator, Sergeant Seltzer, also suggested George’s involvement.<sup>1180</sup> Carson was reluctant to involve George further, saying George “has to live here with these people”.<sup>1181</sup> He instructed Seltzer to contact George on the basis that if he was “uncomfortable helping us, we respect that”.<sup>1182</sup> Carson said George could be used to initiate contact, after which communications would be taken over by a negotiator.<sup>1183</sup> Seltzer advised that he had spoken to Lorne Smith. He reported that Smith was not sure he wanted to be involved with negotiations because he also lived in the area, and did “not want to cause concerns for his family”.<sup>1184</sup> Carson directed that Sergeant Marg Eve be brought in as a negotiator on the next day.<sup>1185</sup>

At 11:37 a.m. Inspector Carson reported to Deputy Superintendent Parkin by telephone. Carson informed him that he understood there was to have been an “inner ministerial committee” meeting at 11:00 a.m. to discuss the MNR’s support for an injunction.<sup>1186</sup> As to possible negotiations, Carson reported as follows:

Parkin: Have we tried to establish any negotiation any discussion?  
Carson: Well they told us last night they would talk to us at noon and there's there's, we really haven't had ah an opportunity to to do that yet.  
Parkin: When they said that did they say like where or how?

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<sup>1176</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 129-30.

<sup>1177</sup> Exhibit P-1099.

<sup>1178</sup> Exhibit 444A, Tabs 9, 10

<sup>1179</sup> Examination in chief of John Carson, May 17, 2005, pp. 68-69.

<sup>1180</sup> Examination in chief of John Carson, May 17, 2005, p. 122.

<sup>1181</sup> Examination in chief of John Carson, May 17, 2005, p. 122; see also pp. 125-26. See also Examination in chief of Mark Wright, February 22, 2006, pp. 70-71, 130, 133-34.

<sup>1182</sup> Examination in chief of John Carson, May 17, 2005, p. 124. See also Exhibit 444A, Tab 11, p. 65. See also See also Examination in chief of Mark Wright, February 22, 2006, p. 134.

<sup>1183</sup> Examination in chief of John Carson, May 17, 2005, p. 124; see also Examination in chief of Mark Wright, February 22, 2006, p. 134.

<sup>1184</sup> Examination in chief of John Carson, May 17, 2005, pp. 122-24; see also Examination in chief of Mark Wright, February 22, 2006, p. 130.

<sup>1185</sup> Examination in chief of John Carson, May 17, 2005, p. 124; see also p. 201.

<sup>1186</sup> Exhibit 444A, Tab 11 (Transcript), p. 65.

Carson: No no that that they there there was an awful lot of alcohol involved there last night so there really wasn't a lot of coherence if you would.

Parkin: They were all pissed up eh?

Carson: Yep that's right.

Parkin: Okay. Um do we plan on ah going down to somewhere near the front gate and ah trying to talk to them?

Carson: What we're going to do that shortly, but I was just trying to find out you know what was happening with helicopters and those kinds of things before we you know got forward and you know you know had to deal with another issue before we knew what our you know.

Parkin: Yep.

Carson: What our back up was.

Parkin: Yep.

Carson: So I think we're getting pretty near to that now.

Parkin: Okay.

Carson: Okay. You getting a little more comfortable with where we are?

Parkin: Uhum.

Carson: And the number of bodies et cetera. So I think it's starting to shake up now but we'll have to go down there and and and have chat and see what they have to say and I mean that is the next step now. We've pretty much you know.<sup>1187</sup>

Carson also referred to the possibility of placing OPP officers back in the Park. He told Parkin he was considering sending “half a dozen or ten guys just to walk up the beach and see...how they react to that”.<sup>1188</sup> He said there was no sign of weapons being used by the occupiers, except for the incident in which a First Nations person had apparently reached for a rifle butt in the trunk of a car, and had stopped when told to do so by another First Nations person.<sup>1189</sup> The two officers discussed that there had been shots fired at Gustafsen Lake on the previous night, and that the situation there seemed to be “escalating”.<sup>1190</sup> Carson reported to Parkin that there were media “satellite trucks all over the place up here”, and that the OPP was handling media relations on a 24 hour basis.<sup>1191</sup>

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<sup>1187</sup> Exhibit 444A, Tab 11 (Transcript), pp. 69-70. See also p. 65: Inspector Carson referred to the possible involvement of Vince George, saying he was going to “see if he’s comfortable...coming in and and being a spokesperson for today until we can get a handle on who the players are and who the best negotiators would be.”

<sup>1188</sup> Exhibit 444A, Tab 11 (Transcript), p. 68.

<sup>1189</sup> Exhibit 444A, Tab 11 (Transcript), p. 69.

<sup>1190</sup> Exhibit 444A, Tab 11 (Transcript), p. 69. Superintendent Parkin testified that he may have gotten his information about Gustafsen Lake from Inspector Hutchinson, but he was unsure. He testified that to his knowledge this information had no impact on his decision making or the management of police operations at the Park: see Examination in chief of Anthony Parkin, February 7, 2006, pp. 30-32.

<sup>1191</sup> Exhibit 444A, Tab 11 (Transcript), p. 71.

Shortly after this conversation, Inspector Carson confirmed to Sergeant Kent Skinner, the TRU team leader, that the role of the TRU team would be “backup”.<sup>1192</sup> Carson gave instructions that the team was to arrive at Pinery Park at 7:00 p.m. that evening, “so that in the event there was going to be a requirement to call somebody out during the night, that they were close at hand”.<sup>1193</sup> He instructed Skinner to sit in on OPP briefing meetings. He also instructed Skinner to keep the TRU team’s cube vans “out of sight”.<sup>1194</sup> Carson “didn’t want to present any appearance that we were raising the anxiety level in regards to the tools that we had at our disposal”.<sup>1195</sup>

At 11:54 a.m. Inspector Carson received a call from Inspector Robertson.<sup>1196</sup> They discussed the helicopter Carson wished to obtain. Carson said “It just that before we do anything I’d like to have an eye you know so we have some idea what’s the movement in there before we move people in any particular spot.”<sup>1197</sup> He subsequently added, “[If] we can get in there and get our...situation...stabilized so...we’re comfortable with it we may not require it”, but at “initial stages if we try to insert into the park we have to make sure that we have...an eye so that we don’t get ambushed”.<sup>1198</sup> Carson testified that his intention continued to be to have OPP officers positioned within the Park, rather than being deployed there to remove the occupiers.<sup>1199</sup>

At 12:10 p.m. Inspector Carson called Sergeant Babbitt.<sup>1200</sup> Babbitt reported that as they spoke, Chief Bressette was on CBC Radio saying he did not condone what the occupiers were doing, that KSP did not support it, and that KSP’s position was that they dealt with issues in the courts.<sup>1201</sup> Babbitt also reported that he had responded to one inquiry by saying “we have no reason to believe that they’re armed in there and that...there’s...any threat to anyone as far as that is concerned. That all our dealings with them in the past have been fairly reasonable.”<sup>1202</sup> Babbitt told Carson he believed the inquiry had been made by someone posing as a media representative.<sup>1203</sup> Carson testified that Babbitt “provided that information given who he thought the call was”, and that Babbitt was trying “to keep the caller of the understanding that this was pretty much a low-key event”.<sup>1204</sup> He continued to believe the occupiers would not turn weapons

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<sup>1192</sup> Examination in chief of John Carson, May 17, 2006, pp. 148-49.

<sup>1193</sup> Examination in chief of John Carson, May 17, 2006, pp. 149-50; see also pp. 169-70. Inspector Carson testified that although there might be times when TRU team members could be asked to do non-TRU tasks, “in a situation like this were team is placed in particular at Pinery Park on standby, absolutely not”: see Examination in chief of John Carson, May 18, 2006, p. 83.

<sup>1194</sup> Examination in chief of John Carson, May 17, 2006, p. 148.

<sup>1195</sup> Examination in chief of John Carson, May 17, 2006, pp. 150-51.

<sup>1196</sup> Exhibit 444A, Tab 12 (Transcript).

<sup>1197</sup> Exhibit 444A, Tab 12 (Transcript), p. 74.

<sup>1198</sup> Exhibit 444A, Tab 12 (Transcript), p. 75. See also Examination in chief of John Carson, May 17, 2006, pp. 157-58.

<sup>1199</sup> Examination in chief of John Carson, May 17, 2006, p. 158.

<sup>1200</sup> Exhibit 444A, Tab 13 (Transcript).

<sup>1201</sup> Exhibit 444A, Tab 13 (Transcript), pp. 82-83.

<sup>1202</sup> Exhibit 444A, Tab 13 (Transcript), p. 83.

<sup>1203</sup> Exhibit 444A, Tab 13 (Transcript), pp. 83-84.

<sup>1204</sup> Examination in chief of John Carson, May 17, 2005, pp. 167-69.

on the OPP, however, even though he believed that there were weapons in the Park because “of what had been seen in the trunk of a vehicle the day previous”.<sup>1205</sup>

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<sup>1205</sup> Examination in chief of John Carson, May 17, 2005, p. 168.

## CHAPTER 8

# THE OCCUPATION AND THE GOVERNMENT: SEPTEMBER 5

### 8.01 THE SEPTEMBER 5 IMC MEETING

A takeover of the Park having occurred, a meeting of the IMC was convened by Julie Jai at Queen's Park, as had been contemplated at the conclusion of the August 2 IMC meeting.<sup>1206</sup> The meeting took place from 11:00 a.m. until 1:30 p.m. on September 5.<sup>1207</sup>

#### (1) UPDATE FROM THE SCENE

Information about events at the scene was provided by Peter Sturdy of the MNR, who participated in the meeting by telephone, and Ron Fox.<sup>1208</sup> It was reported that OPP and MNR personnel were told by the occupiers to leave the Park, and that an OPP cruiser window had been broken.<sup>1209</sup> The IMC was informed that the OPP and MNR staff had sought to serve the occupiers with a written notice that they were trespassing, but the occupiers had refused to accept it.<sup>1210</sup>

Elizabeth Christie, a junior government civil litigation lawyer present at the meeting, said the meeting was informed the Park was ordinarily closed to overnight camping after Labour Day, but continued to be open to the public for day use.<sup>1211</sup> She said the "step that had been taken that was extraordinary here was that the Park had been completely shut down because of this incident".<sup>1212</sup>

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<sup>1206</sup> Examination in chief of Julie Jai, August 30, 2005, p. 213.

<sup>1207</sup> Examination in chief of Julie Jai, August 30, 2005, p. 265; Examination in chief of Ron Fox, July 11, 2005, pp. 154, 158.

<sup>1208</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 231, 268. Jeff Bangs recalled that Ron Fox's update was the lengthier of the two: Examination in chief of Jeff Bangs, November 3, 2005, p. 48.

<sup>1209</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 78; Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 33.

<sup>1210</sup> Examination in chief of Elizabeth Christie, September 26, 2005, pp. 75-76; see also Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 32.

<sup>1211</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 81.

<sup>1212</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 81. Christie testified that an MNR representative said, "[W]e closed the Park so that the Stoney Pointers would be trespassing by being there" (see pp. 82-83). It is unclear how this could have been necessary, or could have been thought to be necessary, given that the occupiers had excluded MNR and OPP personnel from the Park. Ron Fox recalled that it had been

Ron Fox reported that it was difficult for police to secure the Park.<sup>1213</sup> He said, “[T]he longer they’re there, the more familiar they become with surroundings and the more difficult it becomes to remove them.”<sup>1214</sup> It was reported that there was no evidence the occupiers had firearms, although they might have access to them.<sup>1215</sup> Elizabeth Christie’s notes indicate that at a later point in the meeting a comment was made that there was no evidence of weapons, but it would be “naive to presume there won’t be”.<sup>1216</sup> Christie testified regarding a comment that,

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stated that after Labour Day the Park ordinarily remained open for day use: see Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 24. He accepted that it would be “a little bit inaccurate if somebody said that, well, it’s just an empty park, or it’s just a closed park”. See Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 24-25.

<sup>1213</sup> See Examination in chief of Ron Fox, July 11, 2005, pp. 227-29; see also Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 37-38. Contemporary handwritten note of Eileen Hipfner, Exhibit P-510; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 74-75. Elizabeth Christie made a note of a comment at the meeting that, “Public safety is an issue because it’s difficult to secure the area because of the beach access and the...forest”: see Examination in chief of Elizabeth Christie, September 26, 2005, p. 101. Ron Fox testified, “The practical ability to contain the Park was just not there because it is contiguous land to Canadian Forces Base Ipperwash as well as to the beachfront”: see Examination in chief of Ron Fox, July 11, 2005, p. 228. Fox discussed this with John Carson on the afternoon of September 5. See Exhibit 444A, Tab 16 (Transcript), pp. 122-23:

Fox: Well now, will they be letting people in? I said no! The park is cordoned off. But I said, here’s the chunk of reality. (Laughs) It’s a big park! (Laughs) Well, and I said, like knowing the area as well as I do, I said I could get into that park and the police would never know it!

Carson: That’s right. Well, they can come in through the military base that we don’t have control over.

Fox: Yes.

Carson: So they can drive all through the military base and come on through a fence that we have no access to.

Fox: Yeah.

Carson: At this time.

Fox: That’s right. So I mean that’s the - that’s the other aspect. But I mean, as far as people showing up.

<sup>1214</sup> Contemporary handwritten note of Eileen Hipfner, Exhibit P-510; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 74-75. See also Examination of Ron Fox by Mr. Sandler, July 19, 2005, pp. 102-03:

Q: The longer the occupiers were in the park the more difficult their removal would be, if the Court so ordered, right?

A: Yes.

Q: You actually made that point at the Interministerial Committee meeting that, as they become more comfortable with their environment, it might be more difficult if ultimately the Court orders their removal, right?

A: Yes. I -- I think my words were familiarity with their surroundings, yes.

<sup>1215</sup> Examination in chief of Eileen Hipfner, September 15, 2005, pp. 88-91. Elizabeth Christie also recalled that no indication had been received that the occupiers were armed: Examination in chief of Elizabeth Christie, September 26, 2005, p. 83.

<sup>1216</sup> Examination in chief of Elizabeth Christie, September 26, 2005, pp. 99-100. She believed this comment was made by an MNR official. Ron Fox said that it is possible he made this comment: see Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 23-24.



“[T]here's always potential for Mohawk Warriors to move in.”<sup>1217</sup> There was discussion that the IMC should be aware of the “Gustafsen Lake standoff” that was ongoing in British Columbia at the time”.<sup>1218</sup> Christie said,

I recall just a general discussion about the fact that the Gustafsen Lake situation had continued on for quite some time, that it had escalated to the point where there were helicopter surveillance operations...[T]here were reports of...guns being fired at those aircraft and...that...the nature in this sort of emotional heat, if you will, of...that matter had...really...ramped up quite substantially over the time that that had been going on.<sup>1219</sup>

Christie testified that the question was asked, "What is the tolerance level of the Government...if there is an escalation?"<sup>1220</sup>

It was reported to the IMC that Chief Bressette and the KSP council did not support the occupiers.<sup>1221</sup> Charles Harnick's Executive Assistant, David Moran, believed this conveyed a message to the IMC that the occupation raised a law enforcement issue rather than a native issue.<sup>1222</sup> Similarly, Deb Hutton, an Executive Assistant to the Premier attending on behalf of the Premier's Office,<sup>1223</sup> recalled that Chief Bressette's unwillingness to support the occupation supported the view that Ontario's ownership of the Park was clear.<sup>1224</sup> Jeff Bangs, an Executive Assistant to the Minister of Natural Resources, recalled a comment at the meeting that, “Chief

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<sup>1217</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 90. See also Examination in chief of Ron Fox, July 11, 2005, p. 121:

Mohawks of Ahkwasasne is a stand alone First nations territory, and while they are Mohawk people, and warriors may generally be Mohawk, that's not to suggest for a moment that the Mohawks of Ahkwasasne would be there in any other capacity. But I did feel that it would be concerning if the warriors had taken an advocate position, if you will, for those occupying the base...I think it's been shown in previous First Nations matters where the warrior society has been a presence, and it has, certainly from my perspective, caused situations to denigrate as opposed to be of assistance.

<sup>1218</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 90. Elizabeth Christie's notes record a comment by an unidentified person: "Need to decide where we want to place our government in the national picture." See p. 103.

<sup>1219</sup> Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, p. 191. See also pp. 192-93.

<sup>1220</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 92. She added (at pp. 92-93): “So, then we sort of shift -- and this is common in these meetings -- we then sort of shift to, so we now know the state of the world on the ground but...what's the political situation here.”

<sup>1221</sup> Examination in chief of Eileen Hipfner, September 15, 2005, p. 81; Examination in chief of Deb Hutton, November 21, 2005, p. 221. David Moran believed the IMC received information that elders of “the Stoney Pointers” did not support the occupation: see Examination in chief of David Moran, November 1, 2005, pp. 43-44.

<sup>1222</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, pp. 44-45.

<sup>1223</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 131-32, 184.

<sup>1224</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 221-22. See also p. 225: [A]t no time did anyone suggest that there had been a land claim for the Parklands itself. And as I tried to indicate earlier, I think the fact that the Chief did not support this, in my view, sent a -- an additional signal that this was not a land claim issue, the Park itself.” See also pp. 243-44: “It was that because the ownership issue was clear, as I understood it, and would continue to be clear even in the existence of a burial ground, and given the Chief's lack of support, reinforced that for me as well; that in this very specific issue we were dealing with an issue that was not aboriginal -- it was not a land claim issue, I guess, is how I viewed it.”

Bressette had indicated publicly that the occupiers were not speaking on behalf of their community”.<sup>1225</sup>

Charles Harnick’s Executive Assistant, David Moran, recalled that at the September 5 IMC meeting the question of a possible burial ground in the Park was discussed. He said,

...[I]t was something that we discussed at the meeting in terms of the significance in the role because one of the questions that we had was valid title to the Park. And when we discussed whether that a burial ground was sufficient reason for the validity of the land claim, we were told, No, that that was not. There were, in effect, thousands of native burial grounds all across the Province of Ontario and that the proper and appropriate steps, in terms of burial grounds, was to properly protect the site in the same way that a cemetery would be protected. But that it was not a valid claim. The other thing of note in terms of the burial ground is, the only people that seem to know anything about the burial ground was MNR and they provided assurances that it was their best information that there was no burial ground in the Park.<sup>1226</sup>

Moran recalled further,

They didn't think there was one there. But even if there was one that...didn't really make it into a large picture native issue. In terms of the land claim, there was no land claim, none had been filed and that there was a process to...follow should a land claim be filed. And so the impression that we were given was that this was strictly a law enforcement issue and that other than the fact that the people who had taken over the Park were natives, that's just basically where...the native issues ended. And so that it was strictly a law enforcement issue.<sup>1227</sup>

Elizabeth Christie testified that there was discussion about a burial ground in the Park, and that if a burial ground did exist, the government would “do the right thing”:

And...I had certainly -- I don't think I wrote it down here but...I've actually seen it...in other people's notes of what I said and...I sort of recall saying it...I had made the comment that if there is a burial site, then the Government needs to fulfill its obligations,

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<sup>1225</sup> Examination in chief of Jeff Bangs, November 3, 2005. p. 68.

<sup>1226</sup> Examination in chief of David Moran, October 31, 2005, pp. 196-97; see also p. 206.

<sup>1227</sup> Examination in chief of David Moran, October 31, 2005, pp. 206-07. Elizabeth Christie made a note to herself on this point. She described her notes as follows (see Examination in chief of Elizabeth Christie, September 26, 2005, pp. 74-75):

And then the next notation in...my notes...is within square brackets with a little asterisk beside it, that's a note to myself...And it says the burial ground doesn't give them title and that was based on my understanding of the law that there was a...process under the *Cemeteries Act* that you would go through if there was...a burial ground found that would create a – either move the remains or create a cemetery in that place. But it certainly doesn't give the descendants of the...people that might be laid to rest in the burial ground any kind of title -- claim to title.

See also Cross-examination of Elizabeth Christie by Ms. Perschy, September 27, 2005, p. 19 (“It didn't create a legal right to title to the Park, that's for sure.”) See also Cross-examination of Eileen Hipfner by Ms. Perschy, September 19, 2005, p. 88: “My understanding was that the existence of a burial site in the Park would not disturb Ontario's title to the Park.”

needs to do -- do the right thing. And...the comment that had come back was that in the *Cemeteries Act* -- because we do have some obligations under the *Cemeteries Act* and I think part of these comments are a need to find out so we needed to know more about what are our obligations under the *Cemeteries Act* should there turn out to be a claim being asserted to a burial ground.<sup>1228</sup>

Elizabeth Christie recalled information received from the MNR that there might be “archeological evidence that may have been obtained. But it was certainly unclear at that point as to what that evidence was and whether or not there was any validity to it.”<sup>1229</sup> Jeff Bangs said there was reference at the September 5 IMC meeting to a possible burial site. He recalled that, “[I]t was presented to us as the result of rumours and speculation in the community as to why this occupation might be occurring”, and “not anything that was presented as a definite”.<sup>1230</sup> Similarly, Deb Hutton recalled that on September 5 or 6 there was speculation that the potential existence of a burial ground might be one of the motivating factors for the occupation, but this was presented as speculation only.<sup>1231</sup>

Julie Jai had not received any information that any of the people at Stoney Point had previously sought the assistance of ONAS regarding the protection of a possible burial site in the Park.<sup>1232</sup> She was not aware of any attempt having been made to raise the matter with any branch or representative of government.<sup>1233</sup> She was not aware whether there was any basis for the claim.<sup>1234</sup> She did not assume whether a burial site existed or not.<sup>1235</sup> She testified that if

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<sup>1228</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 102. Christie testified in cross-examination that she observed no resistance to this suggestion: see Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, p. 213.

<sup>1229</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 74. She continued:

The background to that was...my best recollection is that there had been some assertion or some...question in the distant past about...the presence of a burial ground that...had been investigated and demonstrated to...not be founded. But, then there was a question – so somebody within the Ministry brought up the question of burial and...indicated that there may have been some new evidence but it hadn't been assessed.

See also p. 106: “So, my understanding was there was some archeological evidence that...had been mentioned that might have some relevance to a burial site; hadn't been investigated. It hadn't been looked into and nobody really knew whether or not it was valid...” See also Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, p. 215. See also Examination in chief of Ron Fox, July 11, 2005, pp. 181-82.

<sup>1230</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 67. See also Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, pp. 226-27:

My understanding was that it was not directly communicated to government by the occupiers, it was more a case of rumours and speculation as to why this might be happening and...my understanding was that it was not that -- that or any other articulation of demands came from the occupiers”.

See also p. 229. See also Cross-examination of Jeff Bangs by Mr. Zbogor, November 3, 2005, pp. 263-65.

<sup>1231</sup> See Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 219-20, 269-70, 272, 273; see also Cross-examination of Deb Hutton by Mr. Horton, November 23, 2005, pp. 203-04; Examination in chief of Deb Hutton, November 21, 2005, p. 223, and November 22, 2005, p. 76.

<sup>1232</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 49.

<sup>1233</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 49-50; see also p. 54.

<sup>1234</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 52-53.

<sup>1235</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 50.

ONAS had been approached, "We could have entered into a discussion with them about how to go about identifying the burial site and protecting it under the *Cemeteries Act*."<sup>1236</sup> She did not believe there would have been any reluctance on ONAS' part to do so.<sup>1237</sup> Deb Hutton considered that the fact that there had been no prior communications from the occupiers about a burial ground signaled that the takeover the Park was just an illegal occupation.<sup>1238</sup>

Elizabeth Christie testified that there was reference to the recent Ontario court decision summarily dismissing the Kettle & Stony Point First Nation's claim to ownership of the surrendered beachfront lands at Kettle Point. She said,

...[T]hat certainly seemed to suggest that lands in the Provincial Park -- because it indicated that the original surrender had been valid, that would certainly suggest that...the Provincial Park title was...good and held...legitimately by the Ontario Government.<sup>1239</sup>

Julie Jai testified, "[W]e felt that we had good title to the Park and that the fact that there hadn't been any claims with respect to the land that the Park was on or any claims really relating to...any alleged burial ground, were the things that we took into account."<sup>1240</sup>

Deb Hutton recalled that there was speculation about the occupiers asserting an informal land claim to the Park.<sup>1241</sup> She said, "[W]e had a -- a quote or a comment from -- from one of the occupiers about the Park being their land or something of that nature."<sup>1242</sup> Elizabeth Christie recalled that an MNR representative reported,

...[S]ome of the -- the occupiers had gone into a maintenance building and they had written down Stoney Number...43. And that's of some significance if I'm recalling correctly. Kettle and Stony Point Band is -- Reserve is number 44. And previously there had been both Kettle and Stony Point and I think the Stoney Point had actually been 43 historically and so there was some suggestion that they were sort of resuming the...creation...of that Reserve.<sup>1243</sup>

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<sup>1236</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 51.

<sup>1237</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 52.

<sup>1238</sup> Examination of Deb Hutton by Ms. Perschy, November 23, 2005, p. 404.

<sup>1239</sup> Examination in chief of Elizabeth Christie, September 26, 2005, pp. 73-74. Julie Jai also testified about this: see Cross-examination of Julie Jai by Ms. Perschy, September 13, 2005, p. 49.

<sup>1240</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 57. See also Cross-examination of Julie Jai by Mr. Klippenstein, September 13, 2005, p. 233:

Q: Correct. So the surrender of the Park by the native people was central to the Government's position in this issue?

A: Well the fact that the Government felt that it had valid title to the Park was a key component of the context in which we made the decisions.

Q: Right. And --

A: And we believed that we had valid title.

<sup>1241</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 225.

<sup>1242</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 225-26.

<sup>1243</sup> Examination in chief of Elizabeth Christie, September 26, 2005, pp. 77-78. See also p. 85:

David Moran said the government's concern at the time was that the occupation could possibly "escalate and spread to other provincial parks".<sup>1244</sup> Jeff Bangs recalled that the takeover of the Park was "presented to us as an occupation with a leaderless group with lots of threats and...suggestions and rumours that this may spread".<sup>1245</sup> Moran said the government also wanted "to act quickly in terms of trying to contain it to the local area", and also be seen to be "dealing with this...in a strong manner", so that it didn't "give anyone the impression that if they took over a provincial park then the province would just readily negotiate away the park".<sup>1246</sup>

## **(2) THE GOVERNMENT'S POSITION**

Deb Hutton was an Executive Assistant to the Premier with responsibility for 'issues management', a role which included the management of government responses to current issues raised in the media or in the legislature.<sup>1247</sup> She was responsible for preparing government messages to be communicated to the public regarding those issues.<sup>1248</sup> Prior to the meeting she had a general awareness that there had been unrest in the Camp Ipperwash area, and frustration over the failure of the federal government to return the lands there.<sup>1249</sup> Hutton had been informed of the occupation the previous evening, by Jeff Bangs.<sup>1250</sup>

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And that -- by that language, I think the next note says, "number 43 equals the Stoney Point reserve before the amalgamation". And so because of the...sign that had been painted saying "Stoney Point Number 43", my recollection is that, sort of, that -- the Ministry people were presuming that that meant there was a claim to ownership; that this is part of our reserve.

Ron Fox testified that at an IMC meeting subsequent to the August 2 meeting and prior to the September 6 meeting (which could only have been the September 5 meeting), he recommended that there should be research whether there was an informal land claim on the Park, which would have included speaking to local residents and members of the local aboriginal community about their understandings and beliefs: see Examination in chief of Ron Fox, July 11, 2005, pp. 111-12. He continued (at p. 112), "I believe ONAS identified that there was no formal land claim process in place and I believe we fell short of identifying, perhaps, a third party intermediary who could have attended and asked those questions." In our submission the Commission should approach this evidence with some caution, as no other participant in the September 5 IMC meeting testified that any such recommendation was made, beyond the view that the position of the occupiers should be determined. It does not appear from any of the notes of participants in the meeting that it was made.

<sup>1244</sup> Examination in chief of David Moran, October 31, 2005, p. 211.

<sup>1245</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 52.

<sup>1246</sup> Examination in chief of David Moran, October 31, 2005, p. 211.

<sup>1247</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 95, 99-102; see also Examination in chief of Mike Harris, February 14, 2005, pp. 23-24; Cross-examination of Mike Harris by Ms. Perschy, February 14, 2005, p. 231.

<sup>1248</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 193.

<sup>1249</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 126-30, 137. Hutton said it would have been her practice for her assistant, Brett Laschinger, who had attended the August 2 IMC meeting on behalf of the Premier's Office, to have briefed her on that meeting, and that she expects he would have made her aware that there was a "potential for some issues on the Park property". She did not recall that briefing or being aware of that prior to September 4: see pp. pp. 126-28, 138. She added that, "[O]n any given day I personally and...the Premier's office would have been made aware, largely through me of, you know, I would venture to say 30 or 40 issues from all of the ministries". See pp. 141, 143-44.

<sup>1250</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 154-55.

Deb Hutton believed she informed the Premier of the occupation either on the evening of September 4 or in the early morning of September 5, prior to the IMC meeting.<sup>1251</sup> She did not recall the specifics of her discussions with the Premier, but she recalled that when she attended the September 5 meeting she and the Premier both shared the “preliminary view” that if the ownership of the Park by Ontario was not in question, the occupation should be resolved “sooner, rather than later” or “as soon as possible”, and in the interim the government should not engage in negotiations of substantive issues with the occupiers.<sup>1252</sup>

Deb Hutton said she viewed the meeting “first and foremost” as an opportunity to get more facts.<sup>1253</sup> She also expected, depending on the information she received, to “potentially come up with some options if there was a role for the government to play in this matter”, and “develop some communications messages” to the public regarding the occupation.<sup>1254</sup>

Numerous witnesses testified that Deb Hutton said, “The Premier is hawkish on this issue”.<sup>1255</sup> ONAS staff lawyer Eileen Hipfner noted that this was followed by a comment that, “It will set the tone for how we deal with these issues over the next four years”.<sup>1256</sup> Jeff Bangs recalled that Hutton said words to this effect.<sup>1257</sup> He said she added comment that the government needed “to respond carefully to this because it was one of the first encounters the new government was having with a First Nations issue”.<sup>1258</sup> A note by Julie Jai records that

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<sup>1251</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 159; see also pp. 162-63, 164. See also Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, pp. 277-78. Mike Harris confirmed this: see Examination in chief of Mike Harris, February 14, 2005, pp. 65-66. He also said it was possible that he spoke to Hutton about the occupation on both the evening of September 4 and in the early morning of September 5. See also p. 69.

<sup>1252</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 171-72, 188, 189-90, 204, 233; Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 215-16, 218, 221, 226. Mike Harris testified that pending the provision of further information at the September 5 IMC meeting, he did not think “that anybody was looking at any action”: see Examination in chief of Mike Harris, February 14, 2005, pp. 75, 91. See also p. 92: “I did not, certainly on the morning of the 5<sup>th</sup>, receive any information that...there was an immediate danger or a safety issue.” He said he expected that Hutton would “get a briefing on...what the status was, what happened, how it happened, and any action that was being taken or contemplated being taken, and report back”: see Examination in chief of Mike Harris, February 14, 2005, pp. 77-78, 90-91. He did not recall giving Hutton any specific instructions: see p. 78.

<sup>1253</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 171, 176, 179-80.

<sup>1254</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 201. At the outset of the meeting she considered that the matter could potentially be one to be dealt with through communications alone: see pp. 201-02. She did not have any preconceived ideas as to what those messages should be beyond the “preliminary views” she described in her evidence: see pp. 202-03.

<sup>1255</sup> Examination in chief of Julie Jai, August 30, 2005, p. 244; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 51, 71; Examination in chief of David Moran, October 31, 2005, p. 212; see also Cross-examination of David Moran by Mr. Klippenstein, November 1, 2005, pp. 161-62; Examination in chief of Jeff Bangs, November 3, 2005, p. 53; Examination in chief of Anna Prodanou, September 20, 2005, pp. 157-58; Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, p. 240.

<sup>1256</sup> Examination in chief of Eileen Hipfner, September 15, 2005, pp. 71-72.

<sup>1257</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, pp. 212-14; Cross-examination of Jeff Bangs by Mr. Zbogor, November 3, 2005, p. 268.

<sup>1258</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 53. See also Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, p. 212: “It was somewhat opposite to what I was saying. I don’t know that it

statement about the Premier being “hawkish”, and that he “feels we’re being tested on this issue”.<sup>1259</sup>

Deb Hutton acknowledged that she may have used the word “hawkish” in the meeting.<sup>1260</sup> As to the reference to ‘setting a tone’, she accepted she may have made a statement to that effect.<sup>1261</sup> She testified that she and the Premier shared the view that:

[W]e did need to respond; that sort of not saying anything was not an acceptable response; that we did need to make clear that we didn't condone this behaviour; that it was illegal and therefore as...landowner, we would take whatever steps we could to see the occupation come to an end.<sup>1262</sup>

She did not consider this to be a concern applicable to First Nations issues alone. She explained,

I thought more generally that this was the first time that a group of people, regardless of whom they were or where they were, were obviously attempting to make a point, get the Government's attention, perhaps encourage the Government to respond in a particular way. So it was a...general concern and a...general sense...that we didn't want to send the signal that it was okay, or that this was the way to get the Government's attention by not responding and by not saying we don't condone this activity.<sup>1263</sup>

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was necessarily adversarial...in the room, but it was in contrast to what I was saying, I would agree with that.” See also Cross-examination of Jeff Bangs by Mr. Roy, November 21, 2005, p. 71.

<sup>1259</sup> Examination in chief of Julie Jai, August 30, 2005, p. 244;

<sup>1260</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 231; Cross-examination of Deb Hutton by Mr. Scullion, November 23, 2005, p. 105.

<sup>1261</sup> Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, p. 31.

<sup>1262</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 232; Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 221, 226. See also Cross-examination of Deb Hutton by Mr. Rosenthal, November 22, 2005, pp. 300-01:

...[M]y very clear understanding of the Premier's position was that given this was an illegal occupation, we should find a remedy to see it come to an end as soon as possible and that we needed to communicate that and that we needed to ensure that in the course of that, so as not to lead anyone to believe that we were condoning this behaviour, we would not be negotiating as long as the occupation was under way.

Elizabeth Christie testified that Deb Hutton made a comment in the September 5 IMC meeting that, “if ever we need to act, it is now”: see Examination in chief of Elizabeth Christie, September 26, 2005, p. 95. This was not put to Deb Hutton for comment in the course of her testimony, although as indicated above she did testify that she and the Premier were of the view that the government needed to respond to the occupation.

Deb Hutton did not consider that she had received instructions or directions from the Premier: see Examination in chief of Deb Hutton, November 21, 2005, pp. 162-63, 164, 167, 179. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 235: “I don’t ever recall or instructing to say anything that the Premier said.” See also Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, pp. 33-34: “I was very careful that if I expressed a view on behalf of Mr. Harris that I – that that was, in fact, his view.” See also Examination in chief of Deb Hutton, November 21, 2005, pp. 185-86. In some situations she would express a position as the Premier’s view if she “had a very high expectation that what I was saying was consistent with his views even if we’d not had a chance to speak”: see Examination in chief of Deb Hutton, November 21, 2005, p. 188.

<sup>1263</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 206-07:

Hutton testified that she was concerned about the report that access to the Park could not be controlled, since this signaled that the size of the occupation could increase.<sup>1264</sup> She was also concerned by information that “the local community around the Park, in particular some permanent cottagers...and homeowners were extremely concerned”.<sup>1265</sup> She was concerned that “the longer this went on there would be a concern for heightened tension or the escalation of tension”.<sup>1266</sup>

Mike Harris testified that Deb Hutton was “certainly...authorized to give her opinion, based on the facts presented to her”.<sup>1267</sup> Having worked with her for five years, he was confident

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I did think that the longer you let a situation of this nature continue, the greater potential, at least, you had for there to be escalated tensions. And therefore I felt that the more prudent course in support of public safety would be to see an end to the occupation sooner rather than later.

See also p. 228. See also Examination in chief of Deb Hutton, November 22, 2005, p. 38:

As I said earlier, I believed, because this was the first incident of this nature for our government, and by nature I mean illegal activity, not more specific than that, designed, I believe to either get the Government's attention or to hopefully force them to do something, that it was important that we signaled publicly that this was not the type of behaviour that we would respond to.

See also Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, p. 16:

Q: Now, would you agree that you at the time regarded this situation as a test of how the Government would respond to any group which took illegal action to pressure the Government to further its own goals?

A: Yes. This, as I believe we've discussed previously, was the first action I will say, outside of the bounds of, sort of, the normal democratic processes that we're used to in government to convince any government, but our government in this case, to do something or to think a particular way. And as such, given my responsibilities to keep the broader government perspective in mind, I was concerned that if we had no response to this situation and by that I mean an illegal activity as you've described it that in of itself was a response that would say to the general public, this is a good way to get the Government to do something. That to me was a broader public safety concern. The idea that you're sending a signal that you condone this type of behaviour may in fact be seen as, for some, who wanted to see it that way, encouragement; that this was the way to act.

See also Examination in chief of Deb Hutton, November 21, 2005, p. 227:

I did believe that how we responded, and by that I mean, including from a communications perspective, would be something that...others would view, they would be looking to us. It was -- obviously it became a...significant provincial issue and as you talked about earlier it did in fact become a significant media issue and so how the Government responded...I believed, was going to be something that people took particular note of.

See also Cross-examination of Deb Hutton by Mr. Scullion, November 23, 2005, pp. 126-27:

For me, as I've said repeatedly, there was a broad concern on my part that if we didn't respond to this first situation, or I would actually argue any situation, but in particular this first one, with a response that said this is not the appropriate way to communicate your position to the Government, that we could in fact be encouraging additional illegal behaviour by anyone as a means to force the Government to do anything or to get its attention.

<sup>1264</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 16, 65.

<sup>1265</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 253.

<sup>1266</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 253.

<sup>1267</sup> Examination in chief of Mike Harris, February 14, 2005, p. 78.



that she would be able to express either his position or the position of the Premier's Office.<sup>1268</sup> She had authority to do so.<sup>1269</sup> Asked generally in cross-examination whether he thought Deb Hutton had misrepresented his views in the Ipperwash matter, he said he did not believe she had.<sup>1270</sup> He said he did not tell Hutton that he was "hawkish",<sup>1271</sup> but said that if that "was to describe that I wanted the occupation to end as soon as possible", that would be appropriate.<sup>1272</sup> He did not recall telling Deb Hutton that he felt the government was being "tested",<sup>1273</sup> but he did recognize the public would pay attention to the manner in which the government responded to the direct action at Ipperwash.<sup>1274</sup> He did not want the government to be seen to condone illegal actions.<sup>1275</sup>

Eileen Hipfner recalled that Deb Hutton and the MNR staff on the scene at Ipperwash regarded the situation as an urgent one, and that other participants at the IMC meeting did not appear to share that view.<sup>1276</sup> Deb Hutton testified that she "certainly put a great deal of stock" in what the MNR representatives reported, because they were "on the ground".<sup>1277</sup> She considered that they "had a particular perspective that those of us at Queen's Park did not have, that I thought was important to understanding the issue".<sup>1278</sup>

### (3) THE LEGAL OPTIONS

Elizabeth Christie advised the IMC as to its legal options. She outlined possible charges under the *Criminal Code*, including mischief charges, as well as provincial offences under trespass and provincial lands and parks legislation.<sup>1279</sup>

Ron Fox testified that MNR representatives participating in the meeting by telephone from the scene preferred that the occupation be dealt with through charges. Fox explained to the meeting that laying charges would not result in the effective removal of the occupiers from the

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<sup>1268</sup> Examination in chief of Mike Harris, February 14, 2005, p. 79; See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 186.

<sup>1269</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 81.

<sup>1270</sup> Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 236. See also p. 237: "I think she fairly reflected my views, and I would have great confidence in her to do so." See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 187.

<sup>1271</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 83-84, 85.

<sup>1272</sup> Examination in chief of Mike Harris, February 14, 2005, p. 84. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 183: "It...may have been we discussed if there's a way that we can get our Park back sooner rather than later, this...would probably be desirable. I would think that I would think something like that and I might say something like that. But I can't recall specifically what I said."

<sup>1273</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 83-84.

<sup>1274</sup> Cross-examination of Mike Harris by Ms. Perschy, February 14, 2005, pp. 235-36; Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 44-46.

<sup>1275</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 208-09.

<sup>1276</sup> Examination in chief of Eileen Hipfner, September 15, 2005, pp. 84-85.

<sup>1277</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 230; see also Examination in chief of Deb Hutton, November 22, 2005, p. 48.

<sup>1278</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 230.

<sup>1279</sup> Examination in chief of Eileen Hipfner, September 15, 2005, p. 76.

Park.<sup>1280</sup> Elizabeth Christie testified that she made the point at the meeting, “[E]ven if you proceeded under any of these, you certainly wouldn’t...guarantee removal of the people from the Park in any expeditious manner”.<sup>1281</sup>

David Moran recalled that there was discussion, and a “sort of education that was the focus of the meeting”, after a question was raised as to what could be done if someone had simply “taken over...your backyard”.<sup>1282</sup> Ron Fox testified that he raised the concept of ‘colour of right’ at the meeting:

I do recall indicating to the Committee that what needed to be examined is what the rationale was of the people that were there, if they felt they had some reasonable entitlement to be there, and I did speak about Colour of Right at that meeting.

Q: All right. Can you explain your understanding of Colour of Right, please?

A: Despite the fact that there may be needed access, or at least access to a park, or any property for that matter, by deed, it may be that there are those who feel that as a result of either, in this case previous treaties, previous agreements that were orally agreed to, that they may have a right or entitlement to be there. One of those things would be a burial ground that would cause people to say that they had a right or entitlement to be there.<sup>1283</sup>

Fox testified that “the best place to vet” any possible colour of right would be “a court of competent jurisdiction”.<sup>1284</sup>

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<sup>1280</sup> See Examination in chief of Ron Fox, July 11, 2005, pp. 213-14 (an extract from Ron Fox’s call to John Carson on September 5):

Fox: MNR by the way, kind of were against an enjoining order.

Carson: Oh, really!

Fox: Yeah. Yeah. Preferring basically to pass it over and say, Well, you know, I mean, there's Criminal Code offenses of mischief. You know, if you're lawful enjoyment or use of property, trespass. So I very carefully explained to them that, you know, under the Trespass to Property, an officer could go serve process, escort somebody to the gate and then they come back in. And we'll go on forever this way. And I explained the same with the Criminal Code and the provisions of the Bail Reform Act and how release procedures work. And I said quite clearly this is a civil dispute and it has to be adjudicated in a court of law and the police given sufficient authority to act.

<sup>1281</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 97.

<sup>1282</sup> Examination in chief of David Moran, October 31, 2005, pp. 203-04. Moran believed that Deb Hutton put this example forward. Deb Hutton recalled putting forward the example of a private landowner: see Examination in chief of Deb Hutton, November 21, 2005, pp. 216-17. Anna Prodanou, a communications expert at the meeting, testified that one of the male political staff at the meeting raised the example of “Hell’s Angels”: Examination in chief of Anna Prodanou, September 20, 2005, pp. 147-48.

<sup>1283</sup> Examination in chief of Ron Fox, July 11, 2005, pp. 162-63.

<sup>1284</sup> Examination in chief of Ron Fox, July 11, 2005, p. 183. See also p. 209:

What my intention was, was to bring to the matter at hand what I believed was the necessary complexity, as opposed to the simplicity. And I likened what would be a simple trespass, and I exemplified myself going to her home, and being an unwanted guest, being asked to leave, not leaving, and the police had intervention. It would be entirely different if I were to go to someone's home, but I felt that there was a right and entitlement for the -- for me to be there. Again, that's something that any police officer would have a very difficult time trying to adjudicate, nor should he or she on the side of the road.

Moran said he understood from the discussion of legal options that laying charges against the occupiers would be “kind of a waste of time”, and that “the appropriate way” was to pursue an injunction.<sup>1285</sup> He said Ron Fox and others recommended an injunction because it “would actually provide the legal authority to remove the occupiers from the park”.<sup>1286</sup> Jeff Bangs said the meeting was told the OPP wanted the government to seek the injunction.<sup>1287</sup> Similarly, Eileen Hipfner testified, “My recollection is that the OPP certainly preferred that an injunction be obtained.”<sup>1288</sup> Julie Jai accepted that in recommending that an injunction be applied for, the IMC would be following “the OPP’s plan”.<sup>1289</sup>

Elizabeth Christie reviewed the option of obtaining a civil injunction. She said that once an injunction was obtained,

...[Y]ou can tell the people that you've got the injunction Order. And if they still don't want to leave, then you have to go back to Court and actually get a warrant that...the police can use -- the police would, typically, not that they did this very often, but occasionally if they needed an injunction they would sometimes use the injunction to...sort of buoy up their negotiations to try and...diffuse a situation and...lead to its rapid end so they might say, you know, we have this injunction order. You know, if you leave now it'll all be easy but if you don't then we're going to...go and get an actual warrant or I can't remember the correct legal terms but the actual order that would...direct them to be...off the land.<sup>1290</sup>

She said that if the occupiers did not comply with a court injunction the government would have to resort to further proceedings in court for contempt, but that ultimately, “If they won’t leave it comes down to using force.”<sup>1291</sup>

Jeff Bangs recalled discussion at the meeting “about options and getting all of the options on the table from one end of the spectrum to the other”.<sup>1292</sup> He expressed concern about

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See also Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 39-40:

Q: And, as I understand it, and I think we both understand it, that by proceeding with an injunction, there's going to be the interposition between the Government and the occupiers of an independent Court to determine whether the government has a right to an injunction, right?

A: Correct.

Q: Right. And the Court could grant the injunction or decline the injunction?

A: Yes, sir.

Q: And, that -- among the options to be considered, that was the least drastic measure at the time, right?

A: I would say so.

<sup>1285</sup> Examination in chief of David Moran, October 31, 2005, p. 205.

<sup>1286</sup> Examination in chief of David Moran, October 31, 2005, p. 205.

<sup>1287</sup> Cross-examination of Jeff Bangs by Mr. Zbogor, November 3, 2005, pp. 282-83.

<sup>1288</sup> Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 227.

<sup>1289</sup> Cross-examination of Julie Jai by Mr. Fredericks, September 12, 2005, pp. 175-76.

<sup>1290</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 99.

<sup>1291</sup> Examination in chief of Eileen Hipfner, September 15, 2005, pp. 76-77.

obtaining an injunction. He said the government could afford to wait, that if an injunction was obtained “we’ll be expected to move in”, and that he did not “want to escalate” the situation.<sup>1293</sup> In his testimony, Minister of Natural Resources Chris Hodgson confirmed that he had discussed this with Bangs. Hodgson said his concern was that if an injunction was obtained, action on the injunction could be required, and he did not know what that action would be.<sup>1294</sup>

Deb Hutton recalled that at the September 5 IMC meeting, some people expressed the view that the government should “sit back and wait, do nothing,...see what happens, see what occurred”.<sup>1295</sup> She considered this option to include waiting to see if charges were laid by the police.<sup>1296</sup> She testified that she regarded this as a legitimate view, but believed it was an “equally legitimately held view to say that sending a signal that this type of behaviour is not condoned, is a broader, cautious approach.”<sup>1297</sup> She said the alternative option at the meeting

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<sup>1292</sup> Examination in chief of Jeff Bangs, November 3, 2005. p. 63.

<sup>1293</sup> Examination in chief of Jeff Bangs, November 3, 2005. p. 61; Cross-examination of Jeff Bangs by Mr. Lauwers, November 3, 2005, pp. 150-51. See also Examination in chief of Elizabeth Christie, September 26, 2005, pp. 89-90.

<sup>1294</sup> Examination in chief of Chris Hodgson, January 12, 2006, pp. 99-100:

Q: All right. And what was your concern, if any, with respect to the option of seeking an injunction?

A: I didn't understand why they needed an injunction, you know, the Attorney General and the police said that's what they needed. I didn't object, but I just wondered why they needed it.

Q: Okay.

A: If you get an injunction, you might be expected to do something about it.

Q: Meaning?

A: Meaning removal of the occupiers or I didn't really know exactly what they would do, but that's sort of the question I had. My opinion was that it's easier to avoid these situations, prevent occupations from occurring, if you can, than it is to remove people. So I just had a question, if you get an injunction, you might be expected to do something. What are you going to do?

Q: All right. And so that was a question you wanted --

A: You know, what are the options that they are going to do? I never did get an answer to it, so.

<sup>1295</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 205; see also Cross-examination of Deb Hutton by Ms. Twohig, November 22, 2005, pp. 198-99 (“a very non-active approach”).

<sup>1296</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 216-17: “If the Government chose to do nothing this [the possibility of charges] was part of the environment that was there. It was not, quite frankly, as is indicated here, it was not my understanding that these were options available to Government.” See also Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, pp. 82-83.

<sup>1297</sup> Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, pp. 51-52. See also Examination in chief of Deb Hutton, November 22, 2005, pp. 51-52:

I recall...considering it a legitimate approach. I mean I certainly wasn't dismissive of it. And I respected the fact that, as should be the case in these situations, different individuals from Ministries have their Ministry perspective as they should have. It's why, in cases like this, and many other in government, you bring all Ministries together and everyone is represented and has an opportunity to share their view. I, in my responsibilities in the Premier's office, and I would say Cabinet office, would be consistent with that as well, had a overall government perspective that was, I think, also important and needed to take into...account each Ministry's perspective on this matter. So, I would have respected, obviously, if Mr. Fox said this, I knew he was from the Solicitor General's Ministry at the time, I would have respected that that was a Solicitor General's

was pursuit of an injunction.<sup>1298</sup> She disagreed with the option of taking no action.<sup>1299</sup> She considered that the government “needed to at least have a communications response that indicated, given the facts we had learned, that this occupation was illegal and that the Government didn’t condone it”.<sup>1300</sup>

#### **(4) COMMUNICATION WITH THE OCCUPIERS**

Jeff Bangs recalled that at the September 5 IMC meeting the occupiers’ purpose was “very unclear...There was an apparent lack of a spokesperson on behalf of this group and no articulated demands as to what it was...they wanted.”<sup>1301</sup> There was “no one to communicate with and no one to negotiate with”, he said. “The OPP had not been able to identify a spokesperson for the group and that...was a challenge that we were facing.”<sup>1302</sup>

Julie Jai made a note that the “OPP are to be the ‘negotiators’”. She said the word ‘negotiators’ was in quotes “to indicate that negotiator doesn’t have the full sense of negotiating any sort of substantive thing but simply facilitating a process solution to end the occupation”.<sup>1303</sup> Jai’s notes indicate it was said at the meeting that a negotiator should not be sent to the scene from ONAS, since doing so “implies some legitimacy” in the occupiers’ claims.<sup>1304</sup> An aide to the Parliamentary Assistant to the Minister Responsible for Native Affairs expressed a concern about doing anything that would confirm the status or recognition of the occupying group:

If we send someone from ONAS, it confirms their legitimacy. OPP and MNR are on the ground and running. They’d be more appropriate.<sup>1305</sup>

Similarly, Jeff Bangs and Elizabeth Christie recalled a discussion at the meeting that Chief Bressette did not want the government to take any steps that would recognize the group occupying the Park.<sup>1306</sup> Christie recalled the meeting being informed “that Chief Bressette didn’t

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view, a Solicitor General Ministry view, and...that would have been, I think, an appropriate view for them to hold. We had other issues as well that we need to consider government- wide.

<sup>1298</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 205.

<sup>1299</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 208.

<sup>1300</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 207.

<sup>1301</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 50.

<sup>1302</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, p. 215; see also Cross-examination of Jeff Bangs by Mr. Zbogar, November 3, 2005, pp. 273-74, 275.

<sup>1303</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 255-56.

<sup>1304</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 256-57. She recalled that this came up at the IMC meetings: see Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 101-02.

<sup>1305</sup> Contemporary handwritten note of Eileen Hipfner, Exhibit P-510; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 78-79; see also Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, pp. 211-13. She accepted (at p. 213) that it was “a reasonable position to take”. Deb Hutton testified that she was not provided with written guidelines for the IMC, which referred to the option of appointing a third party negotiator. She said she would not have seen that as being beyond the scope of what the IMC could recommend: see Examination in chief of Deb Hutton, November 21, 2005, pp. 177, 193-94, 195-96.

<sup>1306</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, p. 121. Examination in chief of Elizabeth Christie, September 26, 2005, p. 104. Ron Fox recalled the concern being expressed at the meeting

want the Government to be recognizing the...Stoney Pointers, as...they were then being referred to, as any kind of legitimate band.”<sup>1307</sup> Christie recalled that at the meeting it was indicated that “the Kettle and Stony Point First Nation is probably intent on having the Government take action”.<sup>1308</sup> She recalled that “because of this fact that the First Nation was not supporting the action of this group, there was some suggestion by the MNR people that...the band...would like to see the government take action against them because they don't want to be seen as associating or supporting them”.<sup>1309</sup> She also recalled an MNR representative commenting, “We need to consider our relationship with the Kettle and Stony Point First Nation who will be frustrated if...we let this thing go on for too long.”<sup>1310</sup>

Julie Jai's testimony, corroborated by her handwritten notes, was that at the end of the meeting Deb Hutton indicated that she “wants an emergency injunction, doesn't want to wait two weeks. Attempts should be made to remove people.”<sup>1311</sup> Deb Hutton testified that by the end of the meeting she believed the takeover of the Park was illegal.<sup>1312</sup> Although she was “leaning toward an injunction”,<sup>1313</sup> she was concerned about a two week timeframe,<sup>1314</sup> and was not yet ready to recommend an injunction as at the end of the September 5 IMC meeting.<sup>1315</sup> She was concerned that the injunction option appeared to involve a “fairly lengthy process”.<sup>1316</sup> She was also “slightly frustrated” that there did not appear to be a large number of options available to the government.<sup>1317</sup> Jeff Bangs accepted that by the conclusion of the meeting Hutton was generally supportive of proceeding with an injunction.<sup>1318</sup>

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that Chief Bressette did not want the government to take any steps to recognize the occupiers: see Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 28. See also pp. 28-31.

<sup>1307</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 104.

<sup>1308</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 89. Similarly Ron Fox recalled the concern being conveyed at the September 5 IMC meeting that Chief Bressette would be upset if action was not taken: see Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 30.

<sup>1309</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 89. Similarly Ron Fox recalled the concern being conveyed at the September 5 IMC meeting that Chief Bressette would be upset if action was not taken: see Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 30.

<sup>1310</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 95.

<sup>1311</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 261-62. David Moran did not recall Deb Hutton asking for an emergency injunction, but thought it was accurate that she had indicated she did not want to wait two weeks: see Cross-examination of David Moran by Mr. Klippenstein, November 1, 2005, pp. 179-80. Ron Fox testified that he recalled Deb Hutton making the comment that she “wants an emergency injunction; doesn't want to wait two weeks.” See also Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, pp. 266-67.

<sup>1312</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 233. She did not view it as “a simple case of trespass”: see p. 229. See also Examination in chief of Deb Hutton, November 22, 2005, p. 26.

<sup>1313</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 222.

<sup>1314</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 237, 252.

<sup>1315</sup> Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 240, 244-46. Ron Fox testified that he believed that by the end of the September 5 IMC meeting Deb Hutton spoke in support of getting an injunction: see Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 34-35; see also Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, pp. 265-66.

<sup>1316</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 205-06.

<sup>1317</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 204-05; see also pp. 214-15; see also Examination in chief of Deb Hutton, November 22, 2005, p. 59. Elizabeth Christie had the impression that Hutton was frustrated at the conclusion of the meeting: see Examination in chief of Elizabeth Christie,

Julie Jai's note on this point was immediately followed by the words, "Leave it up to OPP as to how to do this".<sup>1319</sup> Eileen Hipfner recalled that there was discussion "about the issue of the OPP discretion concerning operational matters and the fact that others can't interfere with those decisions".<sup>1320</sup>

## (5) THE CONSENSUS OF THE MEETING

Julie Jai testified that although "it was sort of challenging" to bring the meeting to a consensus, she believed that a consensus was arrived at.<sup>1321</sup> She said it "was the consensus of the group, that it's not desirable to have these people...continuing to occupy the Park".<sup>1322</sup> At the conclusion of the meeting she made a note that the meeting would recommend "to our political masters", "seeking the injunction and leaving it up to OPP discretion to peaceably remove the dissidents".<sup>1323</sup> Specifically, she testified that the consensus of the meeting was to recommend the seeking of a civil injunction, on the basis that it had not yet been determined whether the injunction should be sought without notice to the occupiers (*ex parte*) or on notice, and further direction would be sought from ministers on the issues.<sup>1324</sup> Deb Hutton considered that the only concurrence that had yet been reached by the IMC was with respect to communications messages.<sup>1325</sup>

A handwritten note by Julie Jai includes the words, "We will not mention burial grounds". Julie Jai testified that she did not know who said this or in what context.<sup>1326</sup> Ron Fox

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September 26, 2005, p. 113. She said she thought there was "there was some pressure from Deb Hutton to...get along with it and...sort of deal firmly...with this issue": see p. 114.

<sup>1318</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 127.

<sup>1319</sup> Examination in chief of Julie Jai, August 30, 2005, p. 262.

<sup>1320</sup> Examination in chief of Eileen Hipfner, September 15, 2005, pp. 92-93.

<sup>1321</sup> Examination in chief of Julie Jai, August 30, 2005, p. 221; Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 14.

<sup>1322</sup> Examination in chief of Julie Jai, August 30, 2005, p. 269. David Moran testified that it was the consensus of the IMC that there was a need to "get the injunction", "as quickly as possible": see Examination in chief of David Moran, October 31, 2005, p. 218. He did not recall anyone expressing the view that the IMC should move more slowly: see p. 217. Deb Hutton testified that "in that specific context we at least, as a group, decided that...doing nothing and saying nothing was not a consensus that we were comfortable with": see Examination in chief of Deb Hutton, November 21, 2005, p. 206. Elizabeth Christie said that she thought the recommendation of an injunction, "really was brought about by the influence of...Ms. Hutton in...her simply saying, you know, the strategic imperative is that we treat them the same and we need to get...the Indians out of the Park".

<sup>1323</sup> Examination in chief of Julie Jai, August 30, 2005, p. 262-63; see also Cross-examination of David Moran by Mr. Downard, November 1, 2005, p. 50: "I think that there was a general consensus that...the injunction was the appropriate way to go."

<sup>1324</sup> Examination in chief of Julie Jai, August 30, 2005, p. 266; see also Examination in chief of Julie Jai, August 31, 2005, pp. 39-40.

<sup>1325</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 192-93. See also Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, p. 237.

<sup>1326</sup> Examination in chief of Julie Jai, August 30, 2005, p. 259. She said, "I assume that what that refers to is that in the public communications that we wouldn't refer to the burial ground, because we didn't know if there was a burial ground and we didn't really know if that was the reason why they were occupying the Park."

testified that it referred to the contents of a media release that might be issued.<sup>1327</sup> Elizabeth Christie recalled that the question of a possible burial ground had been raised by the MNR, and that, “Somebody else is going to look into what might that assertion actually be. But we're not going to raise it for them, because none of the people that are in the Park at this point had said anything about a burial ground.”<sup>1328</sup>

It was agreed that a sub-group of lawyers would conduct further work on the legal options available to the government.<sup>1329</sup> Politicians were to be briefed by the members of their political staff who had attended the meeting.<sup>1330</sup> It was agreed that “communications would be as we had agreed, MNR would be the spokesperson, OPP would take action as appropriate, and we would meet tomorrow at 9:30 a.m.”.<sup>1331</sup>

Elizabeth Christie testified that it was “typical at the end of these meetings, we'd try to come up with sort of a...communications plan”.<sup>1332</sup> The communications messages agreed upon were that, the “public has valid title to the Park”, “The occupiers have been told they're trespassing and have been asked to leave” and, “The Province will take the steps to remove the occupiers ASAP.” Deb Hutton testified her preliminary views had been reinforced by what she learned at the meeting,<sup>1333</sup> and that these communications messages were consistent with them.<sup>1334</sup>

## **(6) THE PRESENCE OF POLITICAL STAFF**

Ron Fox testified that, “Bearing in mind that I didn't have a great deal of experience attending IMC meetings, I had heard that it was very unusual” for political staff to attend IMC meetings.<sup>1335</sup> Deputy Attorney General Larry Taman testified that in his experience “there's nothing particularly unusual about seeing political staff at interministerial meetings”.<sup>1336</sup> Scott Hutchison testified that given the “nature of the committee”, a deputy minister “couldn't

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<sup>1327</sup> Cross-examination of Ron Fox by Mr. Falconer, July 18, 2005, pp. 10-12.

<sup>1328</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 108.

<sup>1329</sup> Examination in chief of Julie Jai, August 30, 2005, pp. 263, 239. See also Examination in chief of Deb Hutton, November 21, 2005, p. 218.

<sup>1330</sup> Examination in chief of Julie Jai, August 30, 2005, p. 264.

<sup>1331</sup> Examination in chief of Julie Jai, August 30, 2005, p. 264. Jeff Bangs recalled that the direction that the Minister of Natural Resources was to be the main spokesperson came from the Premier's Office through Deb Hutton: see Examination in chief of Jeff Bangs, November 3, 2005, pp. 63-64.

<sup>1332</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 108.

<sup>1333</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 191.

<sup>1334</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 203, 191. See also p. 219.

<sup>1335</sup> Examination in chief of Ron Fox, July 11, 2005, p. 100. See also p. 102. The evidence was objected to on the basis of Fox's lack of experience of IMC meetings. Fox subsequently stated in the course of his evidence, “As I have testified to before, up to Ipperwash, there was very little, if any, representation, as I understand it, on the Interministerial Committee by political staffers.” See Examination in chief of Ron Fox, July 12, 2005, p. 191. Fox accepted in cross-examination that his information on this subject was based on hearsay: Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, pp. 226-27.

<sup>1336</sup> Examination in chief of Larry Taman, November 14, 2005, p. 75. See also generally, pp. 74-77.



express any surprise” at “the fact that political staff attend”.<sup>1337</sup> He testified, “Normally you would expect political staff to perhaps indicate what the Minister’s thinking was on a particular issue in the sense of where they wanted options to come from.”<sup>1338</sup> Crown civil litigation counsel Tim McCabe recalled an incident under the tenure of the previous NDP government, during which the Minister of Resources directly participated in an IMC meeting by speaker telephone “for a lengthy period of time”.<sup>1339</sup> He said it was typical that there might be “political people” at such meetings.<sup>1340</sup> Junior civil litigation counsel Elizabeth Christie, who had attended the IMC in the past, testified as follows:

Q: -- as well as people from the ministry of the Attorney General, such as yourself, there would also be political personnel in attendance at these meetings? Do you recall that?

A: Yes.

Q: And was that typical, in your – in your experience, appreciating that you had been there for only a number of meetings up to that point?

A: Yes. There were, at various times there were members of political staff. So, for example, there was...often the executive assistant of the Deputy Minister, which is not really political staff, but the executive assistants of Deputy Minister or Minister of Natural Resources would be present. And then, in addition to that, my recollection is it was not uncommon for...certainly for executive assistants of...ministers to attend....<sup>1341</sup>

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<sup>1337</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 34. See also p. 87 (“I knew that it was a kind of meeting that political staff sometimes attended.”)

<sup>1338</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 289 (“that would be consistent with the mandate for the group”). See also Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, pp. 63-64: [O]ne of the things that a group like this does is option out the different means that are available. I mean, government only has its hands on certain levers of power. What you’ll get at this meeting is, here’s sort of the general direction we want to go in, we’d like to move them out and in as expeditious a way as possible. Tell us what levers we can pull to make that happen.”

<sup>1339</sup> Examination in chief of Tim McCabe, September 28, 2005, p. 23.

<sup>1340</sup> Examination in chief of Tim McCabe, September 28, 2005, p. 78.

<sup>1341</sup> Examination in chief of Elizabeth Christie, September 26, 2005, pp. 58-59. See also p. 61:

Q: Let me just refer back to some of the -- some of the staffers that would have attended. You indicated that it would be not unusual for assistants to -- to ministers to be attendants at these meetings?

A: Yes.

Q: I take it that, aside from the Interministerial Committee, that there might be briefings either with respect to those assistants or to their ministers?

A: Yes. So that was the point of the meetings, we would...get together at these meetings and disseminate information to each other and come up with recommended plans. And then...the individual players would go back to their...own ministers or deputy ministers, as the case may be, and brief them. And...then, if we were having a subsequent meeting, they would come back with...their instructions as to what to do vis-a-vis those plans or proposals that had been made.

Christie recalled that in the summer of 1995 “political staff were more actively engaged in the meetings asking questions, making comments, making recommendations, that sort of thing”. She also said that in the past political staff attended less often, but commented, “Now whether that was because it was near the end of a mandate and they knew -- the political knew the staff that was going to attend and they all understood the issues. I don’t -- I...can’t answer that.” See Examination in chief of Elizabeth Christie, September 26, 2005, pp. 63-64.

The guidelines for the IMC, which pre-existed the election of the Harris government in June of 1995, specifically contemplated representation on behalf of the Premier's Office at IMC meetings.<sup>1342</sup>

## 8.02 RON FOX'S CALL TO JOHN CARSON

Deputy Solicitor General Elaine Todres testified that she expected Ron Fox, in communicating with any operational police officers, to exercise "professional judgment", "in terms of the filtering that needed to occur".<sup>1343</sup> She expected that appropriate protocols would be observed.<sup>1344</sup> She said the proper protocols were that,

[T]he field information that would be in the public domain would be transmitted to me and to others and that those issues that involved the aggregation of facts that would lead to tactical or strategic decisions would not be passed forward, and from...Mr. Fox's perspective, that political decisions after the fact would be conveyed through our proper channels; that is through the Minister or through me.<sup>1345</sup>

Todres accepted that it would be inconsistent with the applicable protocol for there to be communications from the Ministry of the Solicitor General to the OPP regarding political views or discussions prior to any governmental decision being made.<sup>1346</sup>

Fox accepted in cross-examination that he was never instructed to inform Incident Commander John Carson of debate at the Interministerial Committee, any political views of anyone on the Interministerial Committee, what Deb Hutton had said at the meeting, or what

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<sup>1342</sup> Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 226.

<sup>1343</sup> And that similarly, police officers would exercise professional judgement in their communications with Fox: see Examination in chief of Elaine Todres, November 29, 2005, pp.323-24; Examination in chief of Elaine Todres, November 30, 2005, p. 40. Todres also expected that Fox would use judgement in deciding what information obtained from operational police officers he should provide to the IMC: see Examination in chief of Elaine Todres, November 30, 2005, p. 34.

<sup>1344</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 40. See also Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, p. 60:

Q: You were expected to use commonsense and your understanding of your duties as a police officer, correct?

A: Along with good judgement, yes, sir.

Q: All right, and that's what I meant by commonsense, but hopefully they're the same. And in terms of process, though, you never received any formal training about how a liaison officer in your position could keep, as you put it, the politicians out of the operational guys hair, right?

A: I received no formal training, sir.

<sup>1345</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 72.

<sup>1346</sup> Cross-examination of Elaine Todres by Ms. Perschy, November 30, 2005, pp. 228-29. She also accepted (at p. 229) that she would expect that "discussions regarding possible government policy and specifically references to government's legal rights and/or political considerations, that those sorts of discussions would be confidential".

Premier Harris thought.<sup>1347</sup> Fox accepted that all Carson needed to know from him was whether the Government was proceeding with an injunction or not.<sup>1348</sup>

John Carson understood that Ron Fox was an Inspector with the OPP who was assigned as a First Nations liaison officer working in the Deputy Minister's office of the Solicitor General.<sup>1349</sup> He understood Fox's role was to participate on the blockade committee as a police advisor given his experience with First Nations issues.<sup>1350</sup> Fox's role was to keep Carson "apprised of the status or the progress in relation to the application process for the injunction".<sup>1351</sup>

Ron Fox testified that in his opinion, views expressed by MNR representatives and Deb Hutton at the September 5 IMC meeting were "simplistic",<sup>1352</sup> with an undue emphasis on Ontario's legal ownership of the Park.<sup>1353</sup> At 2:47 p.m. on September 5, John Carson called Ron Fox in Toronto<sup>1354</sup> to determine the status of the injunction.<sup>1355</sup> The conversation included the following:

Fox: ...I just want to let you know what went on at this Inter-ministerial Committee on Aboriginal Issues this morning.

Carson: Okay.

Fox: First of all the Premier's Office had representation there in the form of one Debra Hutton.

Carson: Okay.

Fox: And she's quite an attractive lady.

Carson: Uh huh.

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<sup>1347</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 41-42.

<sup>1348</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 42.

<sup>1349</sup> Examination in chief of John Carson, May 17, 2005, p. 229, 230. Carson did not know whether Fox was taking direction from the OPP: see Examination in chief of John Carson, May 17, 2005, pp. 230-31.

<sup>1350</sup> Examination in chief of John Carson, May 17, 2005, p. 229.

<sup>1351</sup> Examination in chief of John Carson, May 17, 2005, p. 229.

<sup>1352</sup> Examination in chief of Ron Fox. July 11, 2005, p. 187.

<sup>1353</sup> Examination in chief of Ron Fox. July 11, 2005, pp. 186-87:

Well, the focus of all that was presented is that the park was the property of the Government of Ontario, and the responsible land owner was MNR. There was no consideration given to the possibility that someone else may have claim to that title...[T]here was a bonafide owner of the land, in the minds of some, and that there was going to be no consideration for any other area that might be examined.

See also p. 211: "I don't see that the issue of aboriginal or treaty rights was taken into consideration. It was a dispute over property without the benefit of having any understanding, or at least acknowledging that there may be those with other interests in it."

<sup>1354</sup> Exhibit 444A, Tab 16 (Transcript).

<sup>1355</sup> Examination in chief of John Carson, May 17, 2005, p. 212.

- Fox: Very much empowered.<sup>1356</sup> And ah basically the Premier has made it clear to her his position is there'll be no different treatment of people in this situation. In other words native as opposed to non-native.
- Carson: Okay.
- Fox: And the bottom line is, wants them out and you know, was asking well what would the police do in a situation where there wasn't natives. I said well, I mean, you can't compare apples and oranges.
- Carson: Right.
- Fox: I said, you know I come to your house and I plunk myself down and you ask me to leave and I don't. And you call for police intervention. Chances are I don't have colour of right for being there.
- Carson: Right.
- Fox: Whether its actual or perceived. And I said it's a little bit different here. We're talking about land claims and treaties. Well no! So I mean this is – its all - I mean its our property. And I said yes. By virtue of letters patent (?) that were produced in 1929. But I said I mean these people refer to treaties that go back to pre-Confederation days. So I said I'm not suggesting for a minute that the course of action is a course of non-action...
- [...]
- Fox: So the bottom line is - I said you know I'm not suggesting a course of non-action but I said my theory has always been make haste slowly.<sup>1357</sup>
- Carson: Right.
- Fox: And I said, what has to be done - I mean there's a whole whack of real steps that are in place now and I know are being done.
- Carson: Right.
- Fox: MNR by the way, kind of were against getting an enjoining order.
- Carson: Oh really!
- Fox: Yeah. Yeah. Preferring basically to pass it over and say well, you know I mean there's *Criminal Code* offences of mischief you know if you're lawful enjoinder, or use of property, trespass. So I very carefully explained to them that you know, under the trespass to property an officer could go serve process, escort somebody to the gate, and then they come back in. And we'll go on forever this way. And I explained the same with the criminal code and the provisions of the *Bail Reform Act* and how release procedures work. And I said quite clearly this is a civil dispute and it has to be adjudicated in a court of law, and the police given sufficient authority to act.
- Carson: Right.
- Fox: So they finally agreed, the consensus is they'll get an enjoining order. And the MNR will provide a large part of the affidavit. But they wondered who they might speak to if they needed some perspective from the police. And I suggested yourself.
- Carson: Mmmhmm.

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<sup>1356</sup> See Examination in chief of Ron Fox, July 11, 2005, p. 207.

<sup>1357</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 44.

Fox: And I confirmed by - when I say confirmed I was talking to Coles just to let him know what went on here after I spoke to you earlier. And he's quite content that you be that contact.

Carson: Okay. Yeah. That's no problem.

[...]

Fox: ...Now it's a matter of affecting arrest.

Carson: That's right. That's right.

Fox: Now how I prefix my remarks in terms of the little briefing to them...

Carson: Yes.

Fox: ...is that I said that I'm told there's between thirty-five and forty people there.

Carson: Right.

Fox: And I said that means men, women and children.

Carson: That's right!

Fox: So I thought I wouldn't have to explain anymore.

Carson: Yes.

Fox: Well, I'll tell ya, this whole fuckin' group is on some sort of testosteran or testosterone high. Then I finally had to get right out and say look. I mean here's the strategy those folk will employ. The women and children will be at the forefront.

Carson: That's right.

Fox: The police are going to be faced with.

Carson: That's right.

Fox: And I said you got to understand that the provincial police will never shirk their responsibility. But read - their hands will get dirty - read - so will the government's.

Carson: That's right.

Fox: And as long as we're prepared for that.

Carson: That's right. But I doubt if they are. Oh, I - you know I doubt if -

Fox: This - listen - this -

Carson: (interrupting) I mean if we're going to do that over a trespassing?!

Fox: That's exactly right! And I said you know you just can't do that!

Carson: That's right. I mean if we're going to do that - I - we have to have the force of the law behind us to provide some recognition by a court in this land.

Fox: Mmmhmm. And let's not lose sight of the fact that this is a civil matter!

Carson: That's right. That's right!

[...]

Carson: Well, and I'm hesitant to get too excited about moving on the Park until we have some court injunction like a ...

Fox: That's right.

Carson: ...For the mere trespassing is - is pretty flimsy grounds.

Fox: Mmmhmm.

Carson: You know, to go start arresting people.

Fox: Yeah.

Carson: You know, its not going to look very good on Canada AM I'll tell ya.  
Fox: Yup. Well, and that's the whole point.  
Carson: Yeah, yeah. Okay.  
Fox: Well, I just wanted to get just a bit of a feel for it.  
Carson: No, you're right on the money Ron. As usual.  
Fox: Let me assure you that I pushed them and they are going to apply for this enjoining order.  
Carson: Okay.  
Fox: And it sounds like they'll do the emergent form.  
Carson: Good. Good.

In cross-examination Fox accepted that Incident Commander Carson did not need to know that in Fox's opinion, "this whole fuckin' group is on some sort of testosteran or testosterone high":

Q: [...]Did incident commander Carson have any need, to do his job, to know that you had the view that, quote: "This whole fucking group on the Interministerial Committee is on some sort of testosterone or testosterone high." Unquote. Did he need to know that?

A: No. No, he did not need to know that.

Q: And wouldn't it be more consistent with the separation of operational police and government, if you had just kept quiet with your opinions on this issue?

A: It could be certainly considered that way. I was venting at the time, my personal frustration.

Q: You were venting at the time?

A: That's right.

Q: And don't -- don't you think that it's -- well, first of all, I take it you -- you agree that it's not appropriate for someone on this Committee, be it yourself or anybody else, to be phoning up incident commander Carson and saying what the political views of the Committee are on his work, or what -- or what the general views of the Committee are on his work, right?

A: It's possible, yes.

Q: Well, isn't that the more -- the thing that's consistent with the separation of government and police?

A: That would be a part of it, yes.<sup>1358</sup>

Charles Harnick's Executive Assistant, David Moran, testified that he was surprised at Ron Fox's reference to "this whole fuckin' group is on some sort of testosteran or testosterone high". He did not consider it to be an accurate description of discussion or behaviour at the meeting. He said, "...[T]he messages that were conveyed were that the Government wanted to handle the situation in a firm manner, but I don't think anything beyond being seen to be strong

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<sup>1358</sup> See Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 49.

in that situation was conveyed.”<sup>1359</sup> Robert Runciman’s Executive Assistant, Kathryn Hunt, said that this description was not consistent with her recollection of the meeting, and that she had been surprised when she learned of it.<sup>1360</sup> The Minister of Natural Resources’ Executive Assistant, Jeff Bangs, did not agree with it.<sup>1361</sup> In cross-examination Fox accepted that the statement was not accurate.<sup>1362</sup> No witness testified that they agreed with the opinion Fox expressed to Carson.

Ron Fox also accepted that the Incident Commander did not need to know the further commentary on the September 5 IMC meeting.<sup>1363</sup> Whatever Fox’s opinion might have been, the meeting did not result in any endorsement of the use of force. In cross-examination Fox accepted that at the end of the meeting the recommendation of the IMC had been “exactly to proceed in a fashion to have the force of law, to provide some recognition by a court in this land”.<sup>1364</sup> He accepted that at the end of the meeting he believed Deb Hutton was supportive of obtaining an injunction.<sup>1365</sup>

Inspector Carson considered that when Fox relayed to him what Fox described as the Premier’s view, Fox was “sharing with me somebody’s opinion”.<sup>1366</sup> He said Fox’s description of the Premier’s views “changed nothing in the way I was...going about my work”.<sup>1367</sup> He said,

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<sup>1359</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, pp. 53-54.

<sup>1360</sup> Cross-examination of Kathryn Hunt by Mr. Downard, November 2, 2005, pp. 114-15.

<sup>1361</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, p. 136.

<sup>1362</sup> See Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 47-48:

Q. Now, sir, would you accept that that statement was a great exaggeration of what the discussion of the Committee had actually been?

A: I testified that the language I used, in hindsight, was perhaps not appropriate. What I also testified to is that it was the forceful removal of the occupiers or the immediate removal of the occupiers.

Q: I see. And, so you're saying this whole group was, to use your interpretation, you're saying this whole group interpreted the immediate and forceful removal of the occupiers? Is that what you're saying?

A: Yes, that's what I said.

Q: Well, that's not right, is it?

A: In hindsight, all aspects of that are -- are not correct. There were those who spoke to moderation at Committee meetings, and there were those who did not.

Q: Right. So, this statement was an exaggeration?

A: It was certainly not a completely accurate reflection; that's correct.

Q: Well it was -- it was seriously inaccurate --

A: No --

Q: Yes --

A: -- I disagree. It wasn't seriously inaccurate. The inaccuracy that I've identified here is that there were competing positions, certainly, at the table.

<sup>1363</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 59-61.

<sup>1364</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 59.

<sup>1365</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 59.

<sup>1366</sup> Examination in chief of John Carson, May 17, 2005, p. 270.

<sup>1367</sup> Examination in chief of John Carson, May 17, 2005, p. 273. See also p. 275:

“[W]e were proceeding with the injunction. That was our direction and we were continuing the course.”<sup>1368</sup>

Detective Sergeant Wright testified that he did not recall overhearing John Carson have this conversation with Ron Fox, or hearing Carson make any comments about it apart from what was recorded in scribe notes.<sup>1369</sup> He did not recall Carson making any comments about the group that was meeting in Toronto, or Fox’s reference to a “testosterone high”.<sup>1370</sup>

Although he did not engage in discussion with Ron Fox on the point during the September 5 telephone call, John Carson testified that he did not believe colour of right was applicable to the occupation of the Park. Carson testified that, “[T]he colour of right is whether a person believes they have the legal right or access or claim to some property”.<sup>1371</sup> In the case of the occupation of CFB Ipperwash, Carson believed colour of right could exist because he had “personally viewed documents that would lead one to believe that the colour of right was far from clear in that instance”.<sup>1372</sup> As to Ron Fox’s comments regarding colour of right and the Park, he said,

Well, that Ron Fox's commentary. My...understanding from the work that had been done was that there was no legitimate land claim against the Park. We had had that researched, and we'd also had the title researched. So there didn't appear to be colour of right issues as there would be, for example, with the military base.<sup>1373</sup>

[...]

Given...the information we had, I mean that was the approach that we told MNR we would take, we felt that from...the documents...that we had obtained, part of that being the turnover of the property in the '20s and the resale of the property through another individual, then the Ministry of, I believe, Lands and Forests back in those days determined it to be a park. And all that documentation seemed to support the fact that the Ministry of Natural Resources had clear title to the property. So, our discussion with the MNR was that we would expect them to tell them they were trespassing first, as the first step in the occupation.<sup>1374</sup>

Similarly, the TRU team leader, Sergeant Kent Skinner, was asked in cross-examination whether he was ever told “there was an issue of colour right for the people to be in the Park”. He said, “At the time...I don’t think I had in my mind or was advised that there was a disputed issue about the Park itself.”<sup>1375</sup>

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Q. Okay. And as a result of this call, did you make any changes in your approach?

A. No, sir, none whatsoever.

<sup>1368</sup> Examination in chief of John Carson, May 17, 2005, pp. 272-73.

<sup>1369</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 169-70.

<sup>1370</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 169-70.

<sup>1371</sup> Examination in chief of John Carson, May 17, 2005, p. 228.

<sup>1372</sup> Examination in chief of John Carson, May 17, 2005, pp. 228-29.

<sup>1373</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, pp. 25-26.

<sup>1374</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 28.

<sup>1375</sup> Cross-examination of Kent Skinner by Mr. Scullion, April 20, 2006, p. 300. See also p. 301.



## **8.03 GOVERNMENTS' MESSAGES TO THE PUBLIC**

### **(1) THE TOWN OF BOSANQUET**

At 1:00 p.m. on September 5, the Town of Bosanquet issued a media release regarding the takeover of the Park.<sup>1376</sup> It was entitled "Reign of Terror Continues". It read 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 Canadian. This reign of terror must stop," Thomas said.

Inspector Carson testified that he was not pleased by this media release. He was concerned it could increase tensions.<sup>1377</sup>

### **(2) ONTARIO**

Jeff Bangs, the Executive Assistant to the Minister of Natural Resources, recalled that after the September 5 IMC meeting briefing material was prepared for his minister by the MNR in consultation with ONAS, the Attorney General's office and the Ministry of the Solicitor General.<sup>1378</sup> The Minister subsequently met with a number of reporters in a scrum in which, Bangs said, the Minister "basically stuck to the script".<sup>1379</sup>

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<sup>1376</sup> Exhibit P-460.

<sup>1377</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 260-61.

<sup>1378</sup> Exhibit P-918; Examination in chief of Jeff Bangs, November 3, 2005. p. 65.

<sup>1379</sup> Examination in chief of Jeff Bangs, November 3, 2005. p. 69.

Minister: Well, basically what we have here is that we have a problem at Ipperwash. A splinter group of the Kettle Point and the Stony 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?

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.

Questions: It doesn't sound like you are looking at consultation at this point?

Ministers: 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.

Ministers: 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.

Questions: How long will this injunction take?

Minister: I'm not sure. You'd have to ask the Attorney General.

Question: Basically, what are you saying off the top here, is that you're going to take some kind of legal action?

Minister: Yes we are.

Question: Which is?

Ministers: The bottom line is, we feel that this splinter group is — we own the land and they're trespassing. We're exploring all remedies to rectify the situation.

Question: Which is in the courts?

Minister: One of the possible remedies would be an injunction through the courts.

Question: You're not talking about — or are you talking about using the police or anything along this line?

Minister: Well, the police are there right now and they're monitoring the situation, so as we consult with other ministers we'll have a clear idea of where we want to go with it.

- Question: Well, I take it you won't want to have that kind of a confrontation ...
- Minister: Well, no one ever wants to have a confrontation. Public safety is always in the forefront of these decisions. But, on the other hand, there's been, in our opinion, illegal activity take place and it should be dealt with.
- Question: As far as that goes, the people in the parks are back at school and work, now ...
- Ministers: Right. As far as the public safety of the campers goes, that's been looked after. All the campers have been vacated so, hopefully, we've minimized that risk.
- Question: Minister, are you concerned that this could be the first of many, that provincial parks will be targeted — basically saying this is a ... a burial ground of some kind that could also end up as being ...
- Minister: I'm not aware of any claims like that. I think this came about because of the military occupation of the military base so I think this is an isolated case. They took over the military base earlier and now they've come into the provincial park which is right next door.
- Question: Are you aware of any damage to the park?
- Minister: We're getting reports, but I don't want to deal in hearsay or speculation. We'll have a full report by tomorrow probably.
- Question: Considering the lawlessness that has gone on in the area to date, are the courts enough?
- Ministers: I'm not sure about the lawlessness, all I'm dealing with is, we own the property, it's a provincial park. We paid for it, and these people are illegally trespassing.
- Question: You seem to be confronting native issues on a couple of fronts. There's the Williams Treaty. Is this a good start for your ministry or do you anticipate confronting many native issues over the next few years?
- Minister: Well, I don't know if "confrontation" is the right word for it or not. There are a hundred and forty-two First Nations and we'll deal with them on a case-by-case basis. In some areas there's a lot of cooperation between the Ministry of Natural Resources. There's a lot of cooperation with my other ministry, the Ministry of Northern Development and Mines. So, I think that this is isolated. You've mentioned a couple of things that are unrelated to this particular incident and, I'm sure that we'll get along well.
- Question: But are you saying that if at any time if natives happen to attempt to make a claim on a provincial park, you wouldn't — your behaviour would be the same — you intend to act quickly to remove them from the property?
- Minister: I don't buy the premise that they're making a claim on this land. There's been no formal claim. I think history has shown that there's quite a process and procedure where they make a claim. For instance, Serpent Mounds — I think it's generally acknowledged that the First Nation there owns that land. So that's a totally separate issue from this Ipperwash situation Where there's never been 'a formal claim made.
- Question: This is simply provincially owned land?

Minister: It's a provincial park that the provincial government paid for. And, in our opinion they're illegally trespassing.

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.<sup>1380</sup>

Chris Hodgson testified that in the media conference he was “trying to do my best just to follow” the briefing note that had been prepared for him.<sup>1381</sup> Asked what he meant by his statement in the media conference that he didn't “want to deal in rhetoric”, Hodgson said,

Just what it says. I've been involved with situations in a small town; anytime there's a dispute or a fight the...first reports are always, from my experience, somewhat exaggerated. So I didn't want to get into that. I didn't want to deal with rhetoric, I wanted to deal with the facts as they would come in over time and figure out what was going on.<sup>1382</sup>

The Minister of Natural Resources, Chris Hodgson, confirmed that as at September 5 he favoured a swift resolution of the situation. With respect to the subject of the removal of the occupiers “as soon as possible” he testified,

...Ron Vrancart and I had discussions about that, in terms of the occupation itself. The Park was closed; we didn't see any urgency around the Park. The larger concern for the Government, as a whole, was the escalation or possibility of an escalation, that there may be roads blockaded if the Federal Government didn't pay attention to this Park takeover, which was Provincial lands. That might not motivate the Federal Government. It might move on to more disruptions in the surrounding area, either the Pinery Park or, more likely, roads would be blockaded.

Q: All right. So --

A: So it was our feeling that, you know, there wasn't an immediate threat to the Park, per se, or -- or that issue in terms of public safety, but in terms of a larger issue, that the quicker this was dealt with, the better it would be to resolve the issue than to let it keep festering and escalating.<sup>1383</sup>

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<sup>1380</sup> Exhibit P-529 (Transcript). Chris Hodgson confirmed the accuracy of the transcript: Examination in chief of Chris Hodgson, January 10, 2006, p. 116.

<sup>1381</sup> Cross-examination of Chris Hodgson by Mr. Klippenstein, January 16, 2006, p. 162; see also pp. 177-78.

<sup>1382</sup> Cross-examination of Chris Hodgson by Ms. McAleer, January 16, 2006, pp. 47-48.

<sup>1383</sup> Examination in chief of Chris Hodgson, January 10, 2006, pp. 111-12. See also p. 128 as to his view at the end of the day on September 5:

We felt that the situation around the Park itself had been stabilized, that there was a concern of the occupation expanding to road blockades or -- particularly road blockades, to stop access for cottages and homes nearby or Highway 21. There was also a possibility of the Pinery Provincial Park being occupied but that was -- our assessment of the Park was that the water -- being winterized could wait for a few months. The public risk to the campers didn't exist because we'd evacuated the campers.

Mike Harris testified that he thought the government's communications message was appropriate. He said,

The communication message I indicated to you I thought was...important for the safety of all concerned. I think it was important that, if you look in balance with that message with the residents who are increasingly becoming...concerned, it was reported to me as well and discussed I think at the Committee, that it was important that everybody be reassured the situation was under control and it was being looked after, and there was no need for...concern by other residents who seemed to be increasingly concerned. So on balance, I think this was the right message to send out.<sup>1384</sup>

## 8.04 MARCEL BEAUBIEN AND BILL KING

Marcel Beaubien did not have a close relationship with Mike Harris. He testified as follows:<sup>1385</sup>

Q: ...[P]rior to September of 1995, how well did you know the former Premier, Michael Harris?

A: Well, I had met him at a photo op -- well, first of all, I met him during the campaign. He did attend our -- come into our riding once and I had met him once prior to that at a photo op in Toronto whereby it was a process line. You come in, you stand beside the Premier, you take your picture and you go away. You say hi, goodbye and that's about the extent of the meeting I had with him.

Q: And you come away with a lovely framed photograph --

A: That's -- that's correct.

Q: -- for your office.

A: Which I've lost, for some reason I don't -- misplaced somewhere.

Mike Harris testified that he did not recall meeting Marcel Beaubien prior to September 4, 1995, other than in a large group such as a caucus meeting.<sup>1386</sup> He did not recall speaking to him on the telephone during that period,<sup>1387</sup> or otherwise discussing the Ipperwash situation with him.<sup>1388</sup>

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<sup>1384</sup> Cross-examination of Mike Harris by Mr. Rosenthal, February 16, 2005, p. 40. See also p. 60:

What I've indicated to you I think on numerous times and I'm quite comfortable saying, is the communication message that went out after the fact, decided on without my input, agreed upon by the Committee and communicated by Mr. Hodgson and reported in the newspapers, I was comfortable with that.

<sup>1385</sup> Examination in chief of Marcel Beaubien, January 18, 2006, p. 269.

<sup>1386</sup> Examination in chief of Mike Harris, February 14, 2005, p. 51; see also Cross-examination of Mike Harris by Mr. Sulman, February 14, 2006, pp. 219, 225-226; Cross-examination of Mike Harris by Mr. Rosenthal, February 16, 2006, p. 93.

<sup>1387</sup> Examination in chief of Mike Harris, February 14, 2005, p. 51.

<sup>1388</sup> Cross-examination of Mike Harris by Mr. Rosenthal, February 16, 2006, p. 93.

Bill King was a member of Premier Harris' staff with responsibility for communications with Progressive Conservative MPPs.<sup>1389</sup> As such his office was located in the legislative building at Queen's Park, separate from the Premier's "core team" of staff who were located at the Whitney Block.<sup>1390</sup>

On September 5, Marcel Beaubien sent Bill King a fax attaching a draft press release. Beaubien's fax indicated that he would issue the release at 3:00 p.m. "unless I hear from Queen's Park".<sup>1391</sup> The press release read,

A councilor from the Kettle and Stony Point Band stated in a local newspaper recently, "The army camp Indians have strained relations between Kettle and Stony Point and the surrounding communities. We all do not act like the army camp Indians, so please do not think that all Chippewas act this way."

The councilor is right. We are not dealing with your decent native citizen, we are dealing with thugs. Are we to assume as law abiding and tax paying citizens, that we have a legal system, in this province and in this country, that is two-tiered. Do we have a double standard with enforcement of the law?

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.<sup>1392</sup>

Bill King contacted the Premier's media advisor, Paul Rhodes, regarding the release.<sup>1393</sup> Bill King contacted Marcel Beaubien. King "conveyed to him that issuing this release would not have been constructive or productive in terms of the government's desire to end it peacefully, quickly".<sup>1394</sup> King also contacted Deb Hutton so that he could advise Beaubien of the government's position regarding the takeover of the Park.<sup>1395</sup> Beaubien had called King and spoken about his constituents' concerns. King testified that he believed Beaubien also told him that he "had gone to see the OPP or had been in touch with the OPP locally, but it's not memorable to me because that's what a member would do".<sup>1396</sup> A handwritten note by Beaubien on a copy of his draft press release indicates Beaubien was informed that the takeover of the Park was an "MNR issue, not an Indian issue", and that the "Premier is following closely".<sup>1397</sup> King did not recall saying this to Beaubien but said,

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<sup>1389</sup> See Examination in chief of Mike Harris, February 14, 2005, pp. 24-26.

<sup>1390</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 118.

<sup>1391</sup> Exhibit P-953, p. 1.

<sup>1392</sup> Exhibit P-953, p. 2.

<sup>1393</sup> Examination in chief of Bill King, November 17, 2005, pp. 170, 175, 176.

<sup>1394</sup> Examination in chief of Bill King, November 17, 2005, p. 175.

<sup>1395</sup> Examination in chief of Bill King, November 17, 2005, pp. 170-72.

<sup>1396</sup> Examination in chief of Bill King, November 17, 2005, p. 179.

<sup>1397</sup> Examination in chief of Marcel Beaubien, January 18, 2006, pp. 135-36.

...[W]hen I read that it seems consistent with the government's position which we've referred to earlier which is: This is about -- this isn't a native land claim issue. It's about a provincial park occupation and the land claim would be dealt with after the occupation ended. So in that context...that's the type of information I would have conveyed to him based on what I understood the position was. Whether the Premier was following it closely or not, I don't know.<sup>1398</sup>

This was pursued further:

Q: It's reasonable that you would have possibly told Mr. Beaubien that the Premier is following the situation closely?

A: That's reasonable, yes.

Q: And given what you see there that's probably what you did tell him?

A: Unless he --

Q: Is that fair?

A: Unless he was debating with me and writing notes to himself about how he felt about what I was saying. I don't know.

Q: Okay.

A: And again, what he wrote I can't speak to. Whether the Premier was following it closely or not, my practice would have been to tell members the Premier cared very, very, very much about their issues and was right on top of it.<sup>1399</sup>

Mike Harris did not speak to Marcel Beaubien on September 4, 5 or 6.<sup>1400</sup> He did not discuss the occupation with Bill King during that period.<sup>1401</sup> He did not give any instructions to King about Beaubien during that period.<sup>1402</sup> The correspondence received from Beaubien by King was not brought to his attention,<sup>1403</sup> and had no bearing on the government's response to the situation at Ipperwash.<sup>1404</sup> Counsel to Marcel Beaubien asked Bill King about a suggestion that he might have passed instructions from the Premier to Beaubien with a view to the instructions being conveyed to the OPP:

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<sup>1398</sup> Cross-examination of Bill King by Mr. Zbogar, November 17, 2005, pp. 293-94.

<sup>1399</sup> Cross-examination of Bill King by Mr. Zbogar, November 17, 2005, pp. 295-96.

<sup>1400</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 105, 162. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 16, 2006, p. 96: "...I agreed that that information could certainly be construed to him having contact or discussion with me or -- more so than -- than I believe was taking place, I mean there were none taking place, so...I had some communication on this issue but none with Mr. Beaubien." See also Cross-examination of Bill King by Ms. McAleer, November 17, 2005, p. 211-12. See also Examination in chief of Marcel Beaubien, January 18, 2006, pp. 169-70.

<sup>1401</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 105, 106, 163-64.

<sup>1402</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 163-64.

<sup>1403</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 105-06, 162-63; Cross-examination of Mike Harris by Mr. Sulman, February 14, 2005, pp. 219, 222, 225, 226.

<sup>1404</sup> Cross-examination of Mike Harris by Mr. Sulman, February 14, 2005, p. 226.

...You certainly were not passing on, from the Premier of the Province, instructions to Mr. Beaubien and he was then to have pass on to the Ontario Provincial Police in Forest or in Ipperwash.

A: And I -- no. And I have a hard time even keeping a straight face when people say things like that, because it's so bizarre. But, the answer is absolutely not.<sup>1405</sup>

Mike Harris testified that Bill King's advice to Marcel Beaubien was appropriate, and that he had been following the Ipperwash situation closely in his ordinary review of media clippings provided to him by staff.<sup>1406</sup> He added,

Mr. King says what Mr. King said, but I would think that one of my staff or somebody speaking on behalf of the...Premier's Office would indicate to a member that we are following an event in somebody's riding with...the appropriate amount of diligence...I would be disappointed if he told members the Premier doesn't care about your issues and really isn't concerned, so...that doesn't surprise me.<sup>1407</sup>

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<sup>1405</sup> Cross-examination of Bill King by Mr. Sulman, November 17, 2005, pp. 226-27. See also Examination in chief of Marcel Beaubien, January 18, 2006, pp. 170.

<sup>1406</sup> Cross-examination of Mike Harris by Mr. Sulman, February 14, 2006, pp. 229-30.

<sup>1407</sup> Examination in chief of Mike Harris, February 14, 2005, p. 164.



## CHAPTER 9

# THE AFTERNOON OF SEPTEMBER 5

### 9.01 ATTEMPTING TO INITIATE DIALOGUE

At 12:12 p.m. Detective Sergeant Wright, Sergeant Seltzer and Les Kobayashi left the Command Post in Forest to go to the Park and attempt to speak to the occupiers.<sup>1408</sup> Wright and Kobayashi were dressed in plain clothes, while Seltzer was dressed in his police uniform.<sup>1409</sup> They drove an unmarked car to the sandy parking lot area outside the northwest corner of the Park.<sup>1410</sup>

Mark Wright testified that they “stood at the fence line there and attempted to get the attention of the people who were occupying the Park”, but did not have “much success”.<sup>1411</sup> He said his job was to make the introduction of Seltzer as the negotiator, but “we never got to there”.<sup>1412</sup> Wright attempted to find Glenn George, since he had spoken to him after the August motor vehicle fatality, and considered that he “had somewhat of a relationship with him”.<sup>1413</sup> Wright “attempted to talk to anybody who went by”.<sup>1414</sup> He said “a number of natives were there”, and there was “some conversation”, but “no real dialogue”.<sup>1415</sup> Wright said people in a vehicle who stopped inside the Park near his location outside the fence line “swore in my general direction”.<sup>1416</sup> There were “some comments” from people at the Park store, to the southeast of him, but “nobody wanted to engage in any meaningful conversation with respect to getting Glenn George or attempting to find out...what was their intention”.<sup>1417</sup> Les Kobayashi attempted again to deliver the written trespass notice, without success.<sup>1418</sup>

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<sup>1408</sup> Examination in chief of John Carson, May 17, 2005, pp. 158-59.

<sup>1409</sup> Examination in chief of Mark Wright, February 22, 2006, p. 149.

<sup>1410</sup> Examination in chief of Mark Wright, February 22, 2006, p. 137. Wright estimated that the trip took “maybe 15 minutes or so”: see Examination in chief of Mark Wright, February 22, 2006, p. 142.

<sup>1411</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 137-38. See Exhibit P-912.

<sup>1412</sup> Examination in chief of Mark Wright, February 22, 2006, p. 138.

<sup>1413</sup> Examination in chief of Mark Wright, February 22, 2006, p. 138. At 12:49 p.m. Detective Sergeant Wright reported to the Command Post, “I’ve passed the message on that I want to speak to Glen George and I think they passed it on and I want to sit here and wait until somebody comes back to talk to us for a while. Let the boss know.” See Exhibit P-1100.

<sup>1414</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 148-49.

<sup>1415</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 140-41.

<sup>1416</sup> Examination in chief of Mark Wright, February 22, 2006, p. 141.

<sup>1417</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 141-42.

<sup>1418</sup> Examination in chief of Mark Wright, February 22, 2006, p. 142.

At 1:20 p.m. Wright reported by radio that, “This isn't working.” He said he would try see if someone would talk to him at the main gate at CFB Ipperwash.<sup>1419</sup> At the main gate Wright spoke to Bert Manning. Wright said he told Manning, “[W]e would like to open a dialogue and discuss the situation.”<sup>1420</sup> Wright said Manning told him “he was happy that his people had their ancient burial ground”.<sup>1421</sup> Wright also testified that Manning said, “[T]hey were not organized”, and, “[H]e’s going to speak to the elders before he could get back to me”.<sup>1422</sup> Wright said Manning “eventually...told me that he’d talk to us, try tomorrow I think at three o’clock”.<sup>1423</sup> Wright said Manning told him the occupiers were “very uncomfortable” and wanted the OPP “blockades” to be removed, but Wright said they definitely would not be.<sup>1424</sup>

Wright testified that he told Manning, “[T]he people on the Park were there unlawfully...there was going to be an injunction”.<sup>1425</sup> Wright said he told Manning, “[T]hey would have an opportunity” if they wanted “to give their side of the story”.<sup>1426</sup> Wright said Manning “replied to me that he wasn’t interested or they weren’t interested, something along those lines because it was white man’s court”.<sup>1427</sup>

Wright said “we weren’t there too awful long with Mr. Manning”.<sup>1428</sup> At 1:40 p.m. he reported by radio that “We made contact”, and that he was on his way back to the Command Post.<sup>1429</sup>

## 9.02 “WE NEEDED AN INJUNCTION”

While Detective Sergeant Wright was at CFB Ipperwash, at 1:32 p.m., Ed Vervoort of the MNR advised that Ron Baldwin of the MNR was still on a telephone conference with the IMC. Baldwin was reported to have said there were two kinds of injunctions, one that could be obtained in 24 hours, and one that could take two to three weeks to get.<sup>1430</sup> Inspector Carson was not familiar with injunctions. The incident at Ipperwash was the first in which he had been involved where an injunction might be sought.<sup>1431</sup> He was concerned about the prospect of the injunction process taking an extended period of time:

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<sup>1419</sup> Exhibit P-1101.

<sup>1420</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 150-51.

<sup>1421</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 150-51.

<sup>1422</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 151-52.

<sup>1423</sup> Examination in chief of Mark Wright, February 22, 2006, p. 152. A contemporary scribe note of a report on the meeting at the Command Post later that afternoon indicates that Wright advised Manning “that we will be back tomorrow at noon”: see Examination in chief of Mark Wright, February 22, 2006, p. 164.

<sup>1424</sup> Examination in chief of Mark Wright, February 22, 2006, p. 159.

<sup>1425</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 152-53; see also pp. 153-54.

<sup>1426</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 152-53; see also pp. 153-54.

<sup>1427</sup> Examination in chief of Mark Wright, February 22, 2006, p. 153.

<sup>1428</sup> Examination in chief of Mark Wright, February 22, 2006, p. 156.

<sup>1429</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 156-57; Exhibit P-1130.

<sup>1430</sup> Examination in chief of John Carson, May 17, 2005, p. 170.

<sup>1431</sup> Examination in chief of John Carson, May 17, 2005, pp. 170-71.

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 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 are they not serious about it? And if it's going to take us two weeks to get it then we need to make sure our media releases start reflecting the time lines and, you know...start doing some appropriate information work to apprise the public as well.<sup>1432</sup>

At 1:54 p.m. Detective Sergeant Wright reported back on his attempt to speak to the occupiers. He said he had spoken to Bert Manning, that the occupiers were “very disorganized, very uncomfortable”, and that he believed Manning was uncomfortable with the situation. Wright reported that the occupiers wanted blockades to be removed. Wright reported that he had told Manning the checkpoints definitely would not be removed. He said he made very clear that the occupiers were trespassing, and that he told Bert Manning “we weren't going away”.<sup>1433</sup> Wright also reported that Manning had said “they are happy to have burial ground”.<sup>1434</sup>

Inspector Carson informed Detective Sergeant Wright that, “Inter-Ministry has to make up mind. Keep it peaceful.”<sup>1435</sup>

Detective Sergeant Wright reported to Inspector Carson that “tactically it is easy to get in the Park” in the area of the Park store.<sup>1436</sup> He testified that he provided this information because “there was always that issue of repopulating” the Park with OPP officers.<sup>1437</sup>

At 1:53 p.m. Inspector Carson had a further telephone conversation regarding his efforts to obtain an armoured vehicle.<sup>1438</sup> In the conversation Inspector Carson stated, “Well given what's going on in B.C. and some other issues that have raised their head here I'd...hope not but I guess I just want to be prepared for all eventualities.”<sup>1439</sup> He expressed concern that “firearms have been displayed and we've had flares thrown at our people already”.<sup>1440</sup>

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<sup>1432</sup> Examination in chief of John Carson, May 17, 2005, p. 172. Superintendent Parkin accepted in cross-examination that he knew on September 5 that Inspector Carson was expecting the MNR to proceed to obtain an injunction in a timely way: see Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, p. 57.

<sup>1433</sup> Examination in chief of John Carson, May 17, 2005, pp. 172-73.

<sup>1434</sup> Examination in chief of John Carson, May 17, 2005, pp. 195, 197. Wright did not recall reporting on this: Examination in chief of Mark Wright, February 22, 2006, pp. 160-61.

<sup>1435</sup> Examination in chief of John Carson, May 17, 2005, p. 196; Examination in chief of Mark Wright, February 22, 2006, p. 162.

<sup>1436</sup> Examination in chief of John Carson, May 17, 2005, pp. 173, 196-97.

<sup>1437</sup> Examination in chief of Mark Wright, February 22, 2006, p. 160.

<sup>1438</sup> Exhibit 444A, Tab 14.

<sup>1439</sup> Exhibit 444A, Tab 14, p. 98. See also the statement by Inspector Carson at p. 100:

...I have my doubts whether were going to need ah ah piece of equipment like that at all. The only thing it's just like you know our Tactical Team you know you want available given worse case scenarios particularly after what's happened in B.C. You know I don't want I don't want a see some young officer under fire and us not not be able to rescue him.

In this conversation John Carson also commented on the status of the injunction:

- Carson: Well see that's...being debated hotly as we speak in ah the big smoke.
- Austin: Cause hardly ever they are you know they.
- Carson: Well there is the emergency type one they can get within a day.
- Austin: Okay.
- Carson: Um and if they're not prepared to do that then I have to you know we have to really look at our whole situation here.<sup>1441</sup>

Carson also commented that an injunction had still not been obtained by the Ministry of Natural Resources, "and that has to take place before we even think about taking any action...of trying to remove anybody".<sup>1442</sup> He stated that it would be better to have the armoured vehicle on hand if the injunction was obtained and, "we're going to go in there and...try to execute...the order".<sup>1443</sup> At 3:36 p.m., in another telephone conversation with a military officer largely concerned with the armoured vehicle, Inspector Carson stated,

...[J]ust to give you some I guess appreciation of where we are...it's a Provincial Park and the Ministry has to seek a court injunction before we would take any overt action...And at this point in time we are simply securing the general area but once the court injunction is secured which would be at best late tomorrow...Then...we would have to decide how we act and anything we do at that point would could be perceived as overt and and that's when our our risk would increase...Ah but the risk you know if there were shots fired and...a serious ah you know escalation then I think we'd have to look at having them say at...within...fifteen (15) minute response in case anybody was down.<sup>1444</sup>

Inspector Carson explained that an injunction was preferable to proceeding with trespass charges because,

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See also Examination in chief of John Carson, May 17, 2005, pp.185-86; Exhibit P-444A, Tab 15 (Transcript), p. 105, and at pp. 108-09, where Carson states: "And as you know in B.C. there has been some problems and you know we don't know if we have people who are gonna try and you know duplicate what's happened elsewhere for the...for the media..." Similarly, in a telephone conversation with Captain Bachelor of the military at 3:36 p.m. on September 5, Inspector Carson stated, "Um so we're still low level but you know given the issues that are happening out in BC the last day or so in it we just don't know if that's gonna carry over down here...Ah we I think we're still a little premature to to say that we would like any anything moved down close at all yet...[H]opefully that's...a day or two down the road at the earliest." See Exhibit P-444A, Tab 19 (Transcript), p. 138.

<sup>1440</sup> Exhibit P-444A, Tab 14 (Transcript), p. 100. There are further conversations regarding the obtaining of an armed vehicle at Exhibit P-444A, Tab 17. See also Examination in chief of John Carson, May 17, 2005, pp. 238-39.

<sup>1441</sup> Exhibit P-444A, Tab 14 (Transcript), pp. 101-02.

<sup>1442</sup> Exhibit P-444A, Tab 14 (Transcript), p. 100.

<sup>1443</sup> Exhibit P-444A, Tab 14, pp. 100-01. See also p. 101, where Inspector Carson states: "But I guess...if we...get ready to to enter...right now we have nobody in the park but if we...get an injunction and ...are prepared to go into the park...we certainly have control over when when that would take place."

<sup>1444</sup> Exhibit P-444A, Tab 19 (Transcript), p. 141.

It's trying to ensure that removing somebody in this kind of a situation under the *Trespass to Property Act*, is a pretty fruitless approach to trying to come to some resolution because the trespassing in and of itself, isn't going to solve the problem. So we go on and we could arrest somebody for trespassing, remove them, give them a Provincial Offences notice and five minutes later be faced with the same situation. We needed something that was going to address the whole issue that was the root here, and that was going to have to come from some decision made by a Court.<sup>1445</sup>

At 3:07 p.m. Inspector Carson reported at the Command Post that it "sounds like they're going to get an emergency injunction".<sup>1446</sup> He said "[W]e're on the right track with some concern notice wasn't accepted". This track was that the OPP "hold the status quo, waiting for the injunction to be processed".<sup>1447</sup> Detective Sergeant Wright reiterated that he had told the First Nations people the occupiers were trespassing, and that he understood the MNR was seeking an injunction. Les Kobayashi of the MNR reported that this was the MNR's intention, and that as a result of research done the MNR understood the burial site was at Kettle Point, not the Park.<sup>1448</sup>

At 4:04 p.m. Inspector Carson spoke again with Deputy Superintendent Parkin.<sup>1449</sup> They reviewed the progress of video surveillance in the Park, the obtaining of armed vehicles and helicopter assistance, the issuance of a media release regarding arrest warrants resulting from the incidents of September 4, and the lengthy local media coverage being given to the Bosanquet media release. Inspector Carson advised that non-residents or persons who "have no business down there" were not being allowed into the Park area, "in the event that they head into the park and create more aggravation for us".<sup>1450</sup> They also discussed the status of events at the checkpoints and that there had been no more discussions with the occupiers. They also discussed the difficulty of controlling access to the Park. Inspector Carson observed, "[U]ntil we can get control that perimeter in the park itself we're at a loss."<sup>1451</sup>

Inspector Carson also discussed what he had heard about events at the IMC:

Carson: No I appreciate that cause...you have you talking to Ron Fox.

Parkin: Yeah I have been.

Carson: Yeah yeah that blockade committee...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.

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<sup>1445</sup> Examination in chief of John Carson, May 17, 2005, p. 274.

<sup>1446</sup> Examination in chief of Mark Wright, February 22, 2006, p. 164.

<sup>1447</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, p. 213.

<sup>1448</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 165, 167.

<sup>1449</sup> Exhibit P-444A, Tab 21 (Transcript).

<sup>1450</sup> Exhibit 444A, Tab 21 (Transcript), p. 165. Inspector Carson was not aware of any searches being carried out at the checkpoints and gave no direction that searches be conducted: see Examination in chief of John Carson, May 17, 2005, pp. 302-03, 304-06.

<sup>1451</sup> Exhibit 444A, Tab 21 (Transcript).

Carson: [Unintelligible]  
Parkin: So.  
Carson: Are we prepared to live with that.  
Parkin: Depends who you listen to apparently the ah the the people from ah the government are saying ah you know why don't we treat them just like a bunch of bikers.<sup>1452</sup>  
Carson: Well well they've got a point.  
Parkin: Yeah.  
Carson: Ah but I guess for trespassing that's not very you know I mean.  
Parkin: Sounds good.  
Carson: Yeah that's right that's right.  
Parkin: But I [Unintelligible]  
Carson: But but if they're if they're prepared for that then lets just get the emergency injunction and get on with life.  
Parkin: Yep.  
Carson: You know if if that's their feeling about it I mean lets have the appropriate support in law and and deal with it.  
Parkin: Yep okay.<sup>1453</sup>

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<sup>1452</sup> In cross-examination Superintendent Parkin acknowledged that he had never observed anyone in government at Queen's Park saying the occupiers should be treated like bikers, and that this information was second hand at best. He said it was likely he got this information from Ron Fox: see Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 40-41. Parkin acknowledged that Carson did not need this information to do his job: see p. 41. Carson testified that he did not receive any information about a specific person who may have made a comment like this, and has "no idea who -- who made that comment": see Cross-examination of John Carson by Ms. Twohig, June 2, 2005, p. 53.

<sup>1453</sup> Exhibit P-444A, Tab 21 (Transcript), p. 169. As to his statement, "They've got a point", Inspector Carson was examined in chief as follows:

Q: And then at page 169 there's a reference: "Depends who you listen to. Apparently the people from the government are, you know, why don't we treat them just like a bunch of bikers? Carson: Well, they've got a point." And what did you mean by that?

A: Well, if you -- if you don't take all the factors into consideration, I guess that's one (1) point of view you can take.

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

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

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

A: Of course.

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

A: That certainly was a factor, yes.

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

A: Correct.

In cross-examination Inspector Carson stated that in saying, "[T]hey've got a point", "[W]hat I'm saying here is there is no land claim issue on the Park as we knew it at that time. And that's a simple trespassing is what I'm

With respect to Inspector Carson's statement, "[L]ets just get the emergency injunction and get on with life", Superintendent Parkin testified that he agreed with this approach, as an "injunction was something that we had wanted prior to and all through the process".<sup>1454</sup> He acknowledged that it was always the OPP's intention that it would take no steps to remove the occupiers from the Park without an injunction first having been granted.<sup>1455</sup> Parkin understood from this conversation that Carson wanted the government to make a decision on the injunction.<sup>1456</sup>

### 9.03 CARSON AND LACROIX

At 4:24 p.m. Inspector Carson spoke with Staff Sergeant Wade Lacroix,

Lacroix: Did you get a call or anything from the Ministry side err.

Carson: No.

Lacroix: Okay but Marcel got briefed a half an hour ago.

Carson: Okay.

Lacroix: And he got he's gonna get briefed again at five.

Carson: Okay.

Lacroix: Uh that this is not an Indian issue but an MNR issue and a Provincial issue.

Carson: Uh huh.

Lacroix: Harris is involved himself and ah quite uptight about it.

Carson: Okay.

Lacroix: And the Ministry I guess the Solicitor General I imagine is to do a press release momentarily or soon saying law will be upheld no matter who is involved.<sup>1457</sup>

Carson: Okay.

Lacroix: So I would say the signal is that ah we're gonna end up evicting them.<sup>1458</sup>

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saying. So the point is, they are simply trespassing as...opposed to the land claim issue as we knew it in the military base. So it's a...distinctly different issue around the occupation." See Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 213.

<sup>1454</sup> Examination in chief of Anthony Parkin, February 7, 2006, p. 51. See also Cross-examination of Anthony Parkin by Ms. Twohig, February 7, 2006, at p. 322: "It was just the OPP's position that we would like to have an injunction." See also Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, at p. 9.

<sup>1455</sup> Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, at pp. 9-10; see also Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, pp. 47-48.

<sup>1456</sup> Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, p. 59; see also Cross-examination of Anthony Parkin by Mr. Rosenthal, February 9, 2006, pp. 149-51.

<sup>1457</sup> Robert Runciman testified that he did not give any instructions to issue any such media release: Examination in chief of Robert Runciman, January 9, 2006, p. 112. See also p. 115.

<sup>1458</sup> See Examination in chief of John Carson, May 17, 2005, pp. 321-22.

Carson: I would suspect.

Lacroix: Ah he's gonna call me in the morning.

Carson: Okay.

Lacroix: And tell me anything else that happened.

Carson: All right.

Lacroix: Cause he was talking to our Chief.

Carson: Okay.

Lacroix: Was impressed by the Chief.

Carson: Oh good.

Lacroix: Found that he was very upfront kind of a guy my kind of individual.

Carson: Good good.

Lacroix: I guess they had a confidential talk which he didn't want to share with me cause he told the Chief he was being that he would you know I guess the Chief told him some things about his concerns.

Carson: Okay.

Lacroix: And he's going to keep to themselves. You're probably aware of what those concerns are.

Carson: I suspect so. (laughs).

Lacroix: Ah somehow I'm involved in that I don't understand that totally but.

Carson: I'm not sure.

[...]

Lacroix: I don't know so anyway the Chief told him he had concerns of some kind.

Carson: Oh.

Lacroix: I don't imagine I don't know what I imagine I could figure out what they are but.

Carson: Huh.

Lacroix: So anyhow I it sounds like the government is on side.

Carson: Oh good.

Lacroix: And there is supposedly some sort of press release.

Carson: Oh well we'll be watching the news at six (6).<sup>1459</sup>

Inspector Carson testified that he was not sure who was being referred to as having given any "signal" that "we're gonna end up evicting them".<sup>1460</sup> He said, "[W]hat I believe we were discussing here is that I believe they're going to move forward and get the injunction."<sup>1461</sup> He

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<sup>1459</sup> Exhibit P-444A, Tab 22 (Transcript), pp. 181-82.

<sup>1460</sup> Examination in chief of John Carson, May 17, 2005, p. 322.

<sup>1461</sup> Examination in chief of John Carson, May 17, 2005, p. 323.



said an eviction would be carried out through the injunction process.<sup>1462</sup> His position was that the OPP would not evict the occupiers without an injunction having been granted.<sup>1463</sup>

Staff Sergeant Lacroix testified that in referring to an eviction, “If the government gets involved and the media gets involved, I figured that it would end up that we would. If we had the injunction there would be pressure to evict.”<sup>1464</sup> Lacroix said he was of the belief at the time that if a court order was obtained the OPP would be directed by the court to evict, and would not have an option not to do so.<sup>1465</sup>

Wade Lacroix testified that if a court order was obtained and the OPP took action to evict the occupiers, it would not have been important to him whether the government “was on side”. Asked whether this would matter to him he answered, “No, not really. I don’t think I’ve ever considered the government in any occurrence I’ve ever been in.”<sup>1466</sup> Lacroix acknowledged that what was done by the OPP after any injunction was granted would have been up to the Incident Commander to decide.<sup>1467</sup>

As to his reference to Marcel Beaubien informing him of being briefed that, “[T]his is not an Indian issue but an MNR issue and a provincial issue”, and that “Harris is involved himself and ah quite uptight about it”, Lacroix testified that the words “quite uptight” were “probably my street talk. You know, Marcel saying to me that Harris has taken an interest in it, so I go and say that comment.”<sup>1468</sup> In cross-examination he did accept that he must have inferred from Beaubien’s statements to him that the Premier was personally anxious or upset about the situation at Ipperwash.<sup>1469</sup>

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<sup>1462</sup> Examination in chief of John Carson, May 17, 2005, p. 323.

<sup>1463</sup> Examination in chief of John Carson, May 17, 2005, p. 323.

<sup>1464</sup> Cross-examination of Wade Lacroix by Mr. Falconer, May 9, 2006, p. 238; see also pp. 244-4. Lacroix also stated (at pp. 248-49):

I mean in the House and in the press it’s going to put pressure on us to actually evict. But we were talking that we would not evict, no matter what. So I’m just saying to him, I hope that’s not what’s going to happen here and I think he says, I would...agree, or I would suspect. I was just picking up on whatever.”

He went on to say (at p. 251):

Well, I receive a phone call from an MP...I’ve never taken that into account when we go to do...a tactical operation or anything. To me I was not looking forward to evicting. Again, I don’t think this could be solved by police.

See also p. 256: “I’m saying that if we get this court order and the government really want to see something done, I would guess that means we’re going to evict.”

<sup>1465</sup> Cross-examination of Wade Lacroix by Mr. Falconer, May 9, 2006, pp. 254-56. See also pp. 255-56: “...I thought we had to...If we got that court order there was no if, ands or buts, you -- it was court order.”

<sup>1466</sup> Cross-examination of Wade Lacroix by Mr. Falconer, May 9, 2006, p. 250. See also p. 252, in response to a question whether it mattered to him that the government would be “on side” if the OPP took this action: “I think I know where you’re going, but no, to tell you the truth...it doesn’t give me comfort to know that the government’s behind me when I’m going down the road...to do something that I really don’t want to do.”

<sup>1467</sup> Re-examination of Wade Lacroix by Mr. Millar, May 10, 2006, pp. 387-88.

<sup>1468</sup> Cross-examination of Wade Lacroix by Mr. Falconer, May 9, 2006, pp. 240-41.

<sup>1469</sup> Cross-examination of Wade Lacroix by Mr. Falconer, May 9, 2006, pp. 241-42.

John Carson said about the statement made to him about the Premier by Wade Lacroix, “Well, it’s just an opinion piece, quite frankly. I mean, everybody’s entitled to their opinion, have their concerns.”<sup>1470</sup> Asked whether this information had any effect on his actions, he said, “We kept proceeding in the direction we had been proceeding for the two days previous, and continued to work towards an injunction.”<sup>1471</sup>

Wade Lacroix testified that the only provincial official he spoke to during the Ipperwash events was Marcel Beaubien.<sup>1472</sup> Asked what, if anything, he took from Beaubien’s statement to him that the Premier was interested in the events at Ipperwash, he said he “really didn’t take that much from it at all...I would expect him to be interested in any kind of event going on in the Province”.<sup>1473</sup> He said, “[A]s a line police officer, it didn’t mean a thing to me...because we don’t take direction from politicians”.<sup>1474</sup> He said the OPP does “not take direction from any other ministry” or civil servants.<sup>1475</sup>

Asked whether he formed the impression that Beaubien was using his position as an MPP to somehow influence the actions of the OPP, Wade Lacroix replied, “Not at all.”<sup>1476</sup> Similarly, Lacroix did not think Beaubien was seeking to intimidate the OPP into taking any specific action by his reference to calling the Premier.<sup>1477</sup> Lacroix said his conduct in his policing duties from September 4 through 7 was not affected by his conversations with Beaubien.<sup>1478</sup> In speaking to Beaubien he did not think he had gone beyond providing general information as he ordinarily would to municipal officials or a police services board.<sup>1479</sup>

The TRU team leader, Sergeant Kent Skinner, was questioned about Lacroix informing Carson that “Harris is involved himself”:

Q: Thank you. Did Mr. Carson or Wade Lacroix pass onto you, the view that Harris is involved himself, first of all? Was that passed onto you?

A: I have no recollection of that, sir.

Q: Would it be appropriate to tell you about that?

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<sup>1470</sup> Examination in chief of John Carson, May 17, 2005, pp. 323-24. Chief Coles testified had little recollection of this: Examination in chief of Christopher Coles, August 16, 2005, pp. 46-47.

<sup>1471</sup> Examination in chief of John Carson, May 17, 2005, p. 324.

<sup>1472</sup> Examination in chief of Wade Lacroix, May 9, 2006, p. 101.

<sup>1473</sup> Examination in chief of Wade Lacroix, May 9, 2006, p. 103.

<sup>1474</sup> Examination in chief of Wade Lacroix, May 9, 2006, p. 103. See also Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, pp. 160-61; Cross-examination of Wade Lacroix by Mr. Falconer, May 9, 2006, pp. 261-63 regarding events immediately after the shooting incident on the night of September 6: “I’m not that way. I am not politically motivated that way. I wasn’t worried about my career or what it would do for me at all.”

<sup>1475</sup> Examination in chief of Wade Lacroix, May 9, 2006, pp. 103-04.

<sup>1476</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, p. 157.

<sup>1477</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, pp. 156-57.

<sup>1478</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, pp. 158-59.

<sup>1479</sup> Cross-examination of Wade Lacroix by Mr. Sulman, May 9, 2006, pp. 160-62.

A: I -- if it was in general conversation and it's just a by the by, I suppose. I don't know if...it's appropriate or inappropriate at that point. If...it was done as an intent, because they said this, we're going to do this, then maybe that would be inappropriate. Again, as I said...it was no never mind to me if a politician had one thought or another on any tactical operation. So if it was said, I don't remember it.

Q: And secondly...was it communicated to you that Premier Harris was, quote, "uptight" about the situation? Was that communicated to you?

A: Again, I have no recollection of that.

Q: And again, my question: Would it be appropriate to communicate that to you, that Harris is uptight about the situation?

A: I don't know what benefit it would be to me as a tactical team leader, sir.

Q: Would you agree that in addition to not being of any benefit, for a person that doesn't have your degree of detachment or neutrality, that it could actually pose the risk of creating a political pressure or imperative unnecessarily on an officer who has to exercise their discretion; it could create that danger, couldn't it?

A: I suppose...hypothetically it could. I think it's made clear to police officers, throughout their career, they are not to react to political pressure.<sup>1480</sup>

Inspector Carson did pass this information on to Chief Superintendent Coles by telephone.<sup>1481</sup> In particular, a note indicates that he "updated Chief Coles that Marcel Beaubien had contacted the Premier. There is to be a press release by the Solicitor General stating that this is not an Indian issue, it is an MNR and a Provincial issue."<sup>1482</sup> Carson testified that this information had no impact on the responsibilities of OPP officers, and that his intention remained to maintain the *status quo*.<sup>1483</sup>

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<sup>1480</sup> Cross-examination of Kent Skinner by Mr. Falconer, April 20, 2006, pp. 182-83.

<sup>1481</sup> Examination in chief of John Carson, May 18, 2005, pp. 14-16.

<sup>1482</sup> Examination in chief of Mark Wright, February 22, 2006, p. 171.

<sup>1483</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 219-22.

## CHAPTER 10

# THE EVENING OF SEPTEMBER 5

### 10.01 THE CURRENT STATUS

In a 4:45 p.m. briefing, Inspector Carson received information that MNR representatives would be meeting again regarding an injunction the next day, and that the MNR was “seeming to be moving for an injunction as soon as possible”.<sup>1484</sup> A short time later Inspector Carson was informed that Peter Sturdy of the MNR was “working on a 24 hour affidavit”.<sup>1485</sup>

At 5:00 p.m. Carson briefed Inspector Dale Linton, who was to take over as Incident Commander overnight. Linton told Carson that earlier in the day he had spoken to Chief Bressette, who was concerned about the safety of cottages adjacent to the northeast corner of the Park on Outer Drive.<sup>1486</sup> Linton said Chief Bressette had also expressed a concern that “Pinery Park is next”.<sup>1487</sup> Carson said that concerns about the Outer Drive cottages had been raised by Mayor Thomas and “residents in that general area”.<sup>1488</sup> Shortly afterward he arranged for a patrol of Outer Drive.<sup>1489</sup>

At about 6:00 p.m. an MNR helicopter was up in the air over the Park to conduct surveillance.<sup>1490</sup>

Sergeant Seltzer informed Inspector Carson that there would be no negotiators overnight, but one OPP negotiator could be available in two hours, and Sergeant Marg Eve would be at Ipperwash at 8:00 a.m. the next morning. He reported that Constable Vince George had been spoken to, and that George was thinking about the OPP’s request that he act to introduce the negotiators.<sup>1491</sup>

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<sup>1484</sup> Examination in chief of John Carson, May 17, 2005, pp. 329, 332.

<sup>1485</sup> Examination in chief of John Carson, May 18, 2005, p. 18.

<sup>1486</sup> Examination in chief of John Carson, May 18, 2005, pp. 16-17.

<sup>1487</sup> Examination in chief of John Carson, May 18, 2005, pp. 17-18.

<sup>1488</sup> Examination in chief of John Carson, May 18, 2005, p. 17.

<sup>1489</sup> Examination in chief of John Carson, May 18, 2005, p. 24-25, 26-27. See also Examination in chief of John Carson, May 19, 2005, pp. 56-58.

<sup>1490</sup> Examination in chief of John Carson, May 18, 2005, p. 19.

<sup>1491</sup> Examination in chief of John Carson, May 18, 2005, pp. 19-20.

## 10.02 OPTIONS FOR DIALOGUE

Inspector Carson did not think it would useful to seek to have Chief Bressette or another member of the KSP council assist in starting negotiations. He clearly understood that “there was certainly not a very harmonious relationship...with the occupiers and the Kettle Point band”.<sup>1492</sup> Involving Chief Bressette or council members did not seem to him to be “a viable option that would work”.<sup>1493</sup>

Similarly, John Carson did not think the KSP police service “would be supportive or assist us in any way, particularly in this type of incident”.<sup>1494</sup> The head of that service, Miles Bressette, had previously made clear to Carson that “he didn’t want his officers working off of Kettle Point”.<sup>1495</sup> This fact and Miles Bressette’s “relationship with our officers, generally” led Carson to conclude that there would be no point in requesting the KSP police service’s involvement.<sup>1496</sup>

Although the OPP had a First Nations policing branch, John Carson did not know anyone there who would have a relationship with the individuals involved so as to be able to establish dialogue.<sup>1497</sup> Although the military at CFB Ipperwash had some contacts with persons in occupation at CFB Ipperwash, Carson did not want to use the military to open discussions with the occupiers at the Park. He wanted the Park occupiers to view the OPP as being independent of the military.<sup>1498</sup> It was also relevant to Carson that Grand Chief Ovide Mercredi had been in the area in August and “there didn’t appear to be any appetite for discussion with the occupiers”.<sup>1499</sup>

Mark Wright testified that he did not recall any discussion in the Command Post about possibly going outside the local community to obtain the services of an aboriginal person as a negotiator.<sup>1500</sup> John Carson was aware of a lawyer who had acted for occupiers of CFB Ipperwash, but he did not turn his mind to contacting him.<sup>1501</sup>

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<sup>1492</sup> Examination in chief of John Carson, May 18, 2005, pp. 20-21.

<sup>1493</sup> Examination in chief of John Carson, May 18, 2005, pp. 20-21.

<sup>1494</sup> Examination in chief of John Carson, May 18, 2005, pp. 21-22.

<sup>1495</sup> Examination in chief of John Carson, May 18, 2005, pp. 21-22.

<sup>1496</sup> Examination in chief of John Carson, May 18, 2005, pp. 21-22. See also Cross-examination of John Carson by Mr. Falconer, June 29, 2005, pp. 110-11: “There had been numerous meetings over the years with Chief Bressette and Miles Bressette and it was their view that we could not use their officers. It wasn’t a matter of whether we wanted to or not, I couldn’t control their desire or their wishes that there...be minimal or no interaction between the First Nations officers of Kettle Point and the OPP officers.” And see generally, pp. 110-14, 118-21.

<sup>1497</sup> Examination in chief of John Carson, May 18, 2005, p. 22.

<sup>1498</sup> Examination in chief of John Carson, May 19, 2005, pp. 23-24; see also Examination in chief of John Carson, May 31, 2005, pp. 181-82.

<sup>1499</sup> Examination in chief of John Carson, May 18, 2005, p. 21.

<sup>1500</sup> Examination in chief of Mark Wright, February 22, 2006, p. 135.

<sup>1501</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 37.

Inspector Carson felt that local individuals like Vince George, Lorne Smith or George Speck had local knowledge and established relationships. That led him to feel that, “[T]hey had a reasonable chance, if anybody did, of establishing some dialogue and would not be seen as threatening, as...police officers”.<sup>1502</sup> At the same time, Carson had received no offers of assistance from First Nations organizations such as the Assembly of First Nations, the Chiefs of Ontario, or the Union of Ontario Indians.<sup>1503</sup>

### 10.03 “HEAT FROM POLITICAL SIDE”

A scribe note attributes the following words to Inspector Carson during a Command Post briefing at 6:00 p.m.: “Heat from political side. Made strong comments in the House court injunction moving along.”<sup>1504</sup> In his testimony Inspector Carson did not recall “that particular terminology” but said, “I suspect I’m reflecting on the discussion Inspector Fox and I had in regards to the Blockade Committee and the...issues around...the different types of injunctions and...all those discussions and his general comments generally”, as well as the information received through Marcel Beaubien, Mayor Fred Thomas, and the local administrator, Ken Williams.<sup>1505</sup> “[T]here’s a number of people at the various areas of responsibility who are voicing concerns and issues,” he said, “so it’s, quite frankly, coming from all angles.”<sup>1506</sup>

Asked whether the “political heat” had on his management of the occupation, John Carson answered,

Well, certainly what we had been planning and what we continued to plan was our approach to this incident by means of an injunction. All it meant was that we had to stay the course. I was informing people of some information that I had received. But the reality of it all is, we simply continue to move forward and...there may be some obstacles at the Ministry level in regards to how the injunction or what type of injunction, but that we were going to continue to pursue our injunction process and that, quite frankly, it’s just business as usual.<sup>1507</sup>

Detective Sergeant Wright testified that he had no recollection of the comment regarding “heat from the political side”.<sup>1508</sup> He said that was not his concern.<sup>1509</sup> The TRU team leader, Sergeant Kent Skinner, did not recall hearing the comment.<sup>1510</sup>

Inspector Carson’s direction to OPP officers immediately after the comments about “heat from the political side” was to ask that OPP officers be advised “to keep tonight quiet”.<sup>1511</sup>

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<sup>1502</sup> Examination in chief of John Carson, May 18, 2005, pp. 22-23.

<sup>1503</sup> Examination in chief of John Carson, May 18, 2005, p. 23.

<sup>1504</sup> Examination in chief of John Carson, May 18, 2005, p. 30.

<sup>1505</sup> Examination in chief of John Carson, May 18, 2005, pp. 30-31.

<sup>1506</sup> Examination in chief of John Carson, May 18, 2005, p. 31.

<sup>1507</sup> Examination in chief of John Carson, May 18, 2005, pp. 31-32.

<sup>1508</sup> Examination in chief of Mark Wright, February 22, 2006, p. 175.

<sup>1509</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 175-76.

<sup>1510</sup> Cross-examination of Kent Skinner by Mr. Falconer, April 20, 2006, p. 171.

He testified that he wanted “to maintain the course, maintain the checkpoints, try...to keep this as low-key as possible”. His view was, “[S]it, hold tight, wait for the injunction and when the injunction comes, then we’ll develop some strategy of how we deal with that piece.”<sup>1512</sup>

John Carson also reported that on the basis of his conversation with Ron Fox, “[I]t sounds like they’re going to get an emergency order.”<sup>1513</sup> In handwritten scribe notes Carson is recorded as saying, “The Premier’s no different treatment from anybody else. We’re okay, on right track.”<sup>1514</sup> Detective Sergeant Wright testified that he did not have any recollection of Carson saying this, or any comment or reaction regarding this information.<sup>1515</sup> He was not sure who else was present at this briefing.<sup>1516</sup>

#### 10.04 OPTIONS IN THE EVENT OF AN INJUNCTION

At 9:53 p.m. Inspector Linton spoke to Superintendent Parkin by telephone:

Linton: Well I heard the Minister of Natural Resources was on the local news here at six o'clock saying that they wouldn't tolerate this but...we heard the rumour that the Solicitor General was going to be on and he wasn't but...anyways...

[...]

Linton: And...I guess if we - There's supposed to be an injunction tomorrow.

Parkin: Mmhmm.

Linton: As early as tomorrow...

Parkin: As early as tomorrow?

Linton: Yeah.

Parkin: Oh that's a change - 'cause today when we were talking to them they were going for - they hadn't even [Inaudible]

Linton: To look at a twenty-four hour injunction?

Parkin: Yeah, the emergency or the standard. And they were looking at the standard injunction which is two weeks. But that's good.

Linton: ...Les Kobyashi was in tonight. He'd been talking to Peter Sturdy. And Peter was tapping away on it and he was...thinking of probably getting it signed tomorrow morning and taken before a judge.

Parkin: Yeah.

Linton: So they were thinking probably -maybe as early as midday tomorrow.

Parkin: Oh!

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<sup>1511</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 223-25.

<sup>1512</sup> Examination in chief of John Carson, May 18, 2005, p. 32.

<sup>1513</sup> Examination in chief of John Carson, May 17, 2005, p. 240.

<sup>1514</sup> Examination in chief of John Carson, May 17, 2005, p. 241. See also Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 208-10.

<sup>1515</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 166-67.

<sup>1516</sup> Examination in chief of Mark Wright, February 22, 2006, p. 167.

Linton: And...so I guess at that point in time we'll have to make a decision with MNR - you know - what we want to do and how we want to do it.

[...]

Linton: No but I guess if...ya know, we'll have to talk at - considerable length...when that injunction comes in. How we're gonna go about movin' in there and ...

Parkin: (interrupting) Well, oh you're definitely right there. We're gonna have to take a look at that because that's...

Linton: (interrupting) Because that's when we'll be getting down to the crunch. But...

Parkin: 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...

Linton: Yeah.

Parkin: ...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...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.

Linton: Yeah.

Parkin: And - so those are the decisions we're going to have to make.<sup>1517</sup>

Superintendent Parkin testified that it was his understanding that if the injunction was granted, "OPP command", including himself, Chief Superintendent Coles and Inspector Carson, would "have time to sit and think about process and planning" regarding the enforcement of the injunction.<sup>1518</sup> Parkin accepted that these discussions could take "considerable time", and that prior to September 7 no decision was ever made as to how an injunction was going to be enforced.<sup>1519</sup> He accepted this was "left as a matter that would be down the road".<sup>1520</sup>

Superintendent Parkin said there was never a change in his understanding that the means of enforcement of any injunction would require considerable discussion, and that the OPP would take as much time as required.<sup>1521</sup> He had no intention or expectation that the OPP would look to politicians for guidance as to how and when to enforce an injunction, whether it was granted on an emergency basis or at a later time.<sup>1522</sup> John Carson testified that "depending on what the

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<sup>1517</sup> Exhibit P-1057, pp. 3-6.

<sup>1518</sup> Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 12-13.

<sup>1519</sup> Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 13-14; see also Cross-examination of Anthony Parkin by Mr. Henderson, February 9, 2006, pp. 288-89.

<sup>1520</sup> Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, p. 14.

<sup>1521</sup> Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 14-15; see also pp. 23-24.

<sup>1522</sup> Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, p. 15. He accepted that he did not have a great concern at this point whether the injunction was granted the next day or at a later time: see p. 18.



injunction would state, there might be a number of options that could come to bear that may not require the use of force”.<sup>1523</sup> In the conversation Parkin also said to Linton,

I think you've got everything under control there and like you say - touch up those couple of issues with John tomorrow and depending on that injunction and depending on the political will we'll...make our decisions accordingly.<sup>1524</sup>

Parkin testified that in referring to “political will” he was referring to the government’s position that “until the occupiers left, that the Government wasn't going to speak to the issue...That was kind of the proviso they put out there. However, there was nothing to -- to prevent them from changing their mind and saying we'll talk.”<sup>1525</sup>

## **10.05 THE PICNIC TABLE INCIDENT**

During the evening of September 5, some of the occupiers of the Park placed a large number of picnic tables in the sandy parking lot outside the Park fence, at the corner of East Parkway Drive and Army Camp Road. OPP officers attended at the scene. There are some discrepancies in the evidence as to what occurred, including disputed evidence as to provocation of some of the First Nations people by the OPP officers. We presume that other parties will analyze that evidence in detail. What appears to be uncontroverted is that the occupiers retreated into the Park. The OPP officers did not follow them into the Park, but remained outside the Park fence. The occupiers involved in the incident then pelted the officers and the OPP vehicles with stones from within the Park.

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<sup>1523</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 185. See also p. 186: “It was also the --- anticipated that once the Court Order was delivered, that it would stimulate the negotiations that would provide us an opportunity to deal with this without having to use force.” See also Examination of John Carson by Mr. Sandler, June 29, 2005, p. 194.

<sup>1524</sup> Exhibit P-1047 (Transcript), p. 9.

<sup>1525</sup> Cross-examination of Anthony Parkin by Mr. Rosenthal, February 9, 2006, pp. 155-56.

## CHAPTER 11

# THE DAY OF SEPTEMBER 6

### 11.01 THE GUNFIRE AND THE “AMBUSH”

On Wednesday, September 6, Inspector Carson and Detective Sergeant Wright both arrived at the Command Post at about 6:30 a.m.<sup>1526</sup> Shortly afterward Carson was briefed on the night’s events by Inspector Linton.<sup>1527</sup> Carson was told that during the previous night OPP officers had gone to the sandy parking lot just outside the Park to check on a fire observed there, and that, “[T]hey were met with a barrage of rocks, which ended up causing damage” to three cruisers.<sup>1528</sup> About an hour and a half later Carson was informed that one of his officers had pepper sprayed someone, although he was not informed of the circumstances in which that happened.<sup>1529</sup> Carson was informed that a dump truck and backhoe had been operating in the Park during the night.<sup>1530</sup>

Just after midnight, at 12:47 a.m., Constable Larry Parks had reported by radio that there had been “large amounts of automatic gunfire back in army camp”. At 6:30 a.m. Inspector Carson was also informed that at one point officers heard 50 to 100 rounds of gunfire that appeared to have been from a weapon.<sup>1531</sup>

The TRU team leader, Sergeant Kent Skinner, said he became aware of this information, as well as “an example of violence towards police officers, the throwing of rocks” in a 7:00 a.m. briefing.<sup>1532</sup> He was not aware that the automatic gunfire had been reported as having occurred within CFB Ipperwash.<sup>1533</sup> He did not have information where it came from.<sup>1534</sup> He considered that “it raised the threat level in my estimation...it was confirmation that it was a good thing we were there and it was confirmation to me that there was now a higher potential for firearms present”.<sup>1535</sup> He said the gunfire “sounded like intimidation”.<sup>1536</sup>

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<sup>1526</sup> Examination in chief of Mark Wright, February 22, 2006, p. 178.

<sup>1527</sup> Examination in chief of John Carson, May 18, 2005, pp. 56, 57. Stan Korosec, who Carson believed was one of the night shift sergeants, was there as well: see pp. 57-58.

<sup>1528</sup> Examination in chief of John Carson, May 18, 2005, pp. 56, 58, 86; see also pp. 244-45.

<sup>1529</sup> Examination in chief of John Carson, May 18, 2005, pp. 72, 82..

<sup>1530</sup> Examination in chief of John Carson, May 18, 2005, pp. 57, 71-72.

<sup>1531</sup> Examination in chief of John Carson, May 18, 2005, p. 57.

<sup>1532</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 94.

<sup>1533</sup> Cross-examination of Kent Skinner by Mr. Falconer, April 20, 2006, pp. 23-24.

<sup>1534</sup> Cross-examination of Kent Skinner by Mr. Falconer, April 20, 2006, pp. 23-24.

<sup>1535</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 94.

<sup>1536</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 95.

At 7:27 a.m. Kent Skinner passed this information to acting Sergeant Ken Deane, his second in command of the TRU team, with the expectation that Deane would inform the rest of the TRU team.<sup>1537</sup> Deane did so in the following telephone conversation:<sup>1538</sup>

Skinner: How you doing Tex. I just wanted to let you know for one thing. I guess around quarter after eleven there was a bonfire out on the road.

Deane: Which road?

Skinner: Army Camp Road.

DEANE Right on the road?

Skinner: Yeah. So the guys drove down to have a look. Proceeded to get four cruiser windows broken by rocks.

Deane: Oh yeah.

Skinner: Then about quarter to twelve, the one check point heard distinctively automatic weapons fire, about 50 to 100 rounds...

Deane: Oh Yeah?

Skinner: ... go off.

Deane: Okay.

Skinner: About one o'clock, they were working inside. They were doing something with a backhoe. We were going to send a chopper up to see what was going on overnight then in that parking lot down at the end of Army Camp Road, they dumped and piled a whole bunch of picnic tables up in there overnight.

[...]

Skinner: [...] I think the automatic weapons fire changes things around here - probably.

Deane: No doubt.

Skinner: Uh, there's other people here who are wanting to do things but I don't think that will happen.

Deane: Uh, Mark Wright?

Skinner: That'd be one of them.

Deane: How about Carson?

Skinner: He's a little more steady.

Sergeant Skinner testified that in referring to people such as Detective Sergeant Wright "wanting to do things", his "recollection would be that there would have been individuals who like to investigate further...where the gunfire came from, the potential to lay charges and make

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<sup>1537</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 104.

<sup>1538</sup> Exhibit P-1342.

an arrest, that type of thing”.<sup>1539</sup> He said it would not have been prudent to go into the Park to investigate the sound of gunfire.<sup>1540</sup> He did not accept that the persons “wanting to do things”, “wanted to take more aggressive action” than Inspector Carson.<sup>1541</sup>

## 11.02 THE DEPLOYMENT OF ERT

At 7:14 a.m. Inspector Carson was informed by Detective Sergeant Wright<sup>1542</sup> that a number of picnic tables were piled in a line across the sandy parking lot outside the Park fence at the edge of the roadway at the corner of Army Camp Road and East Parkway Drive.<sup>1543</sup> Inspector Carson was informed that the tables were piled so as to prevent vehicles from entering the sandy parking lot.<sup>1544</sup> He was informed that after cruisers were damaged during the night, checkpoints had been moved back, and the tables discovered at daylight that morning.<sup>1545</sup>

At 7:18 a.m. Inspector Carson received a call from Ron Fox, who he informed about the cruiser damage and the tables outside the Park fence.<sup>1546</sup> A scribe note indicates that Carson informed Fox of,

Damage to cruisers. Piled tables outside of Park. Someone's going to video. It's adjacent to private property. Potential problems with fires near adjacent houses if tables were set on fire. Spoke to Bressette yesterday, he wants something done<sup>1547</sup>

Inspector Carson sent Detective Sergeant Wright to observe the situation at the sandy parking lot.<sup>1548</sup> The two ERT teams completing their night shift were directed to stand by and be prepared to “go in and get it all and clear it out”.<sup>1549</sup> At 7:30 a.m. Inspector Carson updated Deputy Superintendent Parkin. He reported that the tables were piled near private property and that there was a fire risk to those homes if the tables were set on fire.<sup>1550</sup>

Carson: Ah - last night we got a bit of an ambush.

Parkin: Oh?

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<sup>1539</sup> Examination in chief of Kent Skinner, April 19, 2006, pp. 105-06. Skinner said of Wright that “his background is a criminal investigator so his inkling much like mine would be to provide tactical options, his would be to investigate and lay charges”: see p. 107. See also Cross-examination of Kent Skinner by Mr. Falconer, April 20, 2006, pp. 18-20, 27, 28-36; Cross-examination of Kent Skinner by Mr. Rosenthal, April 20, 2006, p. 211.

<sup>1540</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 106.

<sup>1541</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 106.

<sup>1542</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 182-83.

<sup>1543</sup> Examination in chief of John Carson, May 18, 2005, pp. 62, 63-64, 66.

<sup>1544</sup> Examination in chief of John Carson, May 18, 2005, pp. 63-64.

<sup>1545</sup> Examination in chief of John Carson, May 18, 2005, p. 62.

<sup>1546</sup> Examination in chief of John Carson, May 18, 2005, pp. 62-63.

<sup>1547</sup> Cross-examination of John Carson, June 30, 2005, p. 12.

<sup>1548</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 182-86.

<sup>1549</sup> Examination in chief of John Carson, May 18, 2005, pp. 69-70.

<sup>1550</sup> Examination in chief of John Carson, May 18, 2005, pp. 63, 65-66.

Carson: Oh around eleven o'clock, eleven-thirty. They set a fire on...Army Camp Road itself. So the ERT guys themselves to check it out and got bombarded by rocks from people that were over the Park gate...[Inaudible] -

Parkin: (interrupting) Some of the militants...

Carson: (interrupting) Yeah.

Parkin: ...were throwing them from behind the gate eh?

Carson: Right.

Parkin: Okay.

Carson: Okay? So we got three - three damaged cruisers from - so windows damaged.

Parkin: And nobody hurt?

Carson: No. No. We got out of there okay. Ahh - but overnight they...piled a bunch of picnic tables over the fence, between the fence and the first cottage, right at the beachfront.

[...]

Carson: ...They piled a whole slew of picnic tables in there. And ah - we don't know why. You know they did it to create a humungous bonfire or what I don't know. I've got somebody going down right now to check it out to see exactly what's there.

[...]

Carson: But I think we got to get them out of there. Because if they set a fire we can't even get the damn fire department in there to...prevent it from spreading to the next door house. If...it's the way I think it is.

Parkin: Yeah. I guess its somebody lives inaudible] house. I guess its not just a cottage or something.

Carson: Well, I think it's a - I think its not a year-round residence - I don't believe.

Parkin: Yeah.

Carson: But it's a significant cottage in cottage terms.

Parkin: Right.

Carson: Yeah.

Parkin: Right.

Carson: Yeah. So, from a public perspective I think we got to address that. Quick, quick.<sup>1551</sup>

Upon his return to the Command Post, Detective Sergeant Wright reported that there were a dozen picnic tables, two tents and two “children/teenagers” in the sandy parking lot. outside the Park fence.<sup>1552</sup> He recommended that officers be staged to remove the tables.<sup>1553</sup> At

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<sup>1551</sup> Exhibit P-1058 (Trnsript), pp. 1-3.

<sup>1552</sup> Examination in chief of John Carson, May 18, 2005, pp. 69-70.

<sup>1553</sup> Examination in chief of Mark Wright, February 22, 2006, p. 186.

about 8:45 a.m. Inspector Carson directed that this should be done.<sup>1554</sup> Wright gave directions to send a truck to get the tables, together with a helicopter for observation.<sup>1555</sup> Carson directed that if any persons were arrested, officers were to “get them out quickly”.<sup>1556</sup>

The tables were removed.<sup>1557</sup> Two ERT teams comprised of approximately 30 officers were deployed for that purpose, together with a truck and a helicopter for observation.<sup>1558</sup> Detective Sergeant Wright testified that because of the report of “automatic gunfire we heard the night before, there was 10 officers who went down with the other officers to remove the picnic tables and they were armed with Rugers and they were at port arms”.<sup>1559</sup> Rifles held at “port arms” are held diagonally across the chest, with the barrel pointed at the sky.<sup>1560</sup>

It was reported to Inspector Carson that 21 tables were removed, together with some tents and signs.<sup>1561</sup> Shortly after 9:40 a.m. Inspector Carson reported to the media specialist Sergeant Babbitt that, “[A]ll we did was remove the obstruction on the County property it has nothing to do with the park...it’s not a part of the park itself...”<sup>1562</sup>

### 11.03 THE PROGRESS OF THE INJUNCTION

At 7:35 a.m. Les Kobayashi informed John Carson that the IMC would be meeting at 9:30 a.m., and that Carson “will know more after that”.<sup>1563</sup> Carson expected he would get some information from the IMC as to the status of an injunction application.<sup>1564</sup> At 8:16 a.m., the OPP officer in charge of media relations, Sergeant Babbitt, spoke to Mark Wright on the telephone. Babbitt told Wright he had been informed that the MNR Deputy Minister was upset that the OPP had informed the media it was applying for an injunction, when it was meeting that morning at 9:30 a.m. to discuss that issue.<sup>1565</sup> Babbitt had previously been informed by MNR personnel that

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<sup>1554</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 186; Examination in chief of John Carson, May 18, 2005, pp. 89, 91

<sup>1555</sup> Examination in chief of John Carson, May 18, 2005, pp. 91-92.

<sup>1556</sup> Examination in chief of John Carson, May 18, 2005, pp. 91-92.

<sup>1557</sup> Examination in chief of John Carson, May 18, 2005, pp. 92, 98.

<sup>1558</sup> Exhibit 444A, Tab 30, p. 230; Examination in chief of Mark Wright, February 22, 2006, pp. 201.

<sup>1559</sup> Examination in chief of Mark Wright, February 22, 2006, p. 217. In a telephone conversation shortly after noon on September 6, Wright had described this to Ron Fox:

Wright: Okay. So because we heard automatic fire last night out there...

Fox: Uhum.

Wright: Ah we had ah two ERT teams go down and remove the tables and one team provided cover and they had ten officers with ah rugers - umm - at shoulder arms there or port arms I guess its called.

See Exhibit 444A, Tab 34, pp. 251-52.

<sup>1560</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 217-18.

<sup>1561</sup> Examination in chief of John Carson, May 18, 2006, pp. 112-13.

<sup>1562</sup> Exhibit 444A, Tab 25, p. 212.

<sup>1563</sup> Examination in chief of John Carson, May 18, 2005, pp. 68-69.

<sup>1564</sup> Examination in chief of John Carson, May 18, 2005, p. 69.

<sup>1565</sup> See Examination in chief of Mark Wright, February 22, 2006, p. 193.

he could do so.<sup>1566</sup> Babbitt said that media representatives were now asking him, “[W]hen’s the injunction coming?”<sup>1567</sup> The conversation continued:

Wright: Well, that's not necessarily a bad thing. So we put the heat on those guys right?

Babbitt: So.

Wright: Right?!

Babbitt: Oh, I'm just passing on information.

Wright: Yeah, no, I know but I'm just - don't - you know - right? Opinion wise-

Babbitt: Yep.

Wright: That's not necessarily bad thing.

Babbitt: So.

Wright: That everybody's putting the heat on them like shit or get off the pot!

Babbitt: Yep.

Wright: Right? 'Cause that's the only way we're going to do it.

Babbitt: Yep.

Wright: And they knew about this - this isn't a surprise.<sup>1568</sup>

As to his comment about putting “heat” on the MNR, Wright testified that he was expressing “my personal opinion”, since Sergeant Babbitt was indicating that “the MNR people appear to be backtracking on whether or not they were going to get an injunction”.<sup>1569</sup> Wright said the OPP were not “going to do anything without an injunction”, and that his “information was that they were always going to get an injunction”.<sup>1570</sup> Wright said he felt “from a personal point of view we needed the injunction”, so that if media questions “caused them concern and -- so that they would go get an injunction that wasn’t necessarily a bad thing.”<sup>1571</sup>

At 8:27 a.m. John Carson was informed by Les Kobayashi that “the Deputy Minister had called” and “they’re not going for an injunction”.<sup>1572</sup> Kobayashi said “they want him to retract that position”.<sup>1573</sup> Carson told Kobayashi “that we, the OPP, are pursuing the option of the injunction until we have a court order that gives us ...’a stamp’ which means gives us some direction, we simply don’t have anything”.<sup>1574</sup> He added that if “they’re not getting an

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<sup>1566</sup> Exhibit 44A, Tab 23 (Transcript), p. 187.

<sup>1567</sup> Exhibit 44A, Tab 23 (Transcript), p. 188.

<sup>1568</sup> Exhibit 44A, Tab 23 (Transcript), pp. 188-89.

<sup>1569</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 194, 195.

<sup>1570</sup> Examination in chief of Mark Wright, February 22, 2006, p. 194. See also pp. 195-96: “...the only way...we would go into the Park and deal with the occupiers...was under the authority of an injunction”.

<sup>1571</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 194-95.

<sup>1572</sup> Examination in chief of John Carson, May 18, 2006, p. 87.

<sup>1573</sup> Examination in chief of John Carson, May 18, 2006, p. 87.

<sup>1574</sup> Examination in chief of John Carson, May 18, 2006, pp. 87-88.

order...an injunction, someone will be upset”.<sup>1575</sup> Carson testified that the persons who would be upset were “our chain of command” and himself.<sup>1576</sup> He said it had been,

...our position right from day one that we had shared with the Ministry of Natural Resources...I certainly was not going to be too pleased to continue...the checkpoints and trying to manage a situation if the property owners weren’t going to take the steps necessary...to provide us with the legal assistance that we felt we needed.<sup>1577</sup>

If this position had been maintained by the MNR, Carson would have “picked up the phone and called Chris Coles”, and “put it to him very strenuously that he would have to get on the...line with the Ministry of Natural Resources people...and resolve it”.<sup>1578</sup>

Inspector Carson testified that he never had a sense that the MNR wanted the OPP to remove the occupiers from the Park without the force of an injunction.<sup>1579</sup> A little more than an hour later Les Kobayashi informed him that “it’s all patched up with the deputy’s office”.<sup>1580</sup>

#### **11.04 MEETING WITH MAYOR THOMAS**

At about 8:15 a.m. John Carson met with Mayor Fred Thomas of Bosanquet.<sup>1581</sup> Carson had no difficulty with the Mayor coming to the Command Post, since Carson “understood the anxieties at play here”.<sup>1582</sup> He had no objection to discussing the situation with Thomas “so that he could understand...the situation as we knew it”.<sup>1583</sup> Carson said that receiving information from community representatives about citizens’ concerns in such situations is,

a valuable component that allows the...police to evaluate the information that we may have from other sources, and it may validate or support other concerns that we are aware of, or it may bring to our attention something that we are totally not aware of...It also provides us a vehicle to provide information that can be distributed through the community by other means.<sup>1584</sup>

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<sup>1575</sup> Examination in chief of John Carson, May 18, 2006, p. 88.

<sup>1576</sup> Examination in chief of John Carson, May 18, 2006, p. 88.

<sup>1577</sup> Examination in chief of John Carson, May 18, 2006, p. 88.

<sup>1578</sup> Examination in chief of John Carson, May 18, 2006, p. 89.

<sup>1579</sup> Examination in chief of John Carson, May 18, 2006, p. 88.

<sup>1580</sup> Examination in chief of John Carson, May 18, 2006, p. 110.

<sup>1581</sup> Examination in chief of John Carson, May 18, 2005, p. 77.

<sup>1582</sup> Cross-examination of John Carson by Mr. Sulman, June 2, 2005, p. 123.

<sup>1583</sup> Cross-examination of John Carson by Mr. Sulman, June 2, 2005, p. 123. Inspector Carson saw “nothing inappropriate whatsoever” about the meeting, though it was “essential”, from “a public perspective”: see p. 124.

<sup>1584</sup> Cross-examination of John Carson by Mr. Sulman, June 2, 2005, p. 130.



John Carson informed the Mayor that Chief Bressette did not support the Park occupiers.<sup>1585</sup> Carson informed the Mayor that windows had been smashed out of OPP cruisers on the night of September 5<sup>1586</sup> and police “ambushed with rocks”.<sup>1587</sup>

Mayor Thomas told Carson he did not want Carson to take offence to issues the Township had been trying to address.<sup>1588</sup> Carson recalled that the Mayor said, “[T]hey were trying to take a low key to this”, and felt they “are the third-party involved here”.<sup>1589</sup> He said the Mayor said the police had the full support of the community, but felt “they’re being terrorized”,<sup>1590</sup> and, “[P]eople are very upset out there”.<sup>1591</sup> Thomas mentioned his concerns about Outer Drive and was assured by John Carson that ERT teams were patrolling the area.<sup>1592</sup> The Mayor said his wife was “at home alone” and “very upset”.<sup>1593</sup> Carson assured him the location of the Mayor’s residence would be patrolled.<sup>1594</sup>

Mayor Thomas said he had been in contact with Marcel Beaubien and “informed him of the situation”.<sup>1595</sup> John Carson explained to the Mayor the differences between laying trespass charges and using the injunction process, and that, “[W]e need to get a court order and if there’s

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<sup>1585</sup> Examination in chief of John Carson, May 18, 2005, p. 78.

<sup>1586</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 80. See also Examination in chief of John Carson, May 19.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 78.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 78.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 78. At about 8:30 a.m. Inspector Carson directed Detective Sergeant Wright to put the patrols in place: see Examination in chief of Mark Wright, February 22, 2006, p. 200. See also pp. 206-07.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1587</sup> Examination in chief of John Carson, May 18, 2005, p. 80. Robert Runciman testified that he did not indicate to, 2005, pp. 58-59.

<sup>1588</sup> Examination in chief of John Carson, May 18, 2005, p. 78.

<sup>1589</sup> Examination in chief of John Carson, May 18, 2005, p. 78.

<sup>1590</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1591</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1592</sup> Examination in chief of John Carson, May 18, 2005, p. 78. At about 8:30 a.m. Inspector Carson directed Detective Sergeant Wright to put the patrols were put in place: see Examination in chief of Mark Wright, February 22, 2006, p. 200. See also pp. 206-07.

<sup>1593</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1594</sup> Examination in chief of John Carson, May 18, 2005, p. 80.

<sup>1595</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

a violation of a court order, we have a criminal offence.”<sup>1596</sup> Carson said “a court order would declare the issue of ownership of the Park”.<sup>1597</sup> Carson testified that he and the Mayor “agreed that the...Park is being occupied illegally”.<sup>1598</sup>

John Carson told the Mayor, “[T]he Premier and the Solicitor General wanted to deal with this” and that “the Interministerial Meeting is going to take place again this morning.”<sup>1599</sup> Carson said this because the IMC meeting was being held that morning “to seek the injunction and the sense is...that the Premier and Solicitor General are supportive of that process continuing”.<sup>1600</sup> The Mayor asked to be kept informed about the status of the injunction, and said the municipality would make heavy equipment available if necessary.<sup>1601</sup> Carson assured the Mayor he would keep in touch.<sup>1602</sup> Carson testified that the Mayor did not give him any instructions or orders as to how to carry out police operations.<sup>1603</sup>

## 11.05 ATTEMPTING DIALOGUE AGAIN

Shortly before 9:00 a.m. the negotiator, Sergeant Seltzer, arrived at the Command Post.<sup>1604</sup> Constable Vince George had arrived by this time.<sup>1605</sup> Inspector Carson suggested that George go to the Park with the negotiator Sergeant Marg Eve, attempt to initiate some dialogue, and if successful, have Eve continue it.<sup>1606</sup> Carson testified that he thought George would provide “a bit of safety for us” since he was “well known and people would not be threatened by his presence”.<sup>1607</sup> Seltzer also stated that George could provide officers with assistance in understanding cultural issues.<sup>1608</sup>

John Carson also directed Sergeant Seltzer and Lorne Smith to go to Kettle Point and speak with Robert George there.<sup>1609</sup> Carson felt Robert George “had influence with the

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<sup>1596</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1597</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1598</sup> Examination in chief of John Carson, May 18, 2005, p. 79.

<sup>1599</sup> Examination in chief of John Carson, May 18, 2005, p. 80. Robert Runciman testified that he did not indicate to anyone on September 6 that he wanted to deal with the situation at the Park: see Examination in chief of Robert Runciman, January 9, 2006, pp. 124-25. See also Cross-examination of Robert Runciman by Mr. Rosenthal, January 11, 2006, p. 107.

<sup>1600</sup> Examination in chief of John Carson, May 18, 2005, p. 81.

<sup>1601</sup> Specifically such as backhoes: Examination in chief of John Carson, May 18, 2005, pp. 80-81.

<sup>1602</sup> Examination in chief of John Carson, May 18, 2005, p. 81.

<sup>1603</sup> Cross-examination of John Carson by Mr. Sulman, June 2, 2005, p. 123.

<sup>1604</sup> Examination in chief of John Carson, May 18, 2005, p. 93.

<sup>1605</sup> Examination in chief of John Carson, May 18, 2005, p. 93.

<sup>1606</sup> Examination in chief of John Carson, May 18, 2005, pp. 93-94; see also pp. 99-101, 131-32..

<sup>1607</sup> Examination in chief of John Carson, May 18, 2005, p. 94.

<sup>1608</sup> Examination in chief of John Carson, May 18, 2005, pp. 101-02.

<sup>1609</sup> Examination in chief of John Carson, May 18, 2005, pp. 94-98, 102. Seltzer stated that he wished to keep Smith “at arm’s length” from the Park, because “there was some anxiety” on Smith’s part about that: Examination in chief of John Carson, May 18, 2005, p. 102; see also Cross-examination of John Carson by Mr. Falconer, June 28, 2005, pp. 294-95.

occupiers, or at least knew people who were of influence who may be able to assist us in dialogue”.<sup>1610</sup> He also wanted Smith to assure Robert George “that we wanted this to be peaceful”, and make him aware “that we did get ambushed last night”.<sup>1611</sup> He wanted George to know, “[W]e’re looking – you know, to try to keep this under control”.<sup>1612</sup>

Seltzer and Smith left for Kettle Point at 10:06 a.m.<sup>1613</sup> Vince George indicated that he would be prepared to assist in facilitating dialogue at the Park. George also indicated that the police should make an arrest if they can, since this would demonstrate that “a plan” was in place, and this might encourage the occupiers to talk.<sup>1614</sup>

## 11.06 ADDITIONAL OPERATIONS

In the morning of September 6 Inspector Carson requested that a canine unit be brought to the area in the event that it was required “for a track”.<sup>1615</sup> Later that morning he made inquiries about the quantity of pepper spray available.<sup>1616</sup> He also discussed obtaining ‘ASP’ batons, a collapsible metal baton with a round tip in the shape of a ball, used as a substitute for 26” wooden batons used by OPP officers.<sup>1617</sup> These were obtained and distributed on the afternoon of September 6.<sup>1618</sup> Later that morning Inspector Carson indicated that he wished to use all terrain vehicles to patrol the beach in front of cottages adjacent to the Park.<sup>1619</sup>

Inspector Carson also wished to “get the helicopter up” to observe the Park area and check whether any road blocks had been constructed in the Park using the dump truck and backhoe.<sup>1620</sup> At about 9:16 a.m. Carson said he wanted the helicopter to conduct further video

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<sup>1610</sup> Examination in chief of John Carson, May 18, 2005, pp. 95, 98.

<sup>1611</sup> Examination in chief of John Carson, May 18, 2005, p. 97.

<sup>1612</sup> Examination in chief of John Carson, May 18, 2005, p. 97.

<sup>1613</sup> Examination in chief of John Carson, May 18, 2005, pp. 127-28, 131.

<sup>1614</sup> Examination in chief of John Carson, May 18, 2005, pp. 128-29.

<sup>1615</sup> Examination in chief of John Carson, May 18, 2005, p. 58. Detective Sergeant Wright advised in a 10:20 a.m. meeting that the canine unit would be arriving and “going forward to the TOC site at the MNR parking lot”, and staying at Pinery Park with the TRU members: see pp. 133-34. See also Examination in chief of Mark Wright, February 22, 2006, pp. 207-08.

<sup>1616</sup> Examination in chief of John Carson, May 18, 2005, p. 57. Earlier that morning acting Staff Sergeant Kent Skinner, the TRU team leader, dealt with the obtaining of pepper spray: see Examination in chief of Kent Skinner, April 19, 2006, pp. 111-17, 119-20, Exhibit P-1347.

<sup>1616</sup> Examination in chief of John Carson, May 18, 2005, pp. 72-73.

<sup>1617</sup> Examination in chief of John Carson, May 18, 2005, pp. 72-74, 75-77. Inspector Carson testified that the use and effectiveness of the ‘ASP’ baton is “really no different” from the wooden baton, but it is collapsible to 6-7” in length and is a “much easier piece of equipment to carry on the belt”: see p. 73. He said that at the time, some of his officers had ‘ASP’ batons but others did not, and he “wanted all the officers to have the use of force equipment available to them in the event that it was required”: see p. 74. Arrangements were discussed from training officers in use of the ‘ASP’ baton: see pp. 75-76. See also pp. 92-93, 112..

<sup>1618</sup> Examination in chief of John Carson, May 31, 2005, p. 186.

<sup>1619</sup> Examination in chief of John Carson, May 18, 2006, pp. 90, 111012; Examination in chief of Mark Wright, February 22, 2006, pp. 206-07.

<sup>1620</sup> Examination in chief of John Carson, May 18, 2005, pp. 59-60, 91; see also p. 134.

surveillance.<sup>1621</sup> Mark Wright testified that the OPP wanted to observe what barricades had been put in place and take video pictures, to provide intelligence and to provide documentation of criminal offences such as the cutting down of trees in the Park and breaking and entering into Park buildings.<sup>1622</sup>

At 9:49 a.m. Deputy Superintendent Parkin called Inspector Carson. Carson informed Parkin of the removal of the picnic tables, and that “there was no confrontation or anything there was no big deal”.<sup>1623</sup> He also reported on his intention to obtain more video surveillance by helicopter, and that the MNR was “plugging along with” the injunction, but it would “be some time yet by the looks of it”.<sup>1624</sup>

Superintendent Parkin advised that he and Chief Superintendent Coles would visit the Command Post later that day, just for a “hi how are you doing type of thing”.<sup>1625</sup> He testified that this visit was intended “to show our support for them and show the officers out there that we were aware of what they were doing”.<sup>1626</sup> In his testimony Coles agreed with this. He added, “We went up there to have a conversation with the incident commander, to basically go over the previous day’s events and, if you will, a strategy planning session, if you will.”<sup>1627</sup>

At 10:02 a.m. Inspector Carson was informed that a warrant was being obtained for Dudley George, who had been one of the people camping in the sandy parking lot that morning.<sup>1628</sup> He was to be charged with mischief and possession of stolen property.<sup>1629</sup>

During a 10:20 a.m. briefing of officers managing the ERT day shift at the Command Post, Inspector Carson directed that the OPP were “going to stay tight on our approach at the checkpoints...just checking people as they come in, ensure they need to be in the area”.<sup>1630</sup> He was informed that “intelligence information showed that some violent people may be” in the Park.<sup>1631</sup> It was also reported that a person in a vehicle stopped that morning had said, “You don’t know what you’re up against”, and that the OPP were “biting off more than [they] could chew”.<sup>1632</sup>

Inspector Carson reported that there was “progress on the affidavit” for the injunction application, and that Deputy Superintendent Parkin and Chief Superintendent Coles would be

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<sup>1621</sup> Examination in chief of John Carson, May 18, 2005, pp. 109-10, 112-13.

<sup>1622</sup> Examination in chief of Mark Wright, February 22, 2006, p. 205.

<sup>1623</sup> Exhibit 444A, Tab 27 (Transcript), p. 220.

<sup>1624</sup> Exhibit 444A, Tab 27 (Transcript), p. 220.

<sup>1625</sup> Exhibit 444A, Tab 27 (Transcript), p. 224.

<sup>1626</sup> Examination in chief of Anthony Parkin, February 7, 2006, p. 14.

<sup>1627</sup> Examination in chief of Christopher Coles, August 16, 2005, pp. 55-56; see also pp. 60-61, 61-62.

<sup>1628</sup> Examination in chief of John Carson, May 18, 2005, pp. 123-24.

<sup>1629</sup> The picnic tables: see Examination in chief of John Carson, May 18, 2005, p. 130.

<sup>1630</sup> Examination in chief of John Carson, May 18, 2005, pp. 129, 132.

<sup>1631</sup> Examination in chief of John Carson, May 18, 2005, pp. 132-33.

<sup>1632</sup> Examination in chief of John Carson, May 18, 2005, p. 133. See also Exhibit 444A, Tab 30 (Transcript), p. 232.

visiting the Command Post that afternoon.<sup>1633</sup> He also reported that Mayor Thomas had advised that area residents were happy with the police's work, but were "certainly irate about the situation generally speaking".<sup>1634</sup>

### 11.07 INSPECTOR CARSON AND INSPECTOR HUTCHINSON

At 10:44 a.m. Inspector Carson spoke by telephone with Inspector Hutchinson in British Columbia. The two discussed the pending injunction:

Carson: So we're plugging along bit by bit.

Hutchinson: What's the injunction what's the news on the injunction.

Carson: Well it's being worked on and ah but if you know like anything else it takes it takes a little time.

Hutchinson: Oh it's taken longer than what we thought then I

Carson: Yeah.

Hutchinson: I more or less thought that things were ready to go with it eh.

Carson: Well I guess...the political...spin doctors were working hard yesterday there so...you know I...would be surprised to see an injunction before tomorrow quite frankly.

Hutchinson: Pardon me.

Carson: I'd be surprised to see an injunction before tomorrow.

Hutchinson: Oh is that right.

Carson: Yeah.

Hutchinson: Yeah.

Carson: Yeah so were just trying to hold the status [Unintelligible] until we get that...paper.<sup>1635</sup>

Inspector Carson told Inspector Hutchinson about the removal of picnic tables from the sandy parking lot by ERT. He said, "[W]e kind of made a point that there is a line in the sand there."<sup>1636</sup> Carson testified that his point in saying this was, "[O]ne of the bi-products of removing the picnic tables that morning was sending a message that they needed to stay in the Park, that coming out of the Park...the picnic tables and the camping sites were not going to be

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<sup>1633</sup> Examination in chief of John Carson, May 18, 2005, p. 137.

<sup>1634</sup> Examination in chief of John Carson, May 18, 2005, p. 137.

<sup>1635</sup> Exhibit 444A, Tab 30 9(Transcript), pp. 231-32. See also Examination in chief of John Carson, May 18, 2005, p. 157. Similarly, in a conversation with Bouwman at 11:00 a.m., Carson stated, "[T]hey're working away on [the injunction]...[T]hey're preparing the paperwork...[T]hey certainly haven't got one yet and...how...much longer it's going to take to do that I just don't know": see Exhibit 444A, Tab 33 (Transcript), p. 246. Carson also stated, "But we've got people we have representation...on that so." See p. 246. This referred to Ron Fox: see Examination in chief of John Carson, May 18, 2005, p. 166.

<sup>1636</sup> Exhibit 444A, Tab 30, p. 231.

allowed to continue”.<sup>1637</sup> Carson told Hutchinson he did not know how long the Park occupation would continue:

[...]but I can't see a resolution in the next two or three days quite frankly.

Hutchinson: Yeah.

Carson: I just can't see it.

Hutchinson: Well that's too bad.

Carson: But...I think politically like there has to be a statement made here and if we have to go back and guard trees for a while I think that has to be done but once an injunction is achieved then we can start some some real strategy.

Hutchinson: Yeah.

Carson: But it's not going to be simple.

Hutchinson: No.

Carson: But I'll tell you the community the the mayor of the town that this is in is was in here this morning and he had quite a while their press release was headline Reign of Terror.

Hutchinson: Uhum.

Carson: And...I'll tell you in the restaurant this morning people coming up to us and...one guy says yeah they took the base now they took the park, what's going to be next you know and people are pissed right off.<sup>1638</sup>

Inspector Carson told Inspector Hutchinson it was “unfortunate” that OPP officers had not been able to stay inside the Park, and “that really screws up our strategy a bit”, but he was otherwise pleased with the way the OPP operations had proceeded.<sup>1639</sup> He testified:

...if the Court sees the Park as properly owned and declares, through a Court Order, that the occupiers be removed, that...will send a...message that...they just can't arbitrarily walk into the Provincial Park or other property without having an appropriate land claim. So it's just a matter of getting the force of law to move in there to address that issue.<sup>1640</sup>

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<sup>1637</sup> Examination in chief of John Carson, May 18, 2005, p. 156.

<sup>1638</sup> Exhibit 444A, Tab 30, pp. 236-37.

<sup>1639</sup> Exhibit 444A, Tab 30, pp. 239-40.

<sup>1640</sup> Examination in chief of John Carson, May 18, 2005, p. 158.

## 11.08 SUPERINTENDENT PARKIN AND CHIEF COLES AT THE COMMAND POST

Around midday Chief Superintendent Coles and Superintendent Parkin arrived at the Command Post in Forest.<sup>1641</sup> They visited with Inspector Carson, spoke to other officers, drove around Army Camp Road and East Parkway Drive to the west of the Park, and visited OPP officers at the TOC in the MNR parking lot on East Parkway Drive.<sup>1642</sup>

When Chris Coles and Tony Parkin arrived at the Command Post, John Carson met with them privately.<sup>1643</sup> He said they had a “lengthy discussion about the events to date, and the strategies and the issues around it”, including attempts to establish dialogue and “the challenges with getting the court injunction”.<sup>1644</sup> He estimated the meeting lasted for “a couple of hours”.<sup>1645</sup>

Parkin testified that he did not recall the substance of what he and Coles discussed with John Carson. Carson did not either.<sup>1646</sup> Carson said there would have been discussion of all the circumstances around the incident at the time. He said he was not given any specific assignments by the superior officers.<sup>1647</sup> He said he did not recall “being directed to do anything”, and that the OPP’s plans did not change as a result of the visit.<sup>1648</sup> Parkin believed they would have discussed general matters such as logistics and “how people were feeling, how things were going”.<sup>1649</sup> He acknowledged that some operational matters would also have been discussed.<sup>1650</sup>

Superintendent Parkin testified that he was not present for all of the time that Carson and Coles were together, but he did not see the Chief Superintendent give any advice to Inspector Carson as to how the OPP operation should proceed.<sup>1651</sup> Parkin did not do so.<sup>1652</sup> He did not

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<sup>1641</sup> Superintendent Parkin did not recall when they arrived but accepted that it was around noon: Examination in chief of Anthony Parkin, February 7, 2006, p. 99.

<sup>1642</sup> Examination in chief of Anthony Parkin, February 7, 2006, pp. 97-98.

<sup>1643</sup> Examination in chief of John Carson, May 18, 2005, pp. 170-71.

<sup>1644</sup> Examination in chief of John Carson, May 18, 2005, p. 171.

<sup>1645</sup> Examination in chief of John Carson, May 18, 2005, p. 172.

<sup>1646</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 236-37.

<sup>1647</sup> Cross-examination of John Carson by Mr. Falconer, June 28, 2005, pp. 274-78.

<sup>1648</sup> Cross-examination of John Carson by Mr. Falconer, June 28, 2005, pp. 278-83; see also Cross-examination of John Carson by Mr. Falconer, June 29, 2005, p. 177: “[T]hey weren’t there to give me advice and direction. They were there to meet with me and understand how things were going. They didn’t come with some agenda to task me to do A, B, and C.”

<sup>1649</sup> Examination in chief of Anthony Parkin, February 7, 2006, p. 100.

<sup>1650</sup> Cross-examination of Anthony Parkin by Mr. Falconer, February 9, 2006, pp. 33, 34.

<sup>1651</sup> Examination in chief of Anthony Parkin, February 7, 2006, pp. 100-01. In particular Superintendent Parkin testified that he did not hear any advice or instruction being given to Inspector Carson regarding the deployment of the OPP Crowd Management Unit that occurred that night: see p. 101.

<sup>1652</sup> Examination in chief of Anthony Parkin, February 7, 2006, pp. 100-01. In particular Superintendent Parkin testified that he did not hear any advice or instruction being given to Inspector Carson regarding the deployment of the OPP Crowd Management Unit that occurred that night: see p. 101.

recall any change in approach or operational plans being discussed.<sup>1653</sup> Coles did not have a detailed recollection of the discussions but said, “I do know that I wasn't passing on any information from Government”, or from anyone. He said, “Anything that was being passed on was being passed on from my mind.”<sup>1654</sup>

Tony Parkin said he did not perceive that John Carson was feeling any sort of pressure from anyone within government.<sup>1655</sup> He accepted in cross-examination that it was “the reality of the job” that there are “all kinds of pressures from all kinds of concerned citizens”, that Carson would have had to deal with.<sup>1656</sup> Carson testified,

I was aware of their concerns, but...quite frankly, in the policing business, this is not unusual that there is various concerns from various interest groups, whether it's political or other, and quite frankly, as an Incident Commander...I can't be – well, I have to be concerned about their point of view, but I certainly have to deal with the policing issue itself as...a separate issue...I didn't consider it pressure, quite frankly.<sup>1657</sup>

Superintendent Parkin said that when he left the Command Post he understood the OPP was going to continue to maintain the status quo, pending the MNR seeking and obtaining an injunction.<sup>1658</sup> In cross-examination, Parkin accepted that on the basis of what he and Coles observed during their drive that afternoon, there did not appear to be any urgency, and all appeared to be quiet.<sup>1659</sup>

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<sup>1653</sup> Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, pp. 60-61.

<sup>1654</sup> Examination in chief of Chris Coles, November , 2005, pp. 62-63.

<sup>1655</sup> Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, p. 61.

<sup>1656</sup> Cross-examination of Anthony Parkin by Mr. Falconer, February 9, 2006, pp. 136-39.

<sup>1657</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, pp. 34-35; see also Examination of John Carson by Mr. Sandler, June 29, 2005, p. 226.

<sup>1658</sup> Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, p. 61; see also Examination of John Carson by Mr. Sandler, June 29, 2005, p. 196.

<sup>1659</sup> Cross-examination of Anthony Parkin by Mr. Alexander, February 9, 2006, pp. 303-04.



## CHAPTER 12

# THE OCCUPATION AND THE GOVERNMENT: SEPTEMBER 6

### 12.01 MINISTER HARNICK'S INSTRUCTIONS

#### (1) THE ATTORNEY GENERAL'S BRIEFING

On September 5, Attorney General Charles Harnick and his Deputy Minister, Larry Taman, had met in the morning for about 20 minutes to half an hour with Elaine Todres, Solicitor General Robert Runciman's Deputy Minister, at her office.<sup>1660</sup> Harnick said only two to three minutes of the meeting were spent discussing the Ipperwash situation.<sup>1661</sup> Todres informed them that the OPP were monitoring the situation at Ipperwash.<sup>1662</sup> She said "she really had no other information at that time", but would keep Taman advised.<sup>1663</sup> She did not provide any information as to the reason for the occupation.<sup>1664</sup>

Elaine Todres testified that Solicitor General Robert Runciman was at this meeting, and that it occurred in the afternoon.<sup>1665</sup> In his testimony Runciman did not recall any discussion with Harnick on that day.<sup>1666</sup> He subsequently testified that he believed he did get together with Taman, Todres, Harnick and his Executive Assistant, Kathryn Hunt, on September 5 or 6, probably September 5.<sup>1667</sup> The meeting he recalled was one which "was not confined to simply a discussion of Ipperwash, we were talking about a number of issues".<sup>1668</sup>

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<sup>1660</sup> Charles Harnick firmly disagreed with evidence of Larry Taman that Solicitor General Runciman had also attended the meeting: see Examination in chief of Charles Harnick, November 24, 2005, pp. 70-72.

<sup>1661</sup> Examination in chief of Charles Harnick, November 24, 2005, p. 68; see also Examination in chief of Elaine Todres, November 30, 2005, pp. 29, 38 ("Ipperwash was discussed briefly").

<sup>1662</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 67-70.

<sup>1663</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 67-70.

<sup>1664</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 73-74.

<sup>1665</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 26; Cross-examination of Elaine Todres by Ms. Horvat, November 30, 2005, p. 126.

<sup>1666</sup> Examination in chief of Robert Runciman, January 9, 2006, pp. 109-10.

<sup>1667</sup> Examination in chief of Robert Runciman, January 9, 2006, pp. 115-17, 121. He thought it "passing strange" that he would have met early on September 6 as Larry Taman said, because it was a Cabinet day: Examination in chief of Robert Runciman, January 9, 2006, pp. 118, 120. See also Cross-examination of Robert Runciman by Ms. Tuck-Jackson, January 10, 2006, p. 105 ("virtually impossible"). He did not recall a meeting on September 6: see Examination in chief of Robert Runciman, January 9, 2006, pp. 122-23.

<sup>1668</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 122.

Larry Taman testified that he made a note on the morning of September 6 reading, "ONAS meeting re. Ipperwash. AG instructed by P that he desires removal within 24 hours. Instruction to seek injunction." Taman said he was informed by Charles Harnick that Harnick "was being told that the Premier wanted people out of the Park within 24 hours; that he was ordering the Attorney General to get the injunction. This would then leave the question of whether and how this was going to happen."<sup>1669</sup> Crown civil litigation counsel Tim McCabe testified that he, his junior counsel Elizabeth Christie and Julie Jai met very early on the morning of September 6 with Taman.<sup>1670</sup> A memorandum of Julie Jai also refers to the earlier meeting.<sup>1671</sup> Larry Taman did not think it was possible that this note had been made during his briefing prior to his meeting with Harnick.<sup>1672</sup>

In his testimony, Charles Harnick was adamant that he did not receive any instruction from the Premier regarding Ipperwash. He said he had no communications with the Premier regarding Ipperwash until the afternoon of September 6.<sup>1673</sup> He said,

Well, I...can tell you that I was never instructed by the Premier. I never heard from the Premier, I never saw the Premier until I attended a Cabinet meeting that morning. And the subject of Ipperwash was not part of the...deliberations of Cabinet...And I mean, I can tell you that over the course of five years in the Opposition and four years in...government, you very seldom, if ever, received a phone call from the Premier. And certainly I would remember a phone call where the Premier was instructing me to remove the occupiers within 24 hours. It...makes absolutely no sense to me. I don't know what time this instruction was alleged to have been given. Certainly I didn't tell Mr. Taman about this. Somebody else may have had that impression and may have told Mr. Taman, but I...never heard from the Premier in that regard, whatsoever.

[...]

So, I...don't know where this came from, but it -- it makes absolutely no sense to me. I mean did people actually think that I had some magic way of removing people from the Park within 24 hours? It's absurd.<sup>1674</sup>

Harnick's Executive Assistant, David Moran, testified that he was "fairly certain" that Harnick had not spoken with the Premier on the morning of September 6.<sup>1675</sup> He said that usually a call

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<sup>1669</sup> Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, pp. 105-06. See also p. 108: "I think we both [he and Charles Harnick] understood that our job, based on the instruction, was to get the injunction, and the rest of it was going to be up to the police." See also pp. 121-22: "I didn't take it that I was being instructed to get anybody out of the Park...I would paraphrase in this way: The Attorney General advises me that the Premier wants the protesters out of the Park within 24 hours, get your injunction right away."

<sup>1670</sup> Examination in chief of Tim McCabe, September 28, 2005, pp. 65-67.

<sup>1671</sup> Exhibit P-653.

<sup>1672</sup> Cross-examination of Larry Taman by Ms. Horvat, November 15, 2005, pp. 41-42:

No, I don't think that's possible because...after 10 years, one of the things I recall very clearly is that it was very important to be clear that this instruction had been given, that it had been given from the Premier, and that it had been given in these terms. And the part of it that was an order to me was the get the -- the injunction part.

<sup>1673</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 107-08.

<sup>1674</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 99-101. See also p. 107: "And I can tell you that I never heard from the Premier."

from the Premier was something that would be taken note of, and he had no recollection of that having occurred.<sup>1676</sup>

Mike Harris testified that he did not give instructions to Charles Harnick that he desired the removal of the occupiers from the Park within 24 hours, and that he desired an injunction.<sup>1677</sup> He did not speak to Harnick or Taman about the matter.<sup>1678</sup> Although he favoured getting an injunction as soon as possible, he did not recall saying to anyone that he wanted the occupiers out of the Park within 24 hours.<sup>1679</sup> He said his only recollection was “that the earliest that you would possibly obtain an injunction would be in 24 hours”.<sup>1680</sup> He did not know how long it would take in fact.<sup>1681</sup>

In our submission, it is likely Larry Taman was in error on this point. The “ONAS meeting” referred to in Larry Taman’s note was probably his meeting with the acting Legal Director of ONAS, Julie Jai, and civil litigation counsel advising ONAS, Tim McCabe and Elizabeth Christie, prior to Taman’s meeting with Charles Harnick. As will be seen below, the position at the meeting with Harnick was that the Attorney General supported the obtaining of an injunction “as soon as possible”, and not “within 24 hours”.

## (2) “NOT *EX PARTE*”

Julie Jai’s testimony was that at the briefing of Charles Harnick on the morning of September 6, the Attorney General’s instructions were to apply for an injunction “in the normal way” and not on an *ex parte* basis.<sup>1682</sup> She said that when she chaired a meeting of the IMC later

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<sup>1675</sup> Cross-examination of David Moran by Mr. Klippenstein, November 1, 2005, p. 149.

<sup>1676</sup> Cross-examination of David Moran by Mr. Klippenstein, November 1, 2005, p. 150.

<sup>1677</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 109-10; see also Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 79. See also Cross-examination of Mike Harris by Mr. Horton, February 16, 2005, pp. 311-12.

<sup>1678</sup> Examination in chief of Mike Harris, February 14, 2005, p. 109.

<sup>1679</sup> Examination in chief of Mike Harris, February 14, 2005, p. 110; see also Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 80: “I think the words that I used, As -- as soon as possible. I think that gives you a lot of latitude for one minute or if it was only possible in...a month, you've got lots of latitude. As soon as logically possible, following the process, let's seek the injunction; that's a fair interpretation of my view.” See also p. 81.

<sup>1680</sup> Examination in chief of Mike Harris, February 14, 2005, p. 110; see also Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, pp. 72-74, 76-77: “[W]hat I wanted wasn't particularly relevant anyway. I wanted an injunction. Beyond that, what any of us wanted was...not in our hands. It was then in the hands of the OPP.”

<sup>1681</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 79.

<sup>1682</sup> Examination in chief of Julie Jai, August 31, 2005, pp. 68-69; see also Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 65, 67-79. See in particular pp. 69-70:

Well what I recall from the briefing is that we recommended seeking -- that we get the authority to seek an injunction in the normal course. In other words with notice but, you know, as quickly as possible, so on an expedited basis. After we presented this recommendation to him, he indicated that he agreed with us. So what -- he may have just used those words, I agree, like I can't recall exactly the words that he used. So, if he -- he may have said that he agreed and not really fully understood that -- appreciated that what we were saying was what we're seeking is authority to

that morning she accordingly informed the meeting “that we had met with our minister and that we were going to proceed with a -- an injunction in the normal course”.<sup>1683</sup>

David Moran, Charles Harnick’s Executive Assistant, testified that at the briefing Larry Taman recommended the pursuit of an *ex parte* injunction,<sup>1684</sup> and that Harnick gave instructions that an *ex parte* injunction should be pursued.<sup>1685</sup>

Charles Harnick’s testimony was that his instructions were simply to seek an injunction as soon as possible.<sup>1686</sup> He did not believe there was discussion about the type of injunctive relief to be sought, including whether the injunction should be sought *ex parte* or on notice. He said that issue that was left to the discretion of the civil litigation lawyers who would be seeking the injunction order in court.<sup>1687</sup>

Larry Taman did not recall any instruction from Charles Harnick that the injunction be sought in “the normal course” and not *ex parte*.<sup>1688</sup> Like Harnick, he did not recall any discussion about how the injunction was to be sought.<sup>1689</sup> Tim McCabe did not recall ever being informed that that Attorney General had given a direction that the government should not proceed on an *ex parte* basis.<sup>1690</sup> Eileen Hipfner accepted that she understood the Attorney General supported getting an injunction as soon as possible.<sup>1691</sup>

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proceed with a regular injunction and not an *ex parte* injunction. But I know that in the briefing I very clearly made the distinction between the two and indicated that this was not a case for an *ex parte* injunction in the opinion of myself and the other lawyers who were working on it. So to the extent that there's an inconsistency between what he may have said in his examination for discovery and what I said, I still stand by what I said, what I'm saying now. As I indicated earlier we had a very brief time with him, maybe five or 10 minutes and when you're a minister receiving, you know, many briefings and many things that for very short periods of time, you may not recall all of the details that you're being briefed on. Especially for events that took place many years ago.

See also Cross-examination of Julie Jai by Mr. Klippenstein, September 13, 2005, p. 159; Cross-examination of Julie Jai by Mr. Roy, September 14, 2005, p. 234.

<sup>1683</sup> Examination in chief of Julie Jai, August 31, 2005, p. 71.

<sup>1684</sup> Examination in chief of David Moran, November 1, 2005, p. 12.

<sup>1685</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, pp. 66-67. See also Cross-examination of David Moran by Ms. Horvat, November 1, 2005, pp. 69-70.

<sup>1686</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 80-81, 89, 91, 96, 96-97, 112-13, 114-15; Examination in chief of Charles Harnick, November 28, 2005, p. 9.

<sup>1687</sup> Examination in chief of Charles Harnick, November 24, 2005, pp. 80-81: “[I]t wasn’t for me to be telling Tim McCabe how he should be doing his work.”

<sup>1688</sup> Examination in chief of Larry Taman, November 14, 2005, p. 105.

<sup>1689</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, pp. 97-98.

<sup>1690</sup> Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, p. 84. He acknowledged that such a direction would have been of very specific concern to him. Although he was unsure, he said it “seems likely” that he would have recalled it if such a direction had been given.

<sup>1691</sup> Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 261. See also Cross-examination of Eileen Hipfner by Ms. Horvat, September 15, 2005, pp. 275-77, including at p. 275:

Q: Towards the bottom it says: "Julie: direction from AG is to apply for a civil injunction ASAP".

A: Julie didn't specify what kind of injunction.

In our submission the documentary record alone makes clear that Attorney General Harnick did not give instructions that the government was not to seek the injunction *ex parte*. Julie Jai's handwritten notes show that the "AG direction" was, "We'll apply for a civil injunction ASAP."<sup>1692</sup> The formal meeting notes of the IMC meeting immediately following the briefing of the Attorney General state that the "minister's directive" had been that, "The minister agrees that application will be made for an injunction", and that the communication to the public was to be that, "The AG has been instructed to seek an injunction ASAP."<sup>1693</sup> Similarly, Eileen Hipfner's handwritten notes of the September 6 meeting record that the direction received from the Attorney General had been to apply for a "civil injunction ASAP".<sup>1694</sup> The handwritten notes of Ron Fox's assistant, Scott Patrick, also seconded to the civil service from the OPP,<sup>1695</sup> show that Jai informed the meeting, "should move on injunction asap - Minister".<sup>1696</sup> Patrick did not recall it ever being conveyed at the meeting that the Attorney General had given a direction that the injunction should not be sought *ex parte*.<sup>1697</sup> Elizabeth Christie's handwritten notes are to the effect that the comment of Harnick's Executive Assistant, David Moran, was, "[I]f we're being asked to seek an injunction, then we will seek it ASAP."<sup>1698</sup>

## 12.02 THE SEPTEMBER 6 IMC MEETING

### (1) UPDATE FROM THE SCENE

The IMC met again on the morning of September 6, from 9:30 to 11:45. Peter Sturdy of the MNR reported that there had been reports of automatic gunfire heard overnight.<sup>1699</sup> Sturdy also expressed concern that, "I've got staff there right now accompanying the OPP to serve

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Q: But if she had, would you have included but not an *ex parte*, or words to that effect?

A: I hope that I would have accurately recorded...Julie's remarks and that if she had indicated what kind of injunction the Attorney General had instructed that...lawyers get, that would have been recorded in my notes.

See also p. 277 ("I think I recorded this pretty much as Julie said it.")

<sup>1692</sup> Exhibit P-536.

<sup>1693</sup> Exhibit P-509.

<sup>1694</sup> Exhibit P-636.

<sup>1695</sup> Examination in chief of Ron Fox, July 11, 2005, p. 24; Examination in chief of Ron Fox, July 12, 2005, p. 29; Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, p. 142.

<sup>1696</sup> Examination in chief of Scott Patrick, October 17, 2005, pp. 83-84; Exhibit P-517.

<sup>1697</sup> Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, pp. 124-25.

<sup>1698</sup> Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, p. 199.

<sup>1699</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 126. See also Cross-examination of Peter Sturdy by Ms. McAleer, October 19, 2005, p. 196: "I had concern regardless of what type of firearm it may have been. If the reports of a 100 or 150 or one round -- piece of lead, if you like, in the air, it was a concern to me." Ron Fox left the meeting to obtain confirmation and did receive confirmation from Carson that gunfire had been heard: Examination in chief of Ron Fox, July 12, 2005, pp. 41-44, 105; Examination in chief of Scott Patrick, October 17, 2005, pp. 80-81, 94; see also Exhibit P-517; Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, p. 224. Patrick's evidence was that Fox confirmed to him later that day that there had in fact been a police report of gunfire: see Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, p. 156.

notice and they're being asked to wear bullet proof vests."<sup>1700</sup> He reported that, "Park picnic tables are piled on the road as barricades."<sup>1701</sup> The meeting was informed that there had been reports of heavy equipment operating in the Park.<sup>1702</sup> Crown civil litigation counsel Tim McCabe's notes record a report that there was a "fire on Army Road" and that "Officers were stoned when they went to investigate."<sup>1703</sup> The notes continue,

MNR. Reports of automatic gunfire. Heavy equipment work? Buildings have been broken into. Are being used. Great...apprehension, alarm...cottagers, MNR staff in jeopardy even though public is out of the Park.<sup>1704</sup>

The meeting was informed that warrants had been issued for the arrest of three of the occupiers.<sup>1705</sup> Aerial surveillance of the Park was to be conducted to determine the extent of damage done to MNR equipment and facilities.<sup>1706</sup>

Charles Harnick's Executive Assistant, David Moran, recalled the report of gunfire, but added that there had been no visual confirmation of firearms in the hands of the occupiers of the Park.<sup>1707</sup> He did not believe anyone thought the occupation was going to become an "armed

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<sup>1700</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 126. See also Examination in chief of Peter Sturdy, October 19, 2005, pp. 75-76:

Q: All right. And did you have any concern about the fact that your staff were being asked to wear bulletproof vests in this task?

A: My concern was now beginning to escalate.

Q: All right. You were becoming more anxious as a result?

A: I was concerned about it on a -- because of a number of different things that had occurred over the last numbers of hours, I guess. It's not -- it's certainly not customary for my staff to go to a meeting and being asked to wear a bulletproof vest. These reports of gunfire were a cause of concern. Again, because of staff and our proximity, the community, their families and so, yes, my anxiety and my concern was escalating.

<sup>1701</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 126.

<sup>1702</sup> Exhibit P-517; Examination in chief of Scott Patrick, October 17, 2005, p. 80.

<sup>1703</sup> Similarly, Elizabeth Christie testified that the meeting was informed that there had been a "fire on the Army Camp Road which was the municipal road. The police had responded and they were pelted with stones and beer bottles but reiterating there's no evidence of firearms." See Examination in chief of Elizabeth Christie, September 26, 2005, p. 129. Ron Fox testified that he informed the meeting there had been a fire on the road: see Examination in chief of Ron Fox, July 12, 2005, p. 30: "And I provided the briefing with respect to there being a fire on the road and that there were some picnic tables and that sort of thing."

<sup>1704</sup> Exhibit P-1073; Examination in chief of Tim McCabe, February 13, 2006, p. 141; Cross-examination of Tim McCabe by Mr. Alexander, February 13, 2006, p. 157. See also Examination in chief of Elizabeth Christie, September 26, 2005, pp. 134-37.

<sup>1705</sup> Examination in chief of Ron Fox, July 12, 2005, p. 30; Examination in chief of Elizabeth Christie, September 26, 2005, pp. 128-29.

<sup>1706</sup> Examination in chief of Ron Fox, July 12, 2005, p. 30.

<sup>1707</sup> He called this an "interesting contradiction": see Examination in chief of David Moran, October 31, 2005, p. 219.

confrontation”.<sup>1708</sup> Moran recalled, however, that the information provided by the MNR “created a sense of urgency”, and a “true sense...that the situation was escalating rapidly”.<sup>1709</sup>

Elizabeth Christie testified that the situation was escalating and getting worse.<sup>1710</sup> Deb Hutton recalled the heightened concern of the MNR representatives participating by telephone.<sup>1711</sup> She said the report of gunfire signaled greater concern for public safety, and together with the report about MNR staff being advised to wear bullet proof vests, raised the possibility of escalation.<sup>1712</sup> Ron Fox said there was increased concern for public safety at the September 6 meeting because of the information received “with respect to the picnic tables piled, the fires, the concern for the adjacent property and certainly, the automatic weapon fire”.<sup>1713</sup> Similarly, Jeff Bangs recalled that at the meeting there was a “higher level of concern” and “a bit more charged environment” than at the September 5 meeting, “because of the information that was being reported”.<sup>1714</sup> The meeting was advised by MNR representatives that the Minister of Natural Resources “wants to act as quickly as possible to avoid further damage and to curtail any escalation of the situation.”<sup>1715</sup>

Elizabeth Christie testified that the IMC was again informed that Chief Bressette did not support the persons who had taken over the Park.<sup>1716</sup> Eileen Hipfner recalled that the local municipality’s “Reign of Terror” media release was discussed.<sup>1717</sup>

Moran said it was also “really key in terms of the government’s handling of the situation” that there was a concern that the occupation could spread to nearby Pinery Provincial Park, and that persons from outside the Ipperwash area, including “Mohawk Warriors”, could join the

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<sup>1708</sup> Examination in chief of David Moran, October 31, 2005, p. 220; see also Examination in chief of David Moran, November 11, 2005, pp. 16-17.

<sup>1709</sup> Examination in chief of David Moran, October 31, 2005, p. 193. See also Examination in chief of David Moran, November 1, 2005, pp. 14-15 (MNR personnel described the situation on the ground as “very tense”).

<sup>1710</sup> Cross-examination of Elizabeth Christie by Ms. Perschy, September 27, 2005, p. 27.

<sup>1711</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 33.

<sup>1712</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 28-29. She believed the report of gunfire had been confirmed by the end of the meeting: see Examination in chief of Deb Hutton, November 22, 2005, pp. 140-41. See also p. 53: “If I could just add to that, you know, it's very disturbing to -- to hear that civil servants are being asked to wear bullet-proof vests. I mean, that's something that was very concerning to me obviously.”

<sup>1713</sup> Examination in chief of Ron Fox, July 12, 2005, pp. 59-60.

<sup>1714</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 73. This information included the report of gunfire and reports of vandalism and a fire: see pp. 73, 84; see also Cross-examination of Jeff Bangs by Ms. Perschy, November 3, 2005, pp. 182-83; Cross-examination of Jeff Bangs by Mr. Zbogor, November 3, 2005, pp. 290-93. See also Examination in chief of Jeff Bangs, November 3, 2005, p. 76: “I wouldn’t describe it as been [*sic*] tense. I would describe it as the collective group having a...heightened level of concern and again predominantly because of the kind of information that we were hearing was occurring on the ground.”

<sup>1715</sup> Meeting notes of September 6 IMC meeting; Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 72.

<sup>1716</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 128.

<sup>1717</sup> Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 267.

occupation.<sup>1718</sup> He said, “I can tell you that there was a sense that we wanted to make sure that -- that it was contained as best as possible into Ipperwash and that it didn’t -- did not spread province wide.”<sup>1719</sup>

## **(2) THE GOVERNMENT’S POSITION**

Deb Hutton had briefed the Premier on the discussions, available options, and results of the September 5 IMC meeting.<sup>1720</sup> She believed they discussed that she had received very clear advice that Ontario had ownership of the Park.<sup>1721</sup> She believed she informed the Premier that one of the available options to the government was to take no action,<sup>1722</sup> and that an injunction, which the meeting was “leaning toward”,<sup>1723</sup> was also an option.<sup>1724</sup> She said she would also have raised the burial ground issue with him, together with “the lack of a link between that and ownership”.<sup>1725</sup> She had accepted the advice that the existence of a burial ground would have no impact on the province’s ownership of the Park as a whole.<sup>1726</sup>

Deb Hutton understood the Premier’s view was that the occupation should be ended<sup>1727</sup> “as soon as possible”.<sup>1728</sup> She said that after hearing the reports of escalation overnight, it remained her view, “that it really was in the greatest public safety interest from our government’s perspective to see this come to an end sooner rather than later”.<sup>1729</sup> She said it was “important to me that...our response made it clear that this was not the type of behaviour that anyone should engage in and we didn’t want to be encouraging this type of illegal activity, generally, throughout the course of the Government’s mandate”.<sup>1730</sup>

As at September 1995 Mike Harris had general awareness of the failure of the federal government to return CFB Ipperwash to First Nations people in the 50 years since the taking of the land by the federal government during World War II.<sup>1731</sup> He was generally aware of frustrations that had resulted, and that there had been a takeover by First Nations persons of the

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<sup>1718</sup> Examination in chief of David Moran, October 31, 2005, pp. 193-94; see also Cross-examination of David Moran by Mr. Klippenstein, November 1, 2005, pp. 171-72; Cross-examination of David Moran by Mr. Roy, November 1, 2005, p. 359.

<sup>1719</sup> Examination in chief of David Moran, October 31, 2005, p. 194.

<sup>1720</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 222-23, 254.

<sup>1721</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 11, 13-14, 16, 73; see also Examination in chief of Deb Hutton, November 21, 2005, pp. 244-45.

<sup>1722</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 255.

<sup>1723</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 11.

<sup>1724</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 10.

<sup>1725</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 236-37.

<sup>1726</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 73-74.

<sup>1727</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 248-49, 256.

<sup>1728</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 12.

<sup>1729</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 52-53.

<sup>1730</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 75-76.

<sup>1731</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 48, 49-50, 73.



CFB Ipperwash land.<sup>1732</sup> He testified that it was not viewed as a “high priority” by his government since it was viewed primarily as a federal issue.<sup>1733</sup>

The Premier had not known of the existence of the IMC prior to September 4.<sup>1734</sup> He had not been aware that Brett Laschinger had attended the August 2 meeting on behalf of Deb Hutton.<sup>1735</sup> He was not briefed about that meeting,<sup>1736</sup> and had not been informed of any concern regarding the Park.<sup>1737</sup> He had never been aware of any land claim to the Park as distinct from the army camp, or any frustrations of First Nations people regarding the Park.<sup>1738</sup>

Mike Harris recalled being briefed on the status of the occupation in the interim between the September 5 and 6 IMC meetings.<sup>1739</sup> He recalled being informed that as a result of intimidation or threats the OPP had left the Park,<sup>1740</sup> and Ministry of Natural Resources officials were no longer in control of it.<sup>1741</sup> He was concerned about that, and that the OPP had felt compelled to leave the Park.<sup>1742</sup> He was informed that the occupation “was an action that was not supported or condoned by Chief Bressette”<sup>1743</sup> or the Kettle & Stony Point First Nation.<sup>1744</sup>

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<sup>1732</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 48, 49-50, 52.

<sup>1733</sup> Examination in chief of Mike Harris, February 14, 2005, p. 48.

<sup>1734</sup> Examination in chief of Mike Harris, February 14, 2005, p. 43.

<sup>1735</sup> Examination in chief of Mike Harris, February 14, 2005, p. 54.

<sup>1736</sup> Examination in chief of Mike Harris, February 14, 2005, p. 54.

<sup>1737</sup> Examination in chief of Mike Harris, February 14, 2005, p. 56.

<sup>1738</sup> Cross-examination of Mike Harris by Ms. Perschy, February 14, 2005, p. 233. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 180: “I didn’t know that the surrender of the Park lands was an issue or that it was related.”

<sup>1739</sup> He did not recall whether he spoke with Deb Hutton on the evening of September 5 or the early morning of September 6, and said they could have spoken in both the evening and the morning: Examination in chief of Mike Harris, February 14, 2005, pp. 93, 95-96. He also stated that in addition to the Ipperwash matter, he would have been “briefed on all kinds of issues”: see Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, pp. 232-33.

<sup>1740</sup> Examination in chief of Mike Harris, February 14, 2005, p. 94. See also p. 147:

My understanding was that there was some hint from MNR known to the OPP that it was possible that this dissident group if that's the right word, of Stoney Pointers, the rumour was that they...were planning...to move into the Park, that the OPP were aware of that, that there was OPP presence. But there were 30 or 40 protesters who...forced their way in with...sticks as I understood it, baseball bats, my recollection is not guns and...with enough numbers in force that the OPP did not feel safe staying there and they...left the Park.

<sup>1741</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 70-71, 94.

<sup>1742</sup> Examination in chief of Mike Harris, February 14, 2005, p. 71.

<sup>1743</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 71, 101. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, pp. 260:

Q: So, sir, was that important in your decision as to how to react to these people, the fact that the official Band as you understood it, did not support the people in the Park?

A: Yes.

Q: And if the official Band had supported them, you might have taken a different view?

A: I think that...at that point, then there may have been a different view, yes.

<sup>1744</sup> Examination in chief of Mike Harris, February 14, 2005, p. 101. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 192. He testified that if the Chief and Council had supported the occupation

He was also informed that the MNR had been aware of rumours that the Park would be taken over.<sup>1745</sup> He recalled,

There would have been questions and I had questions that were...either raised with Ms. Hutton or the next day as to how this happened, if advance notice had been given or was it taken seriously...that this would occur. Should it have been taken seriously?<sup>1746</sup>

Mike Harris did not believe that any reason for the occupation was given.<sup>1747</sup> He recalled that “nobody knew” what the occupiers wanted, they had made “no demands”, and they “were not saying what they wanted”.<sup>1748</sup> The occupiers were not communicating any message of protest.<sup>1749</sup> He was not informed that the occupiers considered the Park to be their land.<sup>1750</sup> He said there “may have been reference...to a potential burial ground, but that was not given as a reason for the occupation”.<sup>1751</sup> As a result he believed it was assumed that the occupation was an escalation of the activity of the occupiers of CFB Ipperwash, to draw attention to the issue regarding the army camp.<sup>1752</sup> He said at this point he was “developing a view” that “there was no question over ownership of the Park”, which belonged to the government of Ontario and was “entrusted to the Ministry of Natural Resources”, so that “the occupation was illegal in that sense”.<sup>1753</sup>

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it would not have affected the illegality of the occupation but, “It might have given it more weight, though, or more concern.” See Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 196.

<sup>1745</sup> Examination in chief of Mike Harris, February 14, 2005, p. 94.

<sup>1746</sup> Examination in chief of Mike Harris, February 14, 2005, p. 95.

<sup>1747</sup> Examination in chief of Mike Harris, February 14, 2005, p. 73.

<sup>1748</sup> Examination in chief of Mike Harris, February 14, 2005, p. 103. See also p. 104: “I think there was a frustration that – that there were no demands.” See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 192, 199, 202. He said the illegality of the occupation would not have been affected if there had been communication from the protesters of demands, but that this may have led to a different government response, although this was speculative: see Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 206-07. See also Cross-examination of Mike Harris by Mr. Horton, February 16, 2005, pp. 317-19.

<sup>1749</sup> Cross-examination of Mike Harris by Mr. Rosenthal, February 16, 2005, pp. 28-29.

<sup>1750</sup> Examination in chief of Mike Harris, February 14, 2005, p. 74. He recalled a reference to one of the occupiers saying “Get off our land”, but he did not “believe that that was viewed in any legal sense or seriously by the committee because it was not relayed to me as a reason why they felt this occupation was taking place”: see Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 201.

<sup>1751</sup> Examination in chief of Mike Harris, February 14, 2005, p. 74. See also pp. 104-05. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 198-99, 200. See also the Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 217: “The occupiers of the Park had not provided any information to the Government at that point, that the reason that they’d occupied the Park was because it was a burial site.”

<sup>1752</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 73-74. See also pp. 104-05. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 197-98, 206.

<sup>1753</sup> Examination in chief of Mike Harris, February 14, 2005, p. 72. See also p. 86: “...[A]t no point in any of the briefings was I told that we did not have clear title and ownership to the Park, that that was not in question.” See also p. 87: “I can tell you at no time was I given information that...ownership of the Park was in doubt either by the Ministry of Natural Resources or the Attorney General or by Chief Bressette and...the Band.” See also Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 166:

What I believe I was briefed on was that there is...no challenge, no doubt, and lawyers aren't usually aren't this definitive, that...the Park rightfully and legitimately belongs to the Government

At the time Mike Harris did not see the takeover of the Park as being “aimed at the provincial government doing anything”.<sup>1754</sup> Given his understanding that the occupation was illegal and was not supported by Chief Bressette, he “felt this occupation should end, as soon as possible”.<sup>1755</sup> He considered that was the proper approach in the “context of other events that had taken place around the country”.<sup>1756</sup> He was aware at the time of the ongoing difficulties resulting from a First Nations occupation at Gustafsen Lake in British Columbia, and the violence that had occurred at Oka in connection with a First Nations occupation.<sup>1757</sup> He was informed that one government option was to take no action.<sup>1758</sup> He testified:

I can tell you that by the evening of the 5th, morning of the 6th, that was certainly my view that we should take action, it should be clear what that action is. It should be decisive and that taking no action was, in fact, a mistake and I believe that to this day.<sup>1759</sup>

He added, “I think once you know it's illegal and it's in your power, the longer you -- you allow that to go on the more you're seen to condone it. I didn't think we wished to condone an illegal action.”<sup>1760</sup>

Mike Harris recalled being aware that “there was no way the OPP could secure the Park”, and that “access could easily be gained unbeknownst...to the OPP”.<sup>1761</sup> He was aware of “concern about weapons”, “warriors”, and the potential for others taking over the occupation.<sup>1762</sup> His understanding was that this had occurred at Oka and Gustafsen Lake, and no one could guarantee it would not happen at the Park, since it could not be secured.<sup>1763</sup> He said the view of his government was that “ending the occupation as quickly and peacefully as we could”, was in the “best interest, and the safety” of all concerned, “including the occupiers”.<sup>1764</sup> He recalled discussing this with Deb Hutton.<sup>1765</sup> He understood that,

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of Ontario and the Ministry of Natural Resources. That...was kind of the extent I think of what information had...been shared with me; that would have been post -- so sometime September 4th, 5th, 6th, probably.

See also p. 168: “I think the important thing to me was, was there any legitimate claim or any dispute over the ownership of those lands today.” See also pp. 174-75.

<sup>1754</sup> Examination in chief of Mike Harris, February 14, 2005, p. 74.

<sup>1755</sup> Examination in chief of Mike Harris, February 14, 2005, p. 72. He said he held this view by the evening of September 5 or the early morning of September 6: see pp. 72-73. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 47.

<sup>1756</sup> Examination in chief of Mike Harris, February 14, 2005, p. 86.

<sup>1757</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 76-77.

<sup>1758</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 96, 99. See also Cross-examination of Mike Harris by Mr. Horton, February 16, 2005, p. 294.

<sup>1759</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 89-90.

<sup>1760</sup> Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 263.

<sup>1761</sup> Examination in chief of Mike Harris, February 14, 2005, p. 101.

<sup>1762</sup> Examination in chief of Mike Harris, February 14, 2005, p. 101.

<sup>1763</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 101-02. See also pp. 122-24.

<sup>1764</sup> Examination in chief of Mike Harris, February 14, 2005, p. 90.

<sup>1765</sup> Examination in chief of Mike Harris, February 14, 2005, p. 112.

[T]he consensus was that we should move as quickly as possible to end the occupation before it could escalate, that at the current time it was not -- there was not a threat to -- to safety, that it was contained within...the Provincial Park and the sooner this occupation ...could be dealt with and ended, that you would minimize a possibility that it could escalate.<sup>1766</sup>

He said he was not aware of the views of other ministers but assumed he would have been advised if any had a different view.<sup>1767</sup>

Mike Harris believed he was informed during this period that, “[T]he OPP position was that they would take no action on an occupation unless there was a safety threat or a threat to -- to life until...an injunction was obtained.”<sup>1768</sup> His understanding was that the OPP wished the government to obtain an injunction.<sup>1769</sup> He understood there was a consensus at the IMC that an injunction should be sought, and that lawyers were to report back the next day with further information about that.<sup>1770</sup> He believed he was also briefed about injunctions, including *ex parte* injunctions.<sup>1771</sup>

At the September 6 IMC meeting Deb Hutton expressed the position that the specific situation at Ipperwash was to be viewed more as a law and order issue than a First Nations issue.<sup>1772</sup> Although it was not corroborated by her notes, Julie Jai testified that Deb Hutton indicated, “the Premier’s view that...these protesters or occupiers were to be treated like everyone else...that they didn’t want it viewed as an Aboriginal issue”.<sup>1773</sup> Deb Hutton testified that this was not her general view with respect to First Nations matters, but she did believe that aboriginal and non-aboriginal people should be treated the same in this specific situation.<sup>1774</sup>

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<sup>1766</sup> Examination in chief of Mike Harris, February 14, 2005, p. 97.

<sup>1767</sup> Examination in chief of Mike Harris, February 14, 2005, p. 113: “[I]f somebody had said, you know, this was a consensus of the meeting however the Minister has a different viewpoint I think I would have heard that and I did not hear that.”

<sup>1768</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 76, 95, 172-73; see also Cross-examination of Mike Harris by Ms. Perschy, February 14, 2005, p. 238; Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 11.

<sup>1769</sup> Cross-examination of Mike Harris by Ms. Perschy, February 14, 2005, p. 239.

<sup>1770</sup> Examination in chief of Mike Harris, February 14, 2005, p. 96. See also pp. 107, 111.

<sup>1771</sup> Examination in chief of Mike Harris, February 14, 2005, p. 95.

<sup>1772</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 292. Mr. Hutchison testified that these were, ...not comments that I would particularly say were...offside in terms of what political staff could legitimately ask for. The important thing to remember is, again, it’s not a body that makes a decision, it’s a body that develops advice. The advice makes its way up and...eventually makes its way to the ministers that way.

See also Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, p. 211; Examination in chief of Deb Hutton, November 21, 2005, p. 245.

<sup>1773</sup> Examination in chief of Julie Jai, August 31, 2005, p. 81.

<sup>1774</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 245. Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 280-81; see also Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, pp. 18-19.

She was confident the Premier shared this view.<sup>1775</sup> She testified that given the clear title of Ontario to the Park and the absence of a land claim, she also did not consider that the takeover raised any constitutional issue of native rights.<sup>1776</sup> She did not recall saying the words attributed to her by Jai, but, "Given what we understood to be the facts of this specific situation, it is consistent with what I was thinking and I believe the Premier was as well."<sup>1777</sup>

Mike Harris confirmed this. He was aware that with respect to some matters aboriginal people have distinct rights arising from treaties, land claims and the Constitution.<sup>1778</sup> He said,

...[If] it was an illegal occupation and it did not deal with any constitutional rights or...any other rights, then...it was my view and it is my view today that...any illegal activity, then yes, that native Ontarians should be treated the same as non-native Ontarians.<sup>1779</sup>

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<sup>1775</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 245. Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 280-81; see also Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, pp. 18-19.

<sup>1776</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 34-35, 73. Elizabeth Christie testified that at the conclusion of the September 5 IMC meeting, Deb Hutton said, "Strategic imperative equals this Government treats non-aboriginal people and aboriginal people the same." She said she had a very clear recollection of this comment because, "[I]t demonstrated to me an unnerving ignorance of constitutional law and...the laws of Canada because, as a lawyer, my understanding and sort of knowledge was that...based on the Constitution and the Charter and...jurisprudence, that we don't necessarily treat aboriginal and non-aboriginal people the same. There are good reasons and...laws that require that we do treat them differently in certain circumstances." See Examination in chief of Elizabeth Christie, September 26, 2005, pp. 110-11. In her testimony Christie did not indicate that any circumstance of the Ipperwash occupation engaged a constitutional or other aboriginal right in law. In cross-examination on this subject, Christie said regarding the Ipperwash situation specifically that, "[I]n the meeting no one had said anything that would make me believe at that moment that...it was a matter of opposition of Aboriginal rights." See Cross-examination of Elizabeth Christie by Mr. Klippenstein, September 27, 2005, p. 172.

<sup>1777</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 47.

<sup>1778</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 19, 98.

<sup>1779</sup> Examination in chief of Mike Harris, February 14, 2005, p. 87. See also pp. 87-88:

Q: And...did you discuss with her on the morning of September 5th prior to her attending the meeting that this Government treats aboriginal and non-aboriginal people the same?

A: I...don't recall that discussion but that would be my view if you're dealing with an occupation that we viewed was illegal or breaking the law.

Q: And that it was not a native issue but a law and order issue? Did you discuss that with her?

A: I...don't believe that was discussed in the morning but that certainly became my view as I -- more and more information was given to me.

Q: And if she expressed that view on the morning of September the 5th, was she speaking on your behalf?

A: She wouldn't be speaking on my behalf, but I think she would be...if I had the same information she had at the time and...subsequently it was given to me, I think she would be you know, accurately reflecting my reaction.

Q: And so the relationship that you had with Ms. Hutton and others in your senior staff, was that they could based on the information they had, extrapolate to what the position you might have with respect to the issue at hand?

A: Yes. I had a great deal of confidence in the staff and...that would be my position.

Scott Hutchison, a Crown litigation lawyer with a specialty in criminal law, testified that at the September 6 IMC meeting it was clear that “some direction’s coming down that there was a desire to move the occupiers out of the Park and that that was the focus of the options that were to come back up”.<sup>1780</sup> Hutchison said he thought “everybody” at the meeting appreciated that Ipperwash “was a very significant situation that required urgent attention”.<sup>1781</sup> He accepted that some people at the meeting may have had different views as to the urgency of the situation,<sup>1782</sup> but whether an injunction was to be pursued or not, that decision “had to be dealt with expeditiously”.<sup>1783</sup> “Advice had to be developed and passed up the line,” he said.<sup>1784</sup> Tim McCabe testified,

You know, there was...a certain...sense of...excitement you might say...in the air. But that always happened when...one of these incidents was...underway.

Q: Okay. So the excitement in the air is consistent with other emergency meetings that you'd attended?

A: Yes.

Q: It's an emergency.

A: That's right.<sup>1785</sup>

Hutchison said urgency arose from reports of weapons in the hands of the occupiers, a concern that Park property was being damaged, and “in fairness, there was some urgency presented by political staff, who indicated that ministers wanted to deal with the matter expeditiously”.<sup>1786</sup> He recalled reports that automatic gunfire had been heard.<sup>1787</sup> The Executive Assistant to the

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See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 41-42; Cross-examination of Mike Harris by Mr. Rosenthal, February 16, 2005, p. 31; Cross-examination of Mike Harris by Mr. Horton, February 16, 2005, pp. 286, 287.

<sup>1780</sup> Examination in chief of Scott Hutchison, August 25, 2005, pp. 293-94. See also p. 313:

Q: Okay. Did you hear any...direction of any kind communicated through the meeting?

A: Beyond the suggestions that the...objective was to try to deal with the situation by removing the protesters thorough some means that would be legally available to the government, that's the kind of direction that was, if you like, being communicated through political staff; beyond that, no.

<sup>1781</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 308.

<sup>1782</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 216-17.

<sup>1783</sup> Examination in chief of Scott Hutchison, August 25, 2005, pp. 308-09.

<sup>1784</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 308.

<sup>1785</sup> Examination in chief of Tim McCabe, September 28, 2005, pp. 77-78.

<sup>1786</sup> Examination in chief of Scott Hutchison, August 25, 2005, pp. 309-10. See also Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 57; Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, pp. 106-07.

<sup>1787</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 50. See also p. 59: his notes indicate that “[T]here was a suggestion that there was heavy machinery being used somewhere in the Park and gunfire. And my recollection and my note is to the effect that that report came not from the OPP but from somebody from MNR.” See also p. 69. At pp. 83-84 Hutchison said he did not know who the ultimate source of this information was.

Solicitor General, Kathryn Hunt, said she sensed some tension.<sup>1788</sup> She had “a sense of a need to come up with a solution and so a range of options were being considered and we needed to deal with the issue in a timely way”.<sup>1789</sup> She accepted that this originated with political staff rather than civil servants participating in the meeting.<sup>1790</sup>

Eileen Hipfner’s notes indicate that Deb Hutton told the meeting, “The Premier’s office wants to be seen as having control and moving expeditiously...[I]n this situation not averse to having this be seen as a political issue.”<sup>1791</sup> Hutton did not recall saying these words, but said this was “certainly my view”.<sup>1792</sup> She said she believed that people would be looking to the government to respond,<sup>1793</sup> and, “[I]t was important for me, regardless of that expectation, that we did, for the overall sake of public safety in the long term, indicate that the Government did not condone this behaviour; that because of the illegal nature of this activity we would not be responding to it in any way.”<sup>1794</sup>

Mike Harris was asked whether he told Hutton that he wanted to be seen as having control and moving expeditiously. He replied,

Well, I...don't recall those words. I don't know how important control was to me then or is to me now. I think...the only thing I recall was that...ending the occupation would lessen the likelihood...of anybody being hurt, of any escalation, of any violence, of any losing control of...any other areas; control of the roads, control of...any other land surrounding this area.<sup>1795</sup>

His view was that the government had responsibility for the Park, and that he “absolutely” thought, “[T]his was a government issue, one we had to deal with.”<sup>1796</sup>

Eileen Hipfner’s notes of the meeting attribute to Deb Hutton as statement that the Premier’s view was that the longer the occupiers are there the greater the opportunity they have to garner support and arm themselves.<sup>1797</sup> A handwritten note of Julie Jai attributes to Hutton a statement that, “Premier feels the longer they occupy it, the more support they’ll get. He wants them out in a day or two.” Ron Fox testified that he heard Deb Hutton say, “He wants them out

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<sup>1788</sup> Examination in chief of Kathryn Hunt, November 2, 2005, pp. 46-47. See also pp. 67-68. See also Cross-examination of Kathryn Hunt by Mr. Rosenthal, November 2, 2005, p. 132.

<sup>1789</sup> Examination in chief of Kathryn Hunt, November 2, 2005, pp. 46-47. See also pp. 67-68. See also Cross-examination of Kathryn Hunt by Mr. Rosenthal, November 2, 2005, p. 132.

<sup>1790</sup> Cross-examination of Kathryn Hunt by Mr. Rosenthal, November 2, 2005, p. 133.

<sup>1791</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 119-20.

<sup>1792</sup> Examination in chief of Deb Hutton, November 18, 2005, p. 63.

<sup>1793</sup> Examination in chief of Deb Hutton, November 18, 2005, p. 63.

<sup>1794</sup> Examination in chief of Deb Hutton, November 18, 2005, p. 64.

<sup>1795</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 120-21.

<sup>1796</sup> Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 272.

<sup>1797</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 123-24.

in a day or two.”<sup>1798</sup> Hutton did not recall saying these words but said they were certainly consistent with her view, which she believed the Premier held, “that we shouldn't let this continue; that the longer we did, the more likelihood there was of, I believe I've used the term 'escalation', increased tension”.<sup>1799</sup>

Mike Harris did not recall discussing with Deb Hutton that “the longer they occupy the Park the more support they'll get”. He did believe, however, that he discussed,

...that the longer the occupation took place, the more likely that...reinforcements could come in, others could join and...we were concerned that in other situations around this time and previous to this time, that...others had joined occupations or protests...that were not part of the original occupation or protest and...often times control could be lost. So that...was a concern.<sup>1800</sup>

Deb Hutton said that although the words were “reflective of sooner rather than later”, she did not recall referring to “a day or two”.<sup>1801</sup> Elizabeth Christie testified that Hutton referred to a “day or two” as being the time in which the injunction should be obtained.<sup>1802</sup> Mike Harris did not recall saying to Deb Hutton that he wanted the occupiers out of the Park in a “day or two”, but believed he conveyed to Hutton that he thought that “sooner was better than later, and so as options were being considered...they should bear that in mind”.<sup>1803</sup>

Scott Hutchison testified, “I do recall – and it may have been Ms. Hutton, but I'm happy to defer. I do recall there being comments to the effect that – that the Premier was happy, if you like, to use a bit of government take ownership of the communications end of this.”<sup>1804</sup> He said, “My recollection is that the Premier, to use government language, wasn't afraid to take ownership of the issue.”<sup>1805</sup> It was suggested to Hutchison in cross-examination that the government “wanted to be seen as directing the response to the occupation”. Hutchison responded, “I don't know about directing the response but they wanted to be seen as not being afraid to comment on it, not being afraid to be associated with it, and to...have a position on it”.<sup>1806</sup>

Mike Harris recalled that on September 6 he indicated to Deb Hutton that he would be prepared to speak publicly about the takeover of the Park.<sup>1807</sup> He said, “It often happens when there's issues involving different Ministries, that...I would be designated the spokesperson if I

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<sup>1798</sup> Cross-examination of Ron Fox by Mr. Klippenstein, July 18, 2005, pp. 224-25.

<sup>1799</sup> Examination in chief of Deb Hutton, November 18, 2005, p. 64.

<sup>1800</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 122-23.

<sup>1801</sup> Examination in chief of Deb Hutton, November 18, 2005, pp. 64-65; see also Cross-examination of Deb Hutton by Mr. Klippenstein, November 18, 2005, p. 249.

<sup>1802</sup> Cross-examination of Elizabeth Christie by Mr. Klippenstein, September 27, 2005, p. 86.

<sup>1803</sup> Examination in chief of Mike Harris, February 14, 2005, p. 124.

<sup>1804</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 82.

<sup>1805</sup> Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, pp. 264-65.

<sup>1806</sup> Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, p. 266.

<sup>1807</sup> Examination in chief of Mike Harris, February 14, 2005, p. 125.



was there...and if I wasn't...designated, the likelihood is that the media would want to talk to me as well, anyway, so.”<sup>1808</sup>

### (3) THE LEGAL OPTIONS

Scott Hutchison provided criminal law advice to the meeting. He had already prepared the portion of a legal memorandum outlining criminal offences that may have been committed during the takeover of the Park.<sup>1809</sup> Hutchison said criminal offences were “never put as being an option for eviction”. He continued:

[K]eep in mind that the availability of this doesn't necessarily mean that you're going to go in and do it. The...reality of trying to enter the Park is...an issue that would have been completely in the hands of the OPP. And the fact that they're theoretically avail – that they have this power of arrest available to them, either because of their warrantless authority under the *Code* or a warrant that may have been sought, is completely divorced from the reality of whether they're going to do it, which is a completely different issue...It wasn't – it's not an option, in the sense that it's not a lever that you can pull.<sup>1810</sup>

Hutchison did not recall anything inappropriate occurring at the meeting.<sup>1811</sup> He said:

It is fair to say that it was made clear to people that the Government had a view and that some ministers had expressed a view in the sense of having a particular -- a tone with respect to how they wanted to be advised, but I certainly wouldn't go so far as to say that any said, you know, this is what the answer has to be.<sup>1812</sup>

Hutchison said that this “tone” was “a move that was less conciliatory than the approach that had guided...the previous government” in “this sort of scenario”, and in particular “that it was to be portrayed as a law and order issue as opposed to a native rights issue”.<sup>1813</sup>

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<sup>1808</sup> Examination in chief of Mike Harris, February 14, 2005, p. 125.

<sup>1809</sup> Elizabeth Christie and Tim McCabe authored the portion of the memorandum relating to potential civil proceedings: see Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, p. 205.

<sup>1810</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 199-200. See also p. 201: “And, keep in mind, the police get to decide when and how they invoke that authority.” It was put to Hutchison that the title of the legal memorandum he contributed to was, “Criminal and Civil Proceedings to Terminate the Occupation of Ipperwash Provincial Park by the Stoney Pointers”. He said he did not write that title, did not know who did, and that he would “probably ask the person who wrote it and ask them what they meant by it”. See Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 201-02.

<sup>1811</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 290.

<sup>1812</sup> Examination in chief of Scott Hutchison, August 25, 2005, pp. 290-91.

<sup>1813</sup> Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, pp. 245-46. He added, “But I wouldn't want to paint it as broad as, sort of, all relate – all elements of the relationship with First Nations.” See also Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, pp. 249-50, 252: “[I]t's the idea of – of pressing for an injunction, taking a particular stance in your communications strategy, not having a negotiator. Those are the sorts of things that probably wouldn't have been considered under the previous government.” And see p. 253: “[I]t's to be addressed as some kind of civil disturbance as opposed to a legitimate expression of aboriginal aspirations.” See also Cross-examination of Scott Hutchison by Mr. Roy, August 30, 2005, pp. 28-30, 34-35.

Although he was reluctant to characterize it as debate, Hutchison testified that some participants at the meeting wished to take the approach followed in the past, “a process where you sort of hang back” and have some sort of negotiation take place, not “to settle the ultimate claim but simply to develop a process that will allow the occupiers or protestors to remove themselves and essentially allow the situation to sort of burn itself out”.<sup>1814</sup> It was his understanding that this was the approach preferred by the OPP and supported by Ron Fox.<sup>1815</sup> Other participants “preferred a course that was more proactive”.<sup>1816</sup> He could not attribute this to any particular individual,<sup>1817</sup> although he had a general recollection that “MNR had a preference to...move to remove as opposed to waiting”.<sup>1818</sup> He concluded that this was the view of the Premier’s Office.<sup>1819</sup>

Ron Fox’s assistant, Scott Patrick, recalled that a concern for quicker government action was supported by Peter Allen of the MNR and Deb Hutton.<sup>1820</sup> Patrick testified that Hutton and Fox had a difference of opinion as to how the matter should be dealt with.<sup>1821</sup> He described this difference in his examination in chief as “robust”, and said Hutton and Fox “vigorously disagreed with each other”.<sup>1822</sup> In cross-examination, however, he said that his description related more to the content of what Hutton was saying than her manner.<sup>1823</sup> He accepted that he didn’t have any particular recollection of her manner and tone.<sup>1824</sup>

Scott Patrick’s notes of the meeting indicate that at one point Ron Fox stated, “Appreciate Premier’s concern but should we rush in?”<sup>1825</sup> Patrick said he believed this was “a rhetorical question and he was simply stating that he understood as communicated by Ms. Hutton some anxiousness around resolve the occupation and...resolving it quickly. But he is then advocating a step-by-step approach, a measured response to the incident.”<sup>1826</sup>

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<sup>1814</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 295.

<sup>1815</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 295; see also Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, pp. 269-70.

<sup>1816</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 295. Julie Jai testified that there were “differing views as to the urgency with which we had to proceed”: see Examination in chief of Julie Jai, August 31, 2005, p. 70.

<sup>1817</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 295.

<sup>1818</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 88. See also Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, p. 110.

<sup>1819</sup> Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, pp. 117-18. See also Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 203-04. See also Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, p. 259: “I think it’s fair to say that the direction that was coming from the Premier’s Office and from MNR was in that line.” See also Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, p. 270.

<sup>1820</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 72.

<sup>1821</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 95.

<sup>1822</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 95.

<sup>1823</sup> Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 125.

<sup>1824</sup> Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, pp. 125-26.

<sup>1825</sup> Exhibit P-517.

<sup>1826</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 89; Cross-examination of Scott Patrick by Mr. Falconer, October 18, 2005, p. 28.

Scott Hutchison accepted that the position of political staff was that the options to be canvassed were those available to remove the occupiers from the Park.<sup>1827</sup> He recalled that there was “a desire to move as soon as possible”.<sup>1828</sup> His “sense was that if there was...an available option, it would move more quickly than another, that that option was to be looked at very carefully”.<sup>1829</sup> Hutchison said that from this perspective the approach of applying for an injunction was something the “government could legitimately do” to deal with the situation in a proactive way.<sup>1830</sup>

Kathryn Hunt, Executive Assistant to Solicitor General Robert Runciman, also commented that the Solicitor General’s “protocol is not to be involved in the day to day operation of the police”, and that “the political arm should be divorced”.<sup>1831</sup> Hunt testified that she said this because, “I had some sense that I needed to educate my colleagues, or make sure they had the understanding that we did...inside our ministry”.<sup>1832</sup> David Moran, Executive Assistant to Charles Harnick, recalled that Hunt “was really quite clear on this point”.<sup>1833</sup>

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<sup>1827</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 215-16.

<sup>1828</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 203-04. See also Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, p. 247; see also p. 268.

<sup>1829</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 203-04. See also Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, p. 247; see also p. 268.

<sup>1830</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 295.

<sup>1831</sup> Examination in chief of Eileen Hipfner, September 15, 2005, p. 115. See also Examination in chief of Kathryn Hunt, November 2, 2005, pp. 48-49: “I did indicate that there had to be a separation between -- there could be no interference in the day-to-day operations of the OPP.” See also pp. 64-65, and Cross-examination of Kathryn Hunt by Mr. Downard, November 2, 2005, p. 112. See also Examination in chief of Ron Fox, July 12, 2005, p. 34; Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 78; Examination in chief of Scott Patrick, October 17, 2005, p. 75; Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, pp. 159-63, 178-79. Julie Jai did not recall Kathryn Hunt speaking about non-interference with the police, but accepted that she may have: Examination in chief of Julie Jai, August 31, 2005, p. 113. Robert Runciman testified that on September 5 he discussed with Kathryn Hunt,

...the issue of police direction being given to police and she indicated to me that she had contacted all of the involved executive assistants, chiefs of staff and the Premier’s office to...ensure that they understood that the political arm was not to be involved in providing direction to...the police with respect to operational activities. And her indication -- my support was that she would simply reiterate that at the meeting, and that was the sole role...that both of us saw for her at that meeting unless there was specific questions that she could deal with.

See Examination in chief of Robert Runciman, January 9, 2006, pp. 100-01. See also p. 124. See also Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, pp. 302-03. Kathryn Hunt recalled Runciman discussing the separation of politicians and police in other contexts: see Examination in chief of Kathryn Hunt, November 2, 2005, pp. 23-24. She also testified that, “We had a clear understanding that there could be no interference in the day to day operations of the OPP. So we could not be involved in any operational matters. And all our questions about the OPP related to policy.” See Examination in chief of Kathryn Hunt, November 2, 2005, pp. 26-27.

<sup>1832</sup> Examination in chief of Kathryn Hunt, November 2, 2005, p. 49. She did not recall anything having triggered this. See also Cross-examination of Kathryn Hunt by Mr. Rosenthal, November 2, 2005, pp. 134-37; Cross-examination of Kathryn Hunt by Mr. Scullion, November 2, 2005, p. 176. Elizabeth Christie did not recall who made this comment, and testified as follows:

...[T]his is from the Solicitor General staff, saying that the protocol of the Solicitor General is not to be involved in the day-to-day operations of the OPP. And that’s...my recollection and...I don’t

Scott Hutchison testified that he clearly and plainly stated to the meeting as a whole that the government could not direct police operations in connection with the occupation.<sup>1834</sup> He testified:

There was legal advice given during the course of the meeting that the Government is in no better or worse position – or the Province is in no better or worse position than any other landowner here. If they think that there's a person or persons trespassing on property that's...theirs, they can go to the police and ask the police to take action. But they can't do anything more than ask. They have no right to direct or demand that the police take any action.<sup>1835</sup>

He described this as “fairly straightforward” advice based on the independent discretion of the police, “to decide whether to lay a charge, what charge to lay, what action to take on the basis of that charge. They can't be directed in that regard.”<sup>1836</sup>

Hutchison testified that no one at the meeting disagreed with his advice, or appeared to disagree with it.<sup>1837</sup> He added,

My recollection is that, when it was made clear that you can ask but you can't direct, there was then a discussion of, Well then let's ask. And – I can't sort of recall exactly how that discussion was initiated or where exactly it went but that was – I think people

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have very -- my notes are not great on this point, but...my recollection of what came up at this meeting was that there was a question raised by Deb Hutton as to why we couldn't just tell the OPP to go and get them out of the Park; just go get them out.

See Examination in chief of Elizabeth Christie, September 26, 2005, pp. 140-41.

<sup>1833</sup> Cross-examination of David Moran by Ms. Perschy, November 1, 2005, p. 115. Moran testified that at the time of the September IMC meetings he was aware “that political individuals such as myself or my counterpart, the Ministry of the Solicitor General were not to involve themselves with matters relating to law enforcement”: see Examination in chief of David Moran, October 31, 2005, p. 191.

<sup>1834</sup> Cross-examination of Scott Hutchison by Mr. Downard, August 29, 2005, pp. 14-15, 16.

<sup>1835</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 296. At p. 297 Hutchison stated that he provided this advice to the meeting. See also Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, pp. 77-78; Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 203 and 205: “when, could be never”; see also pp. 222-23: “Sure, if the Premier had phoned the detachment commander in Forest and said, would you please, you know, get me my Park back, that would be inappropriate. If the Park warden phoned and said, we have this problem, you know, how can you help us, that would be entirely appropriate.” Jeff Bangs recalled this advice being given: see Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, p. 225.

<sup>1836</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 297. See also Examination in chief of Scott Hutchison, August 29, 2005, pp. 10-11. Hutchison commented on his notes as follows:

And somewhere in the course of that briefing I would have provided what was the standard criminal advice which is noted at the top of the page...The emphasis on the notion that...the police are in charge of a situation like this, not the Crown, not the Attorney General. The notion that our role in these matters on the criminal side is to provide advice, not to direct anything, and finally the notation that in situations like this, the OPP is normally happier to have an injunction. It puts them in a better legal position and it limits the opportunity for any sort of recurrence of the incident given [*sic*] rise to the involvement of the OPP.”

<sup>1837</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 298.

accepted that advice. And one advantage to being in a group like this as the only lawyer who understands how the criminal law works, is that when you speak you're normally listened to. And if you tell people in the room that they can't direct the police to take action and...you say that that's not policy advice, that's legal advice, normally people listen. And...my perception was in this case that people were listening.<sup>1838</sup>

[...]

I certainly recall my advice had been understood and that the course of the conversation proceeded on that basis. I don't know what people took away from the meeting after that, but for the balance of the meeting I don't the notion [*sic*] of telling the OPP that they had to anything [*sic*] in particular was on the table.<sup>1839</sup>

[...]

And as I said, I made that comment and it appeared that the balance of the conversation proceeded with that parameter if you like, established in terms of drawing boxes around what could and couldn't happen.<sup>1840</sup>

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<sup>1838</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 298. See also Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, pp. 163-64.

<sup>1839</sup> Cross-examination of Scott Hutchison by Mr. Downard, August 29, 2005, p. 17.

<sup>1840</sup> Cross-examination of Scott Hutchison by Mr. Downard, August 29, 2005, p. 19. See also Cross-examination of Julie Jai by Ms. Perschy, September 13, 2005, p. 125:

Well I think that prior to Scott clarifying this point, that there had been a suggestion, you know, Deb Hutton had said that, you know, MNR as...the property owner could ask the OPP to remove people. Then Scott explained that the rule is that government cannot direct the actions of the OPP. And that seemed to be the end of that discussion in terms of no one then contradicting Scott because he clearly was the expert on this issue.

Eileen Hipfner testified that in her opinion Deb Hutton did not like the advice, but understood it. See Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, pp. 253-54:

Q: -- and you -- you've indicated that this issue was raised again. If we turn to page 7, it says: "Hutton" It's a third of the way down the page. "Hutton, my difficulty is not wanting to give political direction to the OPP."

A: Yes.

Q: And do you recall Ms. Hutton saying that?

A: Very clearly.

Q: Okay. And you'll agree that on September 6th Ms. Hutton was conveying to you that she understood that the Government was not in position to give political direction to the OPP?

A: Yes. In delivering that statement, it was very clear to me that she felt boxed in by the advice that she had been given.

Q: Well --

A: Her delivery of that statement was ironic. But it certainly indicated to me that she understood the nature of the advice that she had been given although she didn't like it, she understood the advice.

Q: Okay. And your impression was that she felt boxed in?

A: That was my very very distinct impression.

Q: Did you talk to her about it?

A: I did not talk to Ms. Hutton.

See also Cross-examination of Eileen Hipfner by Ms. Perschy, September 19, 2005, p. 152-53:

Q: Now, I anticipate that Ms. Hutton's evidence will be that she was well aware of the protocol regarding the government not directing police operations, even prior to September the 5th. And that her evidence will be that she accepted that premise, that protocol, and had absolutely no

Scott Hutchison's testimony that there was "a discussion of, Well then let's ask" is corroborated by a handwritten note by Julie Jai of the discussion, reading as follows:

Deb feels MNR, as property owner, can ask OPP to remove people.

Scott: You can ask them to remove them; you can't insist or demand that they be removed.

Deb: Has MNR asked OPP to remove them?

They could be formally requested to do so, but how and when they do it is up to them.<sup>1841</sup>

Deb Hutton testified that she did not recall these specific words, but they were consistent with her recollection that she asked at the meeting whether the government could ask the OPP to remove the occupiers.<sup>1842</sup> Similarly, she said that the response attributed to Scott Hutchison was consistent with her understanding of the situation.<sup>1843</sup>

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intention of trying to direct or otherwise influence police operations. And that her sole focus was to have the committee identify and evaluate all of the possible government responses. And I take it you didn't know what she knew or what she intended?

A: There was a lengthy discussion -- well, I don't know that it was lengthy, but there was a discussion on September 6th that became quite heated at which I recall people explaining and directing their comments to Ms. Hutton on this point, that political staff, government, could not direct the operations of the OPP and being met with this, as I said, physical -- you know physical suggestion of resistance to...the advice that was being provided to her. But ultimately, and I do say this, ultimately an acknowledgement from Ms. Hutton, somewhat grudging, but an acknowledgement from Ms. Hutton that gave me tremendous comfort I remember, feeding back to people that, yes, you know I'm...not too happy about this, but I accept that, you know, we can't provide political direction to the OPP. She described it as...a difficulty for her, but she seemed to accept it.

<sup>1841</sup> Hutchison testified that this note was "certainly consistent with the recollection I have. I can't say those are the exact words that people spoke, but it's consistent with how I recall the conversation proceeding": see Cross-examination of Scott Hutchison by Mr. Downard, August 29, 2005, p. 18. See also p. 263 as to Hutchison's intention in making these statements. He said he did not know whether Deb Hutton spoke the words, "They could be formally requested to do so, but how and when they do it is up to them": see Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, pp. 261-62. Ron Fox testified that he recalled that the substance of this dialogue took place at the meeting: Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 76-77. Julie Jai testified that she believed these words were spoken by someone other than Deb Hutton: see Examination in chief of Julie Jai, August 31, 2005, p. 102. Elizabeth Christie recalled that there was discussion in the meeting,

...about what, you know, how do we...how is the OPP asked to do things and then the point was made that the Ministry of Natural Resources as landowner is certainly entitled to ask the police just like any landowner could call the police and say there are people on my land, could you please come and remove them. The Ministry of Natural Resources was entitled to request that the OPP remove the...people from the Park, but then the precise way in which they went about doing that was entirely up to the OPP.

See Examination in chief of Elizabeth Christie, September 26, 2005, pp. 141-42.

<sup>1842</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 36-37, 67. Mike Harris did not recall having discussed this with Deb Hutton: see Examination in chief of Mike Harris, February 14, 2005, pp. 124-25.

<sup>1843</sup> See Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, p. 10.

Hutchison said he did not take the comment attributed to “Deb” [Hutton] as indicating any intention on her part to inappropriately direct police operations.<sup>1844</sup> In cross-examination it was suggested to Hutchison that Deb Hutton did not understand that government could only request the police to act, and could not insist or demand that they do so. Hutchison did not accept this. He said, “It was more a case of I wanted to make sure that she and everybody else did understand it. I didn’t know what she knew or didn’t know.”<sup>1845</sup>

Scott Patrick accepted that he did not take any comments by Deb Hutton at the meeting “as any kind of direction or instruction to the OPP as to how to handle the occupation of the Park”.<sup>1846</sup> Similarly, Shelley Spiegel testified, “There was no political staff that tried to exert control on operations.”<sup>1847</sup> Eileen Hipfner testified regarding Deb Hutton, “My understanding -- my sense was that her comments were directed at obtaining the support of the IMC for what she was proposing, but I did not at any time believe Ms. Hutton to be attempting, at that meeting, to direct the Ontario Provincial Police.”<sup>1848</sup>

Deb Hutton considered that if the government could meet the test necessary to obtain an *ex parte* injunction, that was the option that was “supportive with how we believed we should be responding”.<sup>1849</sup> Scott Hutchison recalled that Tim McCabe was “less than enthusiastic about the possibility of an *ex parte* injunction, because he had some concerns with respect to the issue of irreparable harm and the lack of notice”.<sup>1850</sup> He also testified that having explained “the pros and the cons”, McCabe “offered it up as one of the options that was available”.<sup>1851</sup>

Tim McCabe testified that it was “certainly a case for an injunction”, but “it seemed to me that this was not – certainly not a good case for an *ex parte* injunction, as I understood the circumstances”.<sup>1852</sup> He continued:

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<sup>1844</sup> Cross-examination of Scott Hutchison by Mr. Downard, August 29, 2005, p. 19. See also Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 205-06.

<sup>1845</sup> Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, pp. 263-64.

<sup>1846</sup> Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 125.

<sup>1847</sup> Examination in chief of Shelley Spiegel, September 21, 2005, p. 115.

<sup>1848</sup> Cross-examination of Eileen Hipfner by Mr. Roy, September 20, 2005, pp. 49-50.

<sup>1849</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 239.

<sup>1850</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 299. Hutchison deferred to McCabe’s knowledge in the area of civil proceedings, since Hutchison was a criminal law expert and, “At the time, I wouldn’t have known an *ex parte* injunction if you’d put it in front of me.” See also Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, pp. 148-49; Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, pp. 247-49.

<sup>1851</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 299. See also Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 57: “...I certainly recall Tim, sort of, setting out the different options that were available, the pros, the con’s and then the challenges that would be presented by any particular course of action”.

<sup>1852</sup> Examination in chief of Tim McCabe, September 28, 2005, p. 68. This view was also expressed in a legal memorandum prepared prior to the September 6 IMC meeting: see Exhibit P-549 and Cross-examination of Elizabeth Christie by Mr. Klippenstein, September 26, 2005, pp. 156-57. See also Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 62. See also Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, pp. 262-63.

Well, as I say, it was certainly a case for an injunction, but I think that, you know, the -- the likely result, if we were to proceed under the *ex parte* rule, would be that the judge would either dismiss it, be -- you know, on the basis that this is not a case for an *ex parte* injunction or more likely, far more likely, would simply adjourn so that we would serve -- so that we could serve. The net result being, that proceeding under the *ex parte* rule would take us more time rather than less. It seemed to me that the appropriate course to follow, this is now Thurs -- no, Wednesday. The appropriate course would be to prepare material that day, serve it tomorrow, Thursday; be in Court Friday and seek an abridgment of the three day notice period. And, you know, in the...end result it seemed to me that if the object was to obtain an order at an early date...that's [what] we ought to do.<sup>1853</sup>

McCabe stated clearly that in his view there was nothing inappropriate in the government proceeding *ex parte* if it wished to do so. He stated,

Although I should say, it was never my view that there was anything wrong, you know. There was nothing reprehensible about proceeding under the *ex parte* rule. It's -- and, you know, if the Government understood the risks involved in that, you know, it could do that.<sup>1854</sup>

In her testimony Julie Jai accepted that, “[T]he primary reason discussed at the Interministerial Committee Meetings for not proceeding *ex parte* was the risk of being unsuccessful on the application.”<sup>1855</sup>

McCabe acknowledged in his testimony that it was never the intention that the persons who had taken over the Park would never be served, and that the only question was when they would be served.<sup>1856</sup> He was never instructed not to serve the occupiers.<sup>1857</sup> He intended to provide service if possible.<sup>1858</sup> He confirmed that if an *ex parte* injunction had been granted it would necessarily be of short duration, and there would be a hearing for a renewal of the injunction in the near future.<sup>1859</sup>

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<sup>1853</sup> Examination in chief of Tim McCabe, September 28, 2005, p. 69. See also pp. 85-86. See also Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, p. 160.

<sup>1854</sup> Examination in chief of Tim McCabe, September 28, 2005, pp. 69-70. See also Cross-examination of Tim McCabe by Mr. Scullion, September 29, 2005, p. 275: “I think from the outset I...recognized that if the government wanted to follow that particular course of action, you know, it was...entirely open for the government to do so.”

<sup>1855</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 114-15.

<sup>1856</sup> Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, p. 162; see also Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, p. 193.

<sup>1857</sup> Cross-examination of Tim McCabe by Ms. Horvat, September 28, 2005, p. 169.

<sup>1858</sup> Cross-examination of Tim McCabe by Mr. Roy, September 29, 2005, p. 321. McCabe’s colleague Elizabeth Christie said, “[W]e wanted the occupiers to be aware that there was the court proceeding going ahead the next morning. And...that was our plan right from the get-go; that...was what we had intended.” See Examination in chief of Elizabeth Christie, September 26, 2005, p. 155.

<sup>1859</sup> Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, p. 162. Similarly, McCabe’s colleague Elizabeth Christie testified that an *ex parte* injunction is “always for a very limited period of time, with a return date following service and so on”. She continued:



McCabe testified that he could not recall any other reasons being expressed by anyone at the meeting in support of proceeding on notice rather than *ex parte*.<sup>1860</sup> Ron Fox's assistant, Scott Patrick, testified that McCabe expressed a concern that an *ex parte* injunction "could, in his opinion, have the effect of inflaming a situation, actually enraging those that may be protesting, and it was around the notion of not having received notification that the party was proceeding".<sup>1861</sup> He said McCabe was also concerned that an *ex parte* injunction might have "some impact on the police" regarding how quickly the police would be required to serve the injunction.<sup>1862</sup>

Although this testimony was not put to McCabe, his evidence did not reflect any concern about this. He testified in cross-examination that,

But when it comes to injunctions, you know, it may be that an injunction...in certain context is not...considered precipitous action. It's...something that's going to be a tool in the box of -- of sorting...the matter out later. Sure.

Q: But the timing of when you go and try and get the injunction is another matter; correct?

A: Well...again...I don't think this matter has come up that -- this question hasn't occurred enough times for us to make, you know, general statements as to a normal course.<sup>1863</sup>

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So, there's never any intention that you would never serve the other side with the proceedings. It's...a matter of when. So under the *ex parte* rules you don't have to officially have given notice and you've got a -- you can have injunctive relief if you get it. You can have injunctive relief for a short period of time, during which time you have to serve.

See Examination in chief of Elizabeth Christie, September 26, 2005, p. 150; Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, p. 193. See also Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 79-81.

<sup>1860</sup> Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, p. 160.

<sup>1861</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 74.

<sup>1862</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 74. Patrick's notes (Exhibit P-517) indicate only, "Seeking injunction - Message - OPP timing after that. Not likely to get *ex parte* injunction w/o notice. Urgency?"

<sup>1863</sup> Cross-examination of Tim McCabe by Mr. Roy, September 29, 2005, p. 305. His colleague Elizabeth Christie testified to the same effect. See Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, pp. 199-200:

Q: Thank you. And with respect to discussion in the meetings about whether to proceed *ex parte* or on notice, do you have recollection as to what considerations were put forward by -- by anyone? Favoring an injunction on notice as distinct from an injunction *ex parte*?

A: Well û [sic]

Q: And I -- I'm just recalling what -- I'm just asking what you -- what you recall, if anything, being said in that regard.

A: So, I...recall Tim describing the importance of notice in a matter like this. And in the context of the discussions that we've been having about the...fact that the Park was an empty Park, the fact that there was no -- aside from this, one mention of...gunfire that needed to be investigated further, there was no specific and direct evidence of...arms by the occupiers, that...he described that the issue of notice...is directly related to the emergency or the urgency on the emergent nature or the urgency...of the case.

Scott Patrick also testified that he personally interpreted statements by Deb Hutton at the meeting as indicating that she wished to raise charges under the *Criminal Code* in order to avoid delays inherent in civil injunction proceedings.<sup>1864</sup> In cross-examination it was put to Patrick that Eileen Hipfner's notes of the meeting indicate it was Tim McCabe who suggested that the *Criminal Code* option be discussed, in response to a comment attributed to Deb Hutton that "Premier's view that the longer the occupiers are there the greater the opportunity they have to garner support, arm selves". Patrick acknowledged that these notes contradicted "my notes and my recollection", and that the notes appear to suggest that in preparing his notes he simply "failed to note that there was a change in speaker".<sup>1865</sup>

Scott Hutchison said Ron Fox advised the meeting<sup>1866</sup> that the OPP,

...indicated a preference to act in the context of an injunction, rather than simply acting on the basis of possible offences, because of course there was at least a discussion going on already with respect to the possibility of a defence of honest but mistaken belief, with respect to colour of right. And that issue, in terms of the propriety of any further police action disappears in the face of an injunction, where the OPP are then simply giving effect to a court order rather than becoming embroiled in the debate with respect to property rights associated with a particular piece of land.<sup>1867</sup>

Crown litigation counsel Tim McCabe recalled as well that, "[T]he Ontario Provincial Police was keen that an injunction be obtained by the Province. Among other reasons because their was perception was that the existence of such an order would make their job easier."<sup>1868</sup>

#### (4) COMMUNICATION WITH THE OCCUPIERS

Scott Patrick testified that the MNR did not wish to enter into any substantive negotiations with the occupiers.<sup>1869</sup> Ron Fox testified that this was consistent with the IMC's mandate,<sup>1870</sup> which had pre-existed the current government.

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And...in the context of the information that we had at that point, he expressed that we...were of the view that this was going to be a very difficult case to...win without any notice because...you have to describe why you're not giving notice. You have to be able to...convince the court that this is a matter of...such emergency that it doesn't warrant giving notice. Or that there's no way of giving notice. No practical way of actually giving notice.

Q: Okay. And...do you recall any further considerations being raised by anyone in the meeting regarding why it might be preferable to proceed on notice rather than *ex parte*? Do you recall anything further?

A: I don't recall anything further.

<sup>1864</sup> Examination in chief of Scott Patrick, October 17, 2005, pp. 87-88; Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, pp. 191-92, 194-95.

<sup>1865</sup> Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, pp. 167-68.

<sup>1866</sup> Cross-examination of Scott Hutchison by Mr. Smith, August 29, 2005, p. 23.

<sup>1867</sup> Examination in chief of Scott Hutchison, August 25, 2005, pp. 301-02; see also Cross-examination of Scott Hutchison by Ms. Tuck-Jackson, August 29, 2005, pp. 103-04; see also Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, p. 133, 135-36.

<sup>1868</sup> Examination in chief of Tim McCabe, September 28, 2005, pp. 27-28.

Eileen Hipfner's notes record a comment by Deb Hutton that, "The Premier does not want anyone involved in discussions other than the OPP and possibly MNR (doesn't want the chief or others involved, doesn't want to get into negotiations)." <sup>1871</sup> Although Deb Hutton did not recall stating these words, she did not dispute that she made a statement to this effect, and accepted that she did so. This was consistent with her understanding of the Premier's position that there would be no negotiation of substantive issues with the occupiers while the takeover of the Park continued. <sup>1872</sup> Mike Harris testified that he did not recall telling Deb Hutton this, but he agreed with the position. <sup>1873</sup>

Deb Hutton recalled that the only potential third party discussed during the course of the meeting was Chief Bressette. <sup>1874</sup> She said she did not have a problem with KSP assisting the government, but she was concerned about "us working together and confusing the situation". <sup>1875</sup> A handwritten note records her saying, "We would like him [Chief Bressette] to be supporting our efforts, but independently." <sup>1876</sup> Ron Fox testified that as at September 5 and 6, he was aware that the occupiers of the Park would not talk to Chief Bressette or his council. <sup>1877</sup>

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<sup>1869</sup> Exhibit P-517; Examination in chief of Scott Patrick, October 17, 2005, pp. 76-77.

<sup>1870</sup> Examination in chief of Ron Fox, July 12, 2005, p. 56.

<sup>1871</sup> Contemporary handwritten notes of Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 109; Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 236. See also Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 73-74. Scott Patrick's notes indicate that this was said after an MNR representative had said that the MNR did not wish to become involved in negotiations: see Exhibit P-517 and Examination in chief of Scott Patrick, October 17, 2005, pp. 76-78. (Patrick testified that the order of his notes reflected the order of discussion: see Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, pp. 163-64.) Patrick's own note of this comment reads "The Premier last night - OPP only, maybe MNR. Out of the park only, nothing else". See also Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, pp. 158-59. See also Examination in chief of Elizabeth Christie, September 26, 2005, p. 130.

David Moran recalled that the OPP were to have discussions but he did not have the impression MNR staff would be engaging in those discussions: Cross-examination of David Moran by Mr. Downard, November 1, 2005, p. 55. Elizabeth Christie made a handwritten note that "the Premier's office doesn't want to be seen to be working with Indians at all". See Examination in chief of Elizabeth Christie, September 26, 2005, p. 132. Christie said this was a "verbatim quote": see Cross-examination of Elizabeth Christie by Ms. Perschy, September 27, 2005, p. 29. Deb Hutton testified that although she did not generally use the term 'Indians', this was "certainly consistent with my point of view that any discussions by the Government with the occupiers would be inconsistent with my view that...I think it is prudent to say you will not have substantial negotiations while an occupation is underway": see Examination in chief of Deb Hutton, November 22, 2005, p. 41.

<sup>1872</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 250-51; see also Examination in chief of Deb Hutton, November 22, 2005, pp. 44, 75. She did not want the public to have an inaccurate perception that the government was negotiating substantive issues before the occupation had ended: see Examination in chief of Deb Hutton, November 22, 2005, p. 39.

<sup>1873</sup> Examination in chief of Mike Harris, February 14, 2005, p. 118. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, pp. 265-68; Cross-examination of Mike Harris by Mr. Rosenthal, February 16, 2005, p. 30.

<sup>1874</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 44-45, 46-47.

<sup>1875</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 45.

<sup>1876</sup> Handwritten notes of Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 111. Scott Patrick characterized Hutton's response as "lukewarm", but did not dispute the accuracy of this note: see Examination in chief of Scott Patrick, October 17, 2005, p. 80; Cross-examination of Scott

Mike Harris did not recall a suggestion that anyone other than the OPP or MNR should be involved.<sup>1878</sup> He testified,

I recall...that we would not negotiate any...claims and this was...one of those things where we weren't aware of any claims at that time but...if there were claims to be made ...at this point nobody was empowered to negotiate those. The only thing they were...dealing with and this is why it would be left to primarily the OPP was...ending the occupation of the Park.

Q: And...do you recall having a discussion with Ms. Hutton that you would like the Chief to support us, being the Government, but to do this independently...you didn't want to go into land claims? I take it from what you've just said –

A: Right...to the best of our knowledge there were no land claims. There wasn't anything to negotiate so if there were land claims, if there were other issues that involved others, that...it was clear that we were quite prepared to negotiate those. But I think it was...former Minister Wildman who'd say we...from the NDP Government, we don't negotiate across a barrier. And that's very consistent with...our philosophy as well. We...we're not going to -- there's no *quid pro quo*, we're not going to negotiate any issues that may come forward. If the occupation ends we're happy to sit down and discuss and negotiate all kinds of issues.<sup>1879</sup>

Deb Hutton did not recall anyone suggesting that another third person be appointed to have discussions with the occupiers.<sup>1880</sup> She believed her comment was directed only at the possibility of Chief Bressette doing that.<sup>1881</sup> She said,

I don't believe at any time did anyone else suggest, or did anyone suggest, another third party option. I would not have dismissed it out of hand, certainly. I would have been open to discussing it. I do want to say though in fairness, I would have had some concerns and would want to have understood how it could possibly have worked, about an individual on behalf of government, whoever that might be, engaging in discussions

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Patrick by Mr. Downard, October 17, 2005, p. 124. Julie Jai understood that the government wanted the support of the Kettle & Stony Point First Nation in the matter: see Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 118.

<sup>1877</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 69.

<sup>1878</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 118-19. See also at p. 119:

Q: And did you have a view the morning of September the 6th whether or not Chief Bressette should be involved?

A: I...don't recall but...I mean listen...I would have thought if anybody could resolve the occupation peacefully I would have had not objection to them being involved regardless of who they are.

<sup>1879</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 119-20.

<sup>1880</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 74; Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 291-92.

<sup>1881</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 44.

without getting into substantive negotiations. Like, I would have had some concerns about how that would have worked.<sup>1882</sup>

Julie Jai testified that she thought the IMC was not able to appoint a third party as a “facilitator/negotiator” because of Deb Hutton’s advice that the Premier wanted the occupiers removed immediately, and that the matter was not to be viewed as an aboriginal issue. Elizabeth Christie said she agreed with this.<sup>1883</sup> In cross-examination, Eileen Hipfner had a different view:

Q: Did anyone at the meeting object and suggest that the Committee should recommend sending a negotiator to try and open up communications with the occupiers at this point in time?

A: I don't know that it would have been framed as an objection. I don't recall whether there was any discussion about actually appointing a negotiator. I don't think we were that far down the road yet.

Q: So, it was concluded, then, by the IMC that, as Mr. Buhagiar has stated, that the OPP and the MNR are on the ground running and they'd be the most appropriate people to try and communicate with the occupiers?

A: I think that somebody makes the point at one of the two meetings that the Committee – that the Government has had enormous success in addressing these kinds of incidents by keeping them local and by having local OPP and local MNR staff or local Ministry of Transportation staff, if you're dealing with the highway, address those matters. That keeping it low key had proven to be a successful response, at least, until that time.<sup>1884</sup>

David Moran said he understood that the OPP would not be able to negotiate any claim to ownership of the Park, but that they could have discussions with the occupiers with a few to arriving at a way of ending the occupation peacefully.<sup>1885</sup> Ron Fox testified that he reported to the meeting that, “[T]he OPP were to attempt a meeting with the Stoney Pointers on...the 6th ...to ferret out what their demands are.”<sup>1886</sup> Deb Hutton recalled being aware that a meeting was to take place that day among OPP and MNR representatives and the occupiers.<sup>1887</sup> She said she had no difficulty with MNR staff speaking to the occupiers.<sup>1888</sup> Moran’s understanding was that this could occur while the province simultaneously pursued an injunction in court.<sup>1889</sup> Similarly, Scott Patrick recalled that at the meeting it was reported that the OPP were going to ask the

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<sup>1882</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 46-47.

<sup>1883</sup> Cross-examination of Elizabeth Christie by Mr. Rosenthal, September 27, 2005, pp. 182-83.

<sup>1884</sup> Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 214. See also p. 234.

<sup>1885</sup> Examination in chief of David Moran, October 31, 2005, p. 221.

<sup>1886</sup> Examination in chief of Ron Fox, July 12, 2005, p. 30.

<sup>1887</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 31. Elizabeth Christie testified that the meeting was informed that, “The OPP was planning to have a meeting with...Bert Manning at...noon on that day. So far they had no demands.” See Examination in chief of Elizabeth Christie, September 26, 2005, p. 128.

<sup>1888</sup> Cross-examination of Deb Hutton by Ms. Twohig, November 22, 2005, p. 201.

<sup>1889</sup> Examination in chief of David Moran, October 31, 2005, p. 221.

occupiers to leave the Park that day, and that the OPP hoped “to determine demands” of the occupiers.<sup>1890</sup>

Scott Hutchison accepted that it was “a standard approach” for government not to enter into substantive negotiations.<sup>1891</sup> “If somebody said whatever you do...don’t even think about negotiating of any kind, I would have noted that.”<sup>1892</sup> He said,

The only specific recollection I have in this regard was that there wasn't a desire to get involved with negotiations involving third-parties, in other words, bringing in other distinguished aboriginal leaders to participate in a negotiation. I...recall that.<sup>1893</sup>

Hutchison said he did not know “that you would necessarily never refer to negotiations again and it wouldn't necessarily ever be part of the options, but it's fairly clear that there's some direction that's come down that that's not an option that, at least, at the beginning of the advice giving process, is one that they're particularly interested in hearing about”.<sup>1894</sup> Asked whether this position took negotiation “off the table”, he said,

I don't know that I'd go as far to say it takes it...off the table, but I would agree with you that it certainly signals a desire that other options be given higher priority. It -- it's not unheard of for a politician to start off with a particular view and ultimately get persuaded by the civil service that a different -- that, in fact, they're wrong...or that it's in their own interest or in the interest of good government to proceed down the path that they initially discounted.<sup>1895</sup>

## **(5) THE OCCUPIERS' RATIONALE**

Elizabeth Christie testified that the meeting was informed that Bert Manning had said “that the park land is theirs and that the land is a burial site”.<sup>1896</sup> ONAS lawyer Eileen Hipfner

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<sup>1890</sup> Examination in chief of Scott Patrick, October 18, 2005, p. 79; Exhibit P-517. See also p. 97: “...[M]y thought on that is that there wasn’t a great deal of information coming from those that were on the scene. And there was to be a meeting later...in the day.”

<sup>1891</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, pp. 49-50: “...[Y]ou don’t negotiate the underlying complaint or grievance. You do negotiate ways to get out of a particular confrontation and you, for example, offer another forum where a particular grievance could be presented.” See also Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, p. 125: “I know there was a reluctance to be seen to be negotiating anything substantive...”

<sup>1892</sup> Cross-examination of Scott Hutchinson by Ms. Perschy, August 29, 2005, p. 91.

<sup>1893</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 218-19: “[T]here was some discussion and I believe the discussion, sort of, ended when this kind of comment was made.” See also Cross-examination of Scott Hutchison by Mr. Roy, August 30, 2005, pp. 35-39.

<sup>1894</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, p. 220.

<sup>1895</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, pp. 221-22. See also Cross-examination of Scott Hutchison by Mr. Horton, August 29, 2005, p. 258: “[I]t’s not unheard of to have political staff come and...represent a particular view and you turn around and when you finally option it out and it makes its way in the ordinary course, the minister takes a different position.”

<sup>1896</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 128. Scott Patrick said that during the meeting he did not learn of any demands of the occupiers, but only “references to the existence of a burial site

recalled that statements reported to have been made by the occupiers were “bald assertions, completely unsupported by any other information”.<sup>1897</sup> Julie Jai was cross-examined on this point:

Q: But the first point which is that a claim was being asserted in the form of, It's our land and there's a burial site there, certainly, clearly, was being put forward; is that fair?

A: Well, I'd have to say that it wasn't clearly communicated to anyone in government. I mean they may have been overheard saying this, but there was no actual communication with them and they didn't go the meeting that the OPP had set up at noon or, you know, clearly articulate, you know, what their demands were. And, in fact, all of these notes, you know, the very first thing it says, they have made no demands but have said that the Park is their land and that the land is a burial site. So it's not...if this, in fact, was their way of making a claim or asserting an interest in the land it was a rather unclear way of doing it...<sup>1898</sup>

Tim McCabe also recalled that there was “an occupation of the Park...without demands having been made”.<sup>1899</sup> He believed this was “unusual”.<sup>1900</sup> He said he was not informed of a “claim for a burial ground”, but only a statement that, “We’re glad to have our burial ground back.”<sup>1901</sup> He said the allegation of a burial site had no effect, in his view, on “the appropriateness or otherwise of...the granting of an injunction”.<sup>1902</sup>

Scott Hutchison testified that “[P]eople responsible for having such opinions or presenting such opinions, took the view that to the extent there was any claim, it was either a weak one or not one that was enforceable in the hands of the particular occupiers.”<sup>1903</sup> These people were “fairly quick and confident that – that there wasn’t such a right”.<sup>1904</sup> Eileen Hipfner testified:

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and a reference to, it’s our Park or we own the Park or something along these lines”: see Re-examination of Scott Patrick, October 18, 2005, p. 159.

<sup>1897</sup> Examination in chief of Eileen Hipfner, September 15, 2005, p. 108. See also p. 142:

You know, on September the 5th we had no information about why they had occupied the Park and on September the 6th all we had were...two statements that...without any further elaboration, no information concerning what...underpinned...those assertions.

Similarly, Deb Hutton testified that she did not believe that on September 5 and 6 the IMC knew the underlying issues of the occupation: see Examination in chief of Deb Hutton, November 21, 2005, p. 221.

<sup>1898</sup> Cross-examination of Julie Jai by Mr. Klippenstein, September 13, 2005, pp. 283-84.

<sup>1899</sup> Examination in chief of Tim McCabe, September 28, 2005, pp. 84-85.

<sup>1900</sup> Examination in chief of Tim McCabe, September 28, 2005, pp. 84-85.

<sup>1901</sup> Cross-examination of Tim McCabe by Mr. Rosenthal, September 29, 2005, pp. 228-31.

<sup>1902</sup> Examination in chief of Tim McCabe, September 28, 2005, pp. 78-79. Tim McCabe initially testified that he did not recall whether an allegation of a burial site in the Park was raised in the September 6 IMC meeting: see Examination in chief of Tim McCabe, September 28, 2005, p. 78. At a later date his notes of the meeting were produced. They include the notation, “Have said there is a burial ground”: see Examination in chief of Tim McCabe, February 13, 2006, p. 141. No suggestion is made in these submissions that McCabe knew or should have known of these notes prior to his initial attendance to testify.

<sup>1903</sup> Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, pp. 182-84. Julie Jai testified that this was “consistent with the general tenor of the discussion”: see Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 55.

<sup>1904</sup> Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, p. 183.

...[T]he individuals who occupied the Park from my perspective had no, we'll say, standing, to assert an interest in land on behalf of the First Nation. And it's not clear either to me that they could have dealt on their own. In fact, I don't think they could have discussed on their own, what to do about a burial site either. Under the *Cemeteries Act*, the owner of land must...deal with the First Nation.<sup>1905</sup>

Eileen Hipfner also stated,

Aboriginal interests in land are communal in nature and as a result, assertions about entitlement to land -- and I don't think there's any dispute about this...among land claim practitioners that assertions of interests in land must be asserted by the...legitimate representatives of the community. And that's usually, in fact always, I think, the Chief and Council because they have the ability both to represent the community; to negotiate on behalf of the community and to enter into...binding agreements and settlements concerning the disposition of those lands. So, I think one of the difficulties that the Committee faced, and I don't remember...how much of a discussion there was about this point, was that the group of people who had occupied the Park were perhaps not, in any event, a group of people...with whom we could have held substantive discussions, even if we understood...what their assertions were about.<sup>1906</sup>

Scott Hutchison said that although, “[T]he question of colour of right was, sort of, floating out there”, “it wasn’t necessarily perceived as being that realistic”.<sup>1907</sup> He said “the issue with respect to the burial site, from my perspective, as I understood the conclusion of that discussion, was that it didn’t interfere or create a colour of right defence”.<sup>1908</sup> Deb Hutton recalled understanding that colour of right was not applicable because of Ontario’s clear ownership of the Park.<sup>1909</sup>

On September 6 Julie Jai received a further legal memorandum outlining the law regarding the protection of aboriginal burial sites.<sup>1910</sup> She could not recall whether she received it before or after the IMC meeting.<sup>1911</sup> At the meeting the author of the memorandum reviewed the province’s obligations regarding burial sites.<sup>1912</sup> Although he observed that those

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<sup>1905</sup> Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 213.

<sup>1906</sup> Examination in chief of Eileen Hipfner, September 15, 2005, p.141.

<sup>1907</sup> Cross-examination of Scott Hutchison by Ms. Esmonde, August 29, 2005, p. 195.

<sup>1908</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, pp. 74-75, 76.

<sup>1909</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 223-24; Examination in chief of Deb Hutton, November 22, 2005, pp. 73-74; Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 268-69,. This was the same view held by Incident Commander Carson. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 193-94.

<sup>1910</sup> Exhibit P-652; Examination in chief of Julie Jai, August 31, 2005, p. 128.

<sup>1911</sup> Examination in chief of Julie Jai, August 31, 2005, pp. 128-29.

<sup>1912</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 130-32.



obligations did not “detract in any way from Ontario’s title to land”,<sup>1913</sup> David Moran recalled that at the September 6 meeting it was again expressed that,

...the burial ground was not just cause for a land claim. And...in terms of...the burial ground that the appropriate steps to be would be to properly preserve the...site and provide the...natives with the support to protect their culture. And in terms of the land claim...we had a discussion about what the appropriate process was for the filing of the land claim, that if...there was a land claim then this was how it should go. But, to our knowledge there was no either grounds for a claim or none that had been filed with the Province.<sup>1914</sup>

Similarly, Jeff Bangs recalled discussions that if there was evidence to suggest there was a burial site in the Park, there was an available process under the *Cemeteries Act* to ensure that it was protected.<sup>1915</sup> He said that at the September 5 and 6 IMC meetings questions were asked if “anyone in any of the ministries knew of the possible existence” of information regarding a burial ground in the Park, and “the answer was no”.<sup>1916</sup> Elizabeth Christie recalled it being reported that Chief Bressette “was actually of the view that there was no burial site in the Park”.<sup>1917</sup>

Deb Hutton testified that she “would have considered a discussion of protecting and respecting the burial ground to be of a substantive nature and therefore that process would wait until the occupation ended.”<sup>1918</sup> She said, “[I]f the Government were to begin discussions about protecting and respecting a burial ground while the occupation was taking place, that's exactly the kind of response that I think could have the potential to encourage others to take a similar course of action to encourage discussions of...their concern with the Government.”<sup>1919</sup> Julie Jai testified that the possibility that a burial ground in the Park required protection was,

...kind of a second order issue that we wouldn't have even gotten to. If we'd gotten to the point of having discussions with the occupiers and they then said there are these, you know, this is the reason we are occupying or there are these two or three reasons, then we would have tried to reach agreement about a process to deal with those issues. And in that separate process, we would have done investigation about the alleged burial ground.

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<sup>1913</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 131.

<sup>1914</sup> Examination in chief of David Moran, November 1, 2005, p. 15. Similarly, Deb Hutton testified that it was important to her that she received information that “regardless of the potential if in fact that was part of the concern or if in fact there was proof to support that point that it did not have any bearing on the ownership of the Park”: see Examination in chief of Deb Hutton, November 21, 2005, p. 214. She would have felt this “was going to encourage more behaviour of an illegal nature potentially instead of support the notion of ending this in...a safe way”: see p. 236.

<sup>1915</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005. pp. 122-23. Deb Hutton recalled this as well: see Examination in chief of Deb Hutton, November 21, 2005, p. 214.

<sup>1916</sup> Examination in chief of Jeff Bangs, November 3, 2005. pp. 108-09.

<sup>1917</sup> Cross-examination of Elizabeth Christie by Mr. Roy, September 27, 2005, p. 319.

<sup>1918</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 234-35.

<sup>1919</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 235.

But, even so, that would have been a separate process. That wouldn't have been part of the negotiations around the end of the occupation.<sup>1920</sup>

Deb Hutton also recalled that one of the potential rationales suggested was frustration with the federal government regarding the return of CFB Ipperwash.<sup>1921</sup>

## **(6) THE CONSENSUS OF THE MEETING**

Julie Jai testified that the September 6 meeting, like the September 5 meeting, concluded with a consensus recommendation.<sup>1922</sup> She said that recommendation was to apply for a civil injunction as soon as possible, but not an *ex parte* injunction.<sup>1923</sup> Julie Jai testified that although the recommendation was not to proceed without notice, there was agreement at the meeting that the occupiers would be provided with a shorter period of notice than that provided by rules of court in ordinary cases, and the government would be in court in less than 48 hours, on Friday.<sup>1924</sup> Tim McCabe commented that if the occupiers sought an adjournment of the injunction hearing on Friday, the government would “argue for an interim interlocutory injunction”.<sup>1925</sup>

Deb Hutton testified that by the end of the September 6 IMC meeting she was fully supportive of pursuing an injunction.<sup>1926</sup> She understood that an injunction would be sought as soon as possible, and that the lawyers would proceed on an *ex parte* basis if they considered it to be feasible to do so.<sup>1927</sup> She would have preferred the government to be in court prior to Friday, since she was concerned about time “slippage”,<sup>1928</sup> resulting in a court hearing not being held until the following week.<sup>1929</sup>

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<sup>1920</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, pp. 53-54.

<sup>1921</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 224-25.

<sup>1922</sup> Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 14.

<sup>1923</sup> Examination in chief of Julie Jai, August 31, 2005, p. 76.

<sup>1924</sup> Examination in chief of Julie Jai, August 31, 2005, pp. 93-94, 110; see also Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 115. David Moran recalled, “[T]he agenda that we were all working on, in terms of a practical sense was Friday.” See Cross-examination of David Moran by Mr. Klippenstein, November 1, 2005, p. 182. Scott Patrick testified, supported by his contemporary note, that McCabe considered the “best case” would be an injunction hearing on Friday: Examination in chief of Scott Patrick, October 17, 2005, p. 87; Exhibit P-517; Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, pp. 127-29.

<sup>1925</sup> Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 129. Tim McCabe did not recall this in the course of his testimony, although he did not dispute that it was his intention: see Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, pp. 158-59.

<sup>1926</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 26; see also Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 236-37.

<sup>1927</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 57.

<sup>1928</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 13; Cross-examination of Deb Hutton by Ms. Twohig, November 22, 2005, p. 210.

<sup>1929</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 12-13.

David Moran testified that the consensus of the IMC on September 6 was to seek an injunction “as expeditiously as possible”.<sup>1930</sup> Similarly, Scott Hutchison testified that at the September 6 meeting “there was a consensus that an injunction should be sought”,<sup>1931</sup> and that this recommendation should be made.<sup>1932</sup> He did not think there was a “crystallized consensus about whether or not it should be *ex parte* or on notice”.<sup>1933</sup> Similarly, Jeff Bangs recalled, “[E]veryone of course wanted the situation resolved somehow...as quickly as possible”, but there was discussion “whether we could wait until Friday or the following week or perhaps doing something sooner”.<sup>1934</sup>

Kathryn Hunt recalled that there was “some consensus that we would move forward with an injunction”.<sup>1935</sup> Scott Patrick testified that his impression was that, “[T]here was a consensus amongst those that favoured the approach that Superintendent Fox was advocating in conjunction with an injunction in the normal course. But...my impression was that there was less of a consensus from others...on that approach.”<sup>1936</sup> He did not think that everyone had “decided on a path that was to be followed”.<sup>1937</sup>

## **(7) FURTHER STEPS**

At the conclusion of the meeting, Tim McCabe advised that if the injunction was obtained two days later, on Friday, the sheriff could request the police to help enforce it. If the occupiers refused to leave the park, the government could go back to court to seek a further order that the occupiers were in contempt of the injunction.<sup>1938</sup> His colleague, Elizabeth Christie, testified,

...[O]nce you get a court order, that's not necessarily the end of the matter. And in the...experience of the people around the table, their experience had been that usually, in the rare, frankly rare, circumstances when injunctions were actually obtained by the government, that simply by virtue of having obtained the court order, the injunction, matters tended to diffuse quite quickly. And the OPP were often able to...hold that document up and...say, you know, we're just here doing our job. There's this court order,

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<sup>1930</sup> Examination in chief of David Moran, November 1, 2005, pp. 20-21. Moran thought this was also the consensus at the end of the September 5 IMC meeting.

<sup>1931</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 310; Cross-examination of Scott Hutchison by Mr. Smith, August 29, 2005, p. 25; see also Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, p. 115.

<sup>1932</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, pp. 71-72, 89.

<sup>1933</sup> Examination in chief of Scott Hutchison, August 25, 2005, p. 310.

<sup>1934</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, pp. 132-33.

<sup>1935</sup> Examination in chief of Kathryn Hunt, November 2, 2005, pp. 55, 61-62.

<sup>1936</sup> Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, p. 175.

<sup>1937</sup> Cross-examination of Scott Patrick by Mr. Horton, October 18, 2005, p. 122.

<sup>1938</sup> Examination in chief of Julie Jai, August 31, 2005, p. 95; Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 79; Contemporary handwritten note by Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, p. 129. In his testimony, Tim McCabe did not recall this, but did not dispute that this was discussed. He accepted that if an injunction was obtained and not complied with, consideration of a contempt proceeding would follow “as a matter of course”, and would involve service on the occupiers: Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, pp. 162-64.

if you don't go out now then things are going to happen. You're going to have to leave. But with any injunction you have to get the -- if the people -- if the occupiers continued to...stay in and refused to leave, then you would have to get an actual contempt order.<sup>1939</sup>

David Moran recalled that his understanding was that once the injunction was granted and in the hands of the OPP, “[H]ow they enforced it was going to be up to them.”<sup>1940</sup> Jeff Bangs’ and Deb Hutton’s recollection was the same.<sup>1941</sup> Scott Patrick testified that it was going to be up to the OPP to determine how service of an injunction was effected.<sup>1942</sup> Tim McCabe said that the enforcement of the order was not discussed.<sup>1943</sup> Eileen Hipfner testified that

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<sup>1939</sup> Cross-examination of Elizabeth Christie by Mr. Downard, September 26, 2005, pp. 194-95. See also Cross-examination of Elizabeth Christie by Mr. Klippenstein, September 27, 2005, p. 63:

...[C]ertainly the Committee had been made aware of the fact that by virtue of obtaining the injunction wasn't necessarily going to result in...the departure of the First Nations people from the Park. So, it certainly...seemed to be a tool. It was certainly a tool in the...group of tools...that could be used to try and expedite things as quickly as possible, for sure.

See also p. 149: “[Y]ou get the order and the protesters may not actually leave the park, and then it may take you three, four, five, six, eight, 10, 12 days, or however many days to...actually fully execute the...order...the actual order for the protesters to leave the park.”

<sup>1940</sup> Cross-examination of David Moran by Mr. Klippenstein, November 1, 2005, p. 195. Moran said he hoped that with “the power of the courts behind them, that people would recognize that really they...had to get out of the Park”. He said he did not think “it was anyone’s intention that there be any sort of physical force”, but subsequently acknowledged (at p. 197) that, “[W]e did know...that if they didn’t leave voluntarily then there could be potential problems down the road.” See also Cross-examination of David Moran by Mr. Ross, November 1, 2005, p. 274: “The only position that we had was that we were going to seek an injunction.”

<sup>1941</sup> Cross-examination of Jeff Bangs by Mr. Zbogar, November 3, 2005, pp. 279-81; Examination in chief of Deb Hutton, November 21, 2005, p. 240; Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 226-27, 235-36. The notion of the occupiers removing themselves voluntarily after the granting of an injunction was considered a possibility, although that was not regarded as highly likely: Examination in chief of Deb Hutton, November 21, 2005, pp. 241-43; Cross-examination of Deb Hutton by Mr. Klippenstein, pp. 234-35.

<sup>1942</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 85; Exhibit P-517.

<sup>1943</sup> Cross-examination of Tim McCabe by Mr. Klippenstein, September 29, 2005, pp. 24-25. The cross-examination continued (at pp. 27-29):

Q: Yeah. Had you thought about enforcement or implementation of the order that you were instructed to seek in the context of September 6th and 7th in any detail?

A: No. I don't think I...considered the matter in any detail. I'm sure it crossed my mind that there is...as you put it, this second stage to the matter that is...going to have to occur.

[...]

Q: And did you think at all about -- I should say at all -- did you give any consideration, significant consideration, that you can recall, to the question of whether the injunction that you would obtain if you were successful, how that would be implemented in the period that Ms. Hutton conveyed from the Premier, a day or two, or the 24 hour period we've seen in Mr. Taman's notes?

A: I, you know, I can't remember giving that any...specific consideration. You know, knowing my failings and what not, I probably would have consigned that to the category of something to do when we reach that bridge.

[...]

Q: Yes. And had you made any specific plans, you or Ms. Christie to your knowledge, made any specific plans about what would happen when you got the injunction in terms of either dealing with the sheriff or dealing with the OPP for enforcing the order?

enforcement of the injunction “would be a decision to be taken by the sheriff and...the OPP who would be responsible for enforcing the injunction”.<sup>1944</sup>

Jeff Bangs pointed out to the meeting that Chris Hodgson had dealt with the media the previous day as requested, but did not wish be the government’s spokesperson any longer.<sup>1945</sup> It was Bangs’ view that the matter was “spiraling out” of the MNR’s hands, because of what was happening on the ground at Ipperwash, and because the occupation was “an escalating situation that had broader implications than just the Ministry of Natural Resources”.<sup>1946</sup> In his testimony Chris Hodgson confirmed that this was his view,<sup>1947</sup> and that it was a position recommended to him by his Deputy Minister, Ron Vrancart.<sup>1948</sup>

## (9) “USE GUNS IF YOU HAVE TO”

Around 11:00 a.m. on September 6, Bob Watts, a consultant with respect to First Nations matters who had previously worked at ONAS, received a telephone from Leslie Kohsed-Currie, an ONAS employee.<sup>1949</sup> Kohsed-Currie informed Watts that at a meeting of the IMC about the

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A: No....I think at...that stage events would have -- you know, it wouldn't be my call or Ms. Christie's call as to what to do with the...injunction order at that point. I mean, I think our...concern, if...an order was granted, we would convey that information to...our ministry and await further events.

<sup>1944</sup> Cross-examination of Eileen Hipfner by Mr. Alexander, September 19, 2005, p. 232.

<sup>1945</sup> Examination in chief of Jeff Bangs, November 3, 2005, pp. 77-78; Examination in chief of Julie Jai, August 31, 2005, pp. 86-87; Contemporary handwritten notes of Eileen Hipfner, Exhibit P-636; Examination in chief of Eileen Hipfner, September 15, 2005, pp. 112-13; David Moran also recalled this, and had the impression that there was “reluctance on behalf of the Ministry of Natural Resources to be at the forefront of a rather difficult situation”: see Examination in chief of David Moran, October 31, 2005, p. 216. See also Examination in chief of Elizabeth Christie, September 26, 2005, pp. 137-38.

<sup>1946</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, pp. 130-31.

<sup>1947</sup> Examination in chief of Chris Hodgson, January 10, 2006, pp. 101-03, 110-11. See p. 102:

I said it hadn't been our issue all of August, that ONAS was in charge of First Nation relations, the OPP were monitoring the situation on the ground and were in charge there, that I didn't feel that it was my responsibility to be the Government spokesperson on issues that we had no control over or say on.

See also pp. 131-32. Hodgson's Deputy Minister, Ron Vrancart, recalled advising Hodgson that he did not think the occupation of the Park “was our issue”: see Examination in chief of Ron Vrancart, October 27, 2005, p. 30.

<sup>1948</sup> Examination in chief of Chris Hodgson, January 10, 2006, p. 103. Ron Vrancart confirmed this. See Examination in chief of Ron Vrancart, October 27, 2005, p. 33:

I was of the opinion that, because the OPP had become involved in this case and...it appeared that this issue was...going to linger, my...intuition told me that, as a Deputy Minister, sometimes you have the instinct to want to protect your Minister from getting into situations that may not reflect positively either on him or on his Ministry, and my intuition told me...that this was a situation where, perhaps, it would be best for the Minister to duck this one and to have one of his colleagues, either the...Attorney General or the Solicitor General take the lead on this.

Q: And did he follow that advice?

A: He...did take that advice.

See also p. 42.

<sup>1949</sup> Examination in chief of Leslie Kohsed-Currie, October 17, 2005, pp. 9-10.

Ipperwash matter, Deb Hutton had made the statement, “Get those fucking Indians out of the Park and use guns if you have to.”<sup>1950</sup> Watts said Kohsed-Currie identified her source as Julie Jai.<sup>1951</sup>

Bob Watts promptly called Chief Tom Bressette on the telephone and told Bressette of what he had heard. Bressette subsequently spoke to a local radio station, which broadcast Bressette’s concerns about the continuation of the occupation. The actual content of the broadcast is not in evidence.

Leslie Kohsed-Currie testified before this Inquiry. She was not a persuasive witness. She said she was “very shocked” and upset when she heard of the alleged statement, but she could not recall from whom she heard about it.<sup>1952</sup> She said she could not recall who told her but was able to specify many people who, she said, did not tell her of the alleged statement. In that respect she specifically ruled out individual participants in the September IMC meetings, including Julie Jai.<sup>1953</sup> When it was suggested to her in cross-examination that the shocking nature of the alleged statement would ordinarily allow one to recall who told it to her, she provided a lengthy and unresponsive answer about the government’s policy approach to the Ipperwash situation.<sup>1954</sup> She said she could not recall when she heard about the alleged statement. The only thing she said she could recall about the person who informed her of the statement was that the person was “a reliable source”.<sup>1955</sup> She accepted in cross-examination that this sole characteristic of her source was one which would justify her conduct in informing Bob Watts of the alleged statement.<sup>1956</sup>

Deb Hutton emphatically denied ever making the alleged statement.<sup>1957</sup> Not a single participant in the IMC meetings testified that any such thing was said. Julie Jai testified that she never told Kohsed-Currie or anyone on September 6 about any such words being spoken, “because those words had not been used at the meeting”.<sup>1958</sup> More broadly, Jai said she did not hear anyone attribute that statement or something close to it to the Premier, at any time in the period of September 5 through 7.<sup>1959</sup> Scott Hutchison said he never heard “Get those fucking Indians out of the park” and use guns if necessary.<sup>1960</sup> He said that if such words had been spoken they would have been “flying in the face” of his advice to the meeting, and he would

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<sup>1950</sup> Examination in chief of Bob Watts, March 8, 2005, p. 41.

<sup>1951</sup> Examination in chief of Bob Watts, March 8, 2005, p. 42.

<sup>1952</sup> Examination in chief of Leslie Kohsed-Currie, October 17, 2005, p. 24; Cross-examination of Leslie Kohsed-Currie by Mr. Downard, October 17, 2005, pp. 32-33.

<sup>1953</sup> Examination in chief of Leslie Kohsed-Currie, October 17, 2005, pp. 15-24.

<sup>1954</sup> Cross-examination of Leslie Kohsed-Currie by Mr. Downard, October 17, 2005, pp. 34-35.

<sup>1955</sup> Examination in chief of Leslie Kohsed-Currie, October 17, 2005, p. 24.

<sup>1956</sup> Cross-examination of Leslie Kohsed-Currie by Mr. Downard, October 17, 2005, pp. 36-37.

<sup>1957</sup> Examination in chief of Deb Hutton, November 21, 2005, p. 241.

<sup>1958</sup> Examination in chief of Julie Jai, August 31, 2005, p. 126.

<sup>1959</sup> Cross-examination of Julie Jai by Mr. Rosenthal, September 14, 2005, p. 143.

<sup>1960</sup> Examination in chief of Scott Hutchison, August 25, 2005, pp. 312-13: “I certainly never heard that. I would have – remember I talked about appropriate and inappropriate? And if...I’d heard her say that I would have perceived that as being inappropriate in terms of the – even if you sort of leave out the issue of language.”

have made a note of it and reported it.<sup>1961</sup> Eileen Hipfner denied ever hearing the alleged statement.<sup>1962</sup> David Moran did not hear any such words and said he would remember it if he had.<sup>1963</sup> Jeff Bangs testified to the same effect.<sup>1964</sup> Tim McCabe said the same thing.<sup>1965</sup> Scott Patrick did not hear them.<sup>1966</sup> Elizabeth Christie said she did not hear them, and that she “would most certainly recall that if I heard it”.<sup>1967</sup> Shelley Spiegel testified that she did not hear those words or words to that effect.<sup>1968</sup> Ron Fox testified that he did not hear them, and that he believed he would recall it if he had.<sup>1969</sup>

It is respectfully submitted that this Commission should find that the information communicated to Bob Watts by Leslie Kohsed-Currie was false.

## **(10) THE “VOICE OF THE PREMIER”**

*From “Ippeewash probe calls final witness”, The Toronto Star, June 29, 2006:*

In an often-scorching cross-examination, lawyer Julian Falconer, who represents Aboriginal Legal Services of Toronto, noted that Hutton said “I don’t recall” or words to that effect 134 times in just one day on the stand.

In the course of the hearings Deb Hutton was on numerous occasions described as “the voice of the Premier” by counsel who took positions adverse to her.<sup>1970</sup> This sound bite characterization – as if the witness was a loud hailer or other mere communications tool – was typical of the discourteous manner in which some counsel dealt with her. Hutton was asked in cross-examination whether she is a member of the Conservative Party.<sup>1971</sup> She was cross-

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<sup>1961</sup> Cross-examination of Scott Hutchison by Mr. Downard, August 29, 2005, pp. 19-21; see also Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 94. See also Cross-examination of Scott Hutchison by Mr. Klippenstein, August 29, 2005, p. 127: “Sometimes, for example, the reference to Indians and using guns. I don’t recall that being said and I’m fairly certain that – that absence of a recollection because I – I didn’t hear somebody say that.” See also pp. 128-29.

<sup>1962</sup> Examination in chief of Eileen Hipfner, September 15, 2005, p. 145. See also Examination of Eileen Hipfner by Ms. Twohig, September 20, 2005, pp. 129-30.

<sup>1963</sup> Examination in chief of David Moran, November 1, 2005, pp. 19-20.

<sup>1964</sup> Examination in chief of Jeff Bangs, November 3, 2005, pp. 90-91; 54-55 (re September 5 IMC meeting).

<sup>1965</sup> Cross-examination of Tim McCabe by Mr. Downard, September 28, 2005, pp. 164-65.

<sup>1966</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 96.

<sup>1967</sup> Examination in chief of Elizabeth Christie, September 26, 2005, p. 144.

<sup>1968</sup> Examination in chief of Shelley Spiegel, September 21, 2005, p. 115.

<sup>1969</sup> Cross-examination of Ron Fox by Ms. Perschy, July 14, 2005, p. 50.

<sup>1970</sup> The phrase was initially used by Ron Fox to describe Deb Hutton at the September 5 IMC meeting. See Examination in chief of Ron Fox, July 11, 2005, p. 208: “She spoke as if she were the voice of the Premier. I believe that’s what I would have used in my conversation with John Carson, the word is ‘empowered’.”

<sup>1971</sup> Cross-examination of Deb Hutton by Mr. Horton, November 23, 2005, p. 164. This was presaged by the following exchange, at pp. 152-53:

Mr. Peter Downard: ...[M]y only concern is that it sounded like he was just about to ask her almost whether she is now, or ever has been, a member of the Conservative Party.

Commissioner Sidney Linden: Well --

examined as to the fact that she is married to a politician.<sup>1972</sup> She was cross-examined as to the amount of her personal income from a job she held after serving in government, and which she does not hold today.<sup>1973</sup> Far more than any other witness, she was hectorred by speeches from counsel that her evidence was “unbelievable”<sup>1974</sup> and irrelevant,<sup>1975</sup> and that her “truthfulness is very much an issue”.<sup>1976</sup>

The *Star*’s report of this point, which it regarded as one of the highlights of the entire Inquiry, was not accurate. It exaggerated the record to Hutton’s prejudice – the reference by counsel was in fact to testimony over two days.<sup>1977</sup> Counsel’s related question – “Is there any organic problem?”<sup>1978</sup> - was found to have been “offensive” by this Inquiry.<sup>1979</sup> This did not stop counsel from continuing to refer to “135 times, I don’t recall”,<sup>1980</sup> “whatever memory failings you have”,<sup>1981</sup> and “we’re bound to get 136 or 137 I don’t recalls”.<sup>1982</sup>

The ‘134 times’ attack – another sound bite - was a cheap shot. It was reserved solely for Deb Hutton, but she was hardly unique among the witnesses. Julie Jai, for example, testified in chief over two days. Unlike Hutton, she had the assistance of detailed notes and memoranda that she had made at the time of the events. In her examination in chief she said she did not recall a matter, or words to that effect, 148 times. Robert Runciman’s Executive Assistant, Kathryn Hunt, testified in this Inquiry for a much shorter period of time, about four hours. During her evidence she said 135 times that she could not recall a matter. We would not suggest that the evidence of Jai and Hunt should be disbelieved on this basis.

Deb Hutton’s limited recollection of discussions on September 5 and 6 was reasonable. As counsel for the OPP observed, she testified regarding events 10 years past, without having her own notes of the events.<sup>1983</sup> As at 1995, she had worked for the Premier for five years, and had

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Mr. Peter Downard: And that she's trying -- and that his line of questioning suggests that she is biased because of her political allegiance. And I simply want to make this -- the submission, which I doubt you would disagree with, sir --

Commissioner Sidney Linden: Yes.

Mr. Peter Downard: That this is not a place where people's politics should be put on trial.

Commissioner Sidney Linden: Yes. I certainly agree with that and I don't think that's what Mr. Horton was doing.

Mr. William Horton: Commissioner, politics are at the bottom of this entire Inquiry.

<sup>1972</sup> Cross-examination of Deb Hutton by Mr. Horton, November 23, 2005, pp. 165-67.

<sup>1973</sup> Cross-examination of Deb Hutton by Mr. Horton, November 23, 2005, pp. 159-63.

<sup>1974</sup> Comment by Mr. Rosenthal, November 23, 2005, p. 230.

<sup>1975</sup> Comment by Mr. Rosenthal, November 23, 2005, p. 61.

<sup>1976</sup> Comment by Mr. Horton, November 23, 2005, p. 145.

<sup>1977</sup> Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, p. 223.

<sup>1978</sup> Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, p. 221.

<sup>1979</sup> Comment by Commissioner Linden, November 23, 2005, pp. 225-26.

<sup>1980</sup> Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, p. 242.

<sup>1981</sup> Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, p. 245.

<sup>1982</sup> Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, p. 307.

<sup>1983</sup> Cross-examination of Deb Hutton by Ms. Tuck-Jackson, November 22, 2005, p. 178.



contact with him throughout that period on virtually a daily basis.<sup>1984</sup> She explained that she did not specifically recall her discussions with the Premier regarding Ipperwash because they spoke so often on many issues.<sup>1985</sup> She expanded on this:

I spoke with Mr.Harris, with minor exceptions, every single day that I worked for him and sometimes that included vacations, both his and mine; not only every day but numerous, numerous times. While this was a significant issue for us during that period of time, it would be, by no means, the only issue that I was dealing with him on. I can't recall the specifics, but I would feel confident in suggesting that even when we discussed this important issue, there were probably many other things involved in those conversations as well. It was just the general routine of government, not only in the early days but quite frankly throughout my...five years in government.<sup>1986</sup>

In his testimony, former Deputy Attorney General Larry Taman was asked whether in his experience, political aides would indicate that they were speaking on behalf of their minister. He answered,

I think it's a very common feature of government for anybody who's ever worked there that everybody claims the greatest possible authority they can for their own opinions. And so it would be a very common feature of government for someone to tell you something and to tell you that their director, their ADM, their deputy minister, their minister, the Premier, depending on the circumstances, wanted such and so to happen and for you to find out subsequently that the person invoked had no idea what this particular person was talking about at all. So it's kind of a way of speaking in government. Everyone says, my boss wants this

Q: And over time I take it you learn that perhaps some do and some don't.

A: Yeah, I think over time you learn that some do and some don't and over time you learn to find out for yourself if it's important.<sup>1987</sup>

Deb Hutton accurately reflected the Premier's views, and she truthfully testified in this Inquiry.

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<sup>1984</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 76, 78. See also p. 116:

It was very common, in fact I would say more than common, probably routine, for the Premier and I to speak most days. The media writes every day and issues happen every day and so even on the weekends and to a certain extent while he was on vacation, we would speak every day at some point just really as a, you know, what's happening, what do I need to know about, kind of conversation.

See also pp. 117, 159. See also Examination in chief of Mike Harris, February 14, 2005, p. 79.

<sup>1985</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 232-33.

<sup>1986</sup> Cross-examination of Deb Hutton by Mr. Rosenthal, November 23, 2005, pp. 23-24. See also Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, p. 246: "I spoke with Mr. Harris, particularly when I worked for him, several times every day on a wide variety of issues."

<sup>1987</sup> Examination in chief of Larry Taman, November 14, 2005, pp. 40-41.

## CHAPTER 13

# THE PREMIER'S DINING ROOM

### 13.01 THE PREMIER'S DINING ROOM

A regularly scheduled Cabinet meeting was held on the morning of September 6. Deb Hutton believed that after the September 6 IMC meeting she would have gone to sit in on the end of the Cabinet meeting. She also wanted to ensure that the Premier and relevant ministers were “all on the same page” regarding the takeover of the Park.<sup>1988</sup>

Mike Harris testified that at the Cabinet meeting there may have been “a one or two minute update for the ministers”.<sup>1989</sup> He said that at that point there had been a decision that the relevant ministers would discuss the matter following the Cabinet meeting.<sup>1990</sup> Ipperwash was not on the Cabinet agenda.<sup>1991</sup> Deb Hutton testified that Cabinet agendas are set many days in advance, and that the agenda for the September 6 meeting would have been set well prior to the commencement of the takeover of the Park.<sup>1992</sup>

At the conclusion of the Cabinet meeting there was a small gathering in a dining room adjacent to the Premier's Office, down the hall from the Cabinet room.<sup>1993</sup> The room was also described as an “anteroom”.<sup>1994</sup> Deb Hutton said, “It just seems to me to be logical that if each of us were looking for final confirmation from our individual Ministers, in my case the Premier, and that's where they were, it makes some sense that we'd come together and have one conversation instead of four.”<sup>1995</sup> She added that, “[I]t would be very common: to “convene a group and say, Okay well let's all get in the same room and...have this discussion once.”<sup>1996</sup>

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<sup>1988</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 77.

<sup>1989</sup> Examination in chief of Mike Harris, February 14, 2005, p. 114. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 244: “I believe I've indicated that...somebody had suggested that the relevant ministers meet. I think I probably informed all of Cabinet that there would be a meeting afterwards of the relevant ministers. Whether I got a note sent in to me to that effect or not I don't know and so I...think that is consistent with my understanding, yes.”

<sup>1990</sup> Examination in chief of Mike Harris, February 14, 2005, p. 114. See also pp. 115-16.

<sup>1991</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 235.

<sup>1992</sup> Examination in chief of Deb Hutton, November 21, 2005, pp. 258-59. She also said the government's short term response to the takeover of the Park would not have been a subject that would ordinarily be discussed at a full Cabinet meeting.

<sup>1993</sup> Examination in chief of Mike Harris, February 14, 2005, p. 126.

<sup>1994</sup> Examination of Scott Patrick by Ms. Tuck-Jackson, October 18, 2005, pp. 136-37; Re-examination of Scott Patrick, October 18, 2005, p. 158.

<sup>1995</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 85.

<sup>1996</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 86.

She said that “gatherings like this they're not formal meetings in the sense of regular Cabinet meetings or something like that, but they're certainly regular occurrences throughout government”.<sup>1997</sup> She said, “This to me, I think, at the time struck me as I said a few minutes ago, a convenient way to...do what I think needed to be done before we fully confirmed the Government's course of action in seeking an injunction.”<sup>1998</sup>

The Solicitor General, Robert Runciman, did not clearly recall how he received notice of the meeting, but he recalled the Premier “reminding us that we were having a brief meeting following the adjournment of Cabinet”.<sup>1999</sup> Although he was not sure, he believed it had been arranged by the Premier's Office.<sup>2000</sup> Mike Harris did not recall who had made the arrangements, but accepted that “it could very well have been called by my staff”.<sup>2001</sup> Chris Hodgson did not know who convened the meeting.<sup>2002</sup> Jeff Bangs believed it was arranged by the Premier's Office.<sup>2003</sup> David Moran believed the Premier's Office arranged the meeting.<sup>2004</sup> Kathryn Hunt did as well.<sup>2005</sup>

Larry Taman accepted that the meeting could have occurred “within minutes” of the completion of the IMC meeting at 11:45 a.m.<sup>2006</sup> He thought it occurred at about noon, but did not “know exactly from memory”.<sup>2007</sup> Jeff Bangs thought the meeting started “later in the lunch hour or after one o'clock”, but he did not recall “the exact start time”.<sup>2008</sup> Most of the witnesses who participated estimated the length of the discussion as about 15 minutes to half an hour.<sup>2009</sup>

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<sup>1997</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 86.

<sup>1998</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 86-87.

<sup>1999</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 127.

<sup>2000</sup> Cross-examination of Robert Runciman by Mr. Scullion, January 11, 2006, p. 217.

<sup>2001</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 233.

<sup>2002</sup> Examination in chief of Chris Hodgson, January 10, 2006, p. 168.

<sup>2003</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, p. 235. See also p. 237: “I don't know that he [the Premier] personally called the meeting. His staff certainly asked us to be there.”

<sup>2004</sup> Examination in chief of David Moran, November 1, 2005, pp. 25-26.

<sup>2005</sup> Cross-examination of Kathryn Hunt by Mr. Rosenthal, November 2, 2005, p. 148.

<sup>2006</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, pp. 105-06.

<sup>2007</sup> Cross-examination of Larry Taman by Mr. Sulman, November 15, 2005, p. 54; see also Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, p. 85.

<sup>2008</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 97. Elaine Todres thought the meeting took place around 11:00 a.m.: see Examination in chief of Elaine Todres, November 30, 2005, p. 49; Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, pp. 165-66; Cross-examination of Elaine Todres by Mr. Klippenstein, December 1, 2005, p. 30. Chris Hodgson thought it commenced around 1:30 or 1:45 p.m.: Examination in chief of Chris Hodgson, January 10, 2006, p. 169.

<sup>2009</sup> Robert Runciman thought the meeting was 20 to 30 minutes in length, and no longer than that: Examination in chief of Robert Runciman, January 9, 2006, p. 141. Chris Hodgson thought the meeting lasted “about 15 minutes”: Examination in chief of Chris Hodgson, January 10, 2006, p. 182. David Moran thought it lasted approximately 20 minutes: Examination in chief of David Moran, November 1, 2005, p. 30. Mike Harris thought it could have been as short as 15 or 20 minutes, but he did not think it lasted more than half an hour: Examination in chief of Mike Harris, February 14, 2005, p. 131. Elaine Todres estimated the length of the meeting as having been 45 to 50 minutes, but accepted it could have been closer to 15 to 20 minutes in length: Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, pp. 169-70. Jeff Bangs believed it lasted around an hour: Cross-examination of Jeff Bangs by Mr. Zbogor, November 3, 2005, p. 294.

Robert Runciman regarded the discussion as an “informal gathering”.<sup>2010</sup> Chris Hodgson regarded it as an “information session” rather than “a formal Cabinet meeting or anything like that”.<sup>2011</sup> Deb Hutton described it as an informal discussion.<sup>2012</sup>

Mike Harris recalled that it was “an informal gathering” to make sure “we all got the brief”.<sup>2013</sup> David Moran said he believed the “reason why we went up to brief the Premier was to make sure that he was supportive in approval of the direction that we were going”.<sup>2014</sup>

## 13.02 THE GOVERNMENT’S ROLE

The Deputy Solicitor General, Elaine Todres, testified that at the outset of the meeting she,

...felt an obligation to repeat what for many would have been obvious, but to repeat the point about what precisely is the role of the police, what is the role of the Solicitor General and the demarcation line between politician and operational instructions to police. To simply make it clear and put it on the table that we all knew that this was the policy but to remind us this was indeed, was the policy and we intended to observe it at this meeting.<sup>2015</sup>

She said she did this because she was dealing with “a new government” and, “I felt that that was my role at the meeting to...make that perfectly plain.”<sup>2016</sup> An internal memorandum reviewing the matter had been prepared by the Director of the Legal Branch of the Ministry of the Solicitor General and Correctional Services, although it was not distributed.<sup>2017</sup>

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<sup>2010</sup> Cross-examination of Robert Runciman by Ms. Johnson, January 11, 2006, p. 242.

<sup>2011</sup> Examination in chief of Chris Hodgson, January 10, 2006, p. 194.

<sup>2012</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 118.

<sup>2013</sup> Examination in chief of Mike Harris, February 14, 2005, p. 139; Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 17-18.

<sup>2014</sup> Cross-examination of David Moran by Ms. Perschy, November 1, 2005, p. 146.

<sup>2015</sup> Examination in chief of Elaine Todres, November 30, 2005, pp. 52-53; see also Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 201. Mike Harris testified:

...[T]he first one I recall speaking was Ms. Todres and that's the best I can tell you....my recollection is Ms. Todres spoke first...And...she talked about the...I think briefly the process, the Interministerial Committee, the...my best recollection was that she talked about the separation from politicians and police...and the importance of that.

See Examination in chief of Mike Harris, February 14, 2005, p. 130. See also Examination in chief of Deb Hutton, November 22, 2005, pp. 103-05.

<sup>2016</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 53. See also Cross-examination of Elaine Todres by Mr. Rosenthal, December 1, 2005, p. 117: “I just -- I had determined in my own mind that the role I had to fulfil was to prepare -- was to suggest, perhaps would have been redundant for everyone in the room, the level playing field upon which I believed we had to begin.” See also Cross-examination of Elaine Todres by Mr. Henderson, December 1, 2005, p. 120: “But I wanted to make sure that others in the room were very clear about what the established rules and statutory requirements were. And it was my first ever such meeting so that was the decision I chose to take.”

<sup>2017</sup> Exhibit P-594; Examination in chief of Elaine Todres, November 30, 2005, pp. 72-73.

Larry Taman confirmed that initially Elaine Todres spoke about the separation between police operational matters and the government.<sup>2018</sup> He accepted it was made very clear that the government could not direct the operations of the OPP.<sup>2019</sup> Charles Harnick's Executive Assistant, David Moran, also recalled Todres speaking "about the separation of the political side versus the police officers".<sup>2020</sup> He accepted that she did this at an early stage of the meeting, and that she "made the ground rules for the situation quite clear".<sup>2021</sup>

Mike Harris recalled that, "[M]y recollection is Ms. Todres spoke first...and she talked about...I think briefly the process, the Interministerial Committee...my best recollection was that she talked about the separation from politicians and police...and the importance of that."<sup>2022</sup> He added, "[S]he was talking about the role of politicians and policy", "that police had operational authority and...there was no role for the politicians in directing...any of the operations of the police".<sup>2023</sup>

Mike Harris said he believed Elaine Todres was "repeating things that I think were, from my impression of the meeting, pretty well understood by the participants and those who were in attendance at the meeting".<sup>2024</sup> He also considered that personally, "I didn't see any need for it. I understood it and I don't recall anything at the meeting that required it."<sup>2025</sup> He also said,

I think it would be important for everybody new. The people in the room I didn't know. I didn't know...where they came from. We were new government, we had new political staff and there were some people in the room who I...didn't know how familiar they were with issues as well.<sup>2026</sup>

Taman said he also spoke about the issue. He recalled, "I said that I thought it was important to bear in mind that the best practice in these situations was that when there was an

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<sup>2018</sup> Examination in chief of Larry Taman, November 14, 2005, pp. 120-21.

<sup>2019</sup> Cross-examination of Larry Taman by Mr. Downard, November 15, 2005, p. 31.

<sup>2020</sup> Examination in chief of David Moran, November 1, 2005, p. 26.

<sup>2021</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, p. 61.

<sup>2022</sup> Examination in chief of Mike Harris, February 14, 2005, p. 130; see also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 53-54.

<sup>2023</sup> Examination in chief of Mike Harris, February 14, 2005, p. 134. See also Cross-examination of Mike Harris by Mr. Smith, February 14, 2005, p. 210:

Q: And was the message she delivered a clear one? Was there any ambiguity about what she was saying?

A: I...don't think there was any ambiguity at all. I think it was clear that...the political side of government gave no direction to the OPP on any operational decisions, and they would not take political direction and ought not to be given.

<sup>2024</sup> Cross-examination of Mike Harris by Mr. Smith, February 14, 2005, pp. 210-11. He did not recall anyone dissenting from or disagreeing with Elaine Todres' statement. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 48-51.

<sup>2025</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 54. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, pp. 217-18 ("She didn't need to inform me").

<sup>2026</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 244.

ongoing law enforcement matter that the police had the operational management of it.”<sup>2027</sup> Taman said no one disagreed with this.<sup>2028</sup> The Deputy Minister of Natural Resources, Ron Vrancart, confirmed that Taman spoke to the point, although he did not recall Elaine Todres addressing it.<sup>2029</sup> Similarly, the Executive Assistant to the Minister of Natural Resources, Jeff Bangs, recalled discussion of “the very definite line between the political arm of government and the police” being raised by Taman,<sup>2030</sup> although he did not recall Elaine Todres speaking to the subject.<sup>2031</sup> Bangs said the point “came up more than once”.<sup>2032</sup> He disagreed with a suggestion in cross-examination that this was so because there were people “on both sides of it to some extent”.<sup>2033</sup>

### 13.03 THE STATUS UPDATE

Solicitor General Robert Runciman testified that he recalled the Deputy Minister of Natural Resources, Ron Vrancart, reporting on the situation at the Park:

Well, things that stand out in my memory were Mr. Vrancart giving a...summary...of the situation on the ground from MNR's perspective and what he was hearing from...park rangers and officials in the Ministry that there had been gunfire heard in the evening and there was...someone who...thought that it was an AK-47 being shot off. I recall that very vividly. And there was also the comment that people were coming in to the site; they were described as warriors, coming into the site from various parts of North America.

Q: And who --

A: This was Vrancart's so-called intelligence, that he was providing us with an update of what he was hearing from MNR staff in the field. So, I think that that was somewhat alarming to everyone.<sup>2034</sup>

Mike Harris recalled learning that “our fears of escalation were well founded”.<sup>2035</sup> He recalled reports of gunfire the previous night.<sup>2036</sup> He recalled some discussion about whether the

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<sup>2027</sup> Examination in chief of Larry Taman, November 14, 2005, p. 121.

<sup>2028</sup> Examination in chief of Larry Taman, November 14, 2005, p. 121.

<sup>2029</sup> See Examination in chief of Ron Vrancart, October 27, 2005, p. 62:

I distinctly recall Larry Taman, the Deputy Attorney General, inserting himself into the -- the discussion on a couple of occasions and forcefully making the point with the politicians that not only did they have to but they had to be seen to not be instructing the police on this matter.

See also p. 66.

<sup>2030</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, p. 236.

<sup>2031</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 100.

<sup>2032</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, pp. 238-39.

<sup>2033</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, pp. 238-39.

<sup>2034</sup> Examination in chief of Robert Runciman, January 9, 2006, pp. 135-36.. See also Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, pp. 253-54.

<sup>2035</sup> Examination in chief of Mike Harris, February 14, 2005, p. 115.

<sup>2036</sup> Examination in chief of Mike Harris, February 14, 2005, p. 131. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 210.

weapon was automatic, semi-automatic or not. He “thought it was a moot point”.<sup>2037</sup> He believed it was discussed in the dining room that the OPP “were wearing bullet proof vests”.<sup>2038</sup> He recalled that “the OPP believed they could contain the occupiers in the Park” but “could not contain access to the Park”, so that others “could join in”.<sup>2039</sup> He continued to be concerned that there could be no assurance that others would not join the takeover of the Park because access to it could not be prevented.<sup>2040</sup>

Mike Harris said he believed there was some discussion of “the mood across the country from Gustafsen Lake and possibly of Oka”.<sup>2041</sup> He said the situation at Ipperwash “was certainly not viewed as...an Oka-type situation or a Gustafsen Lake type situation”.<sup>2042</sup> He said any references to those incidents related to “how do we make sure it doesn’t become that”.<sup>2043</sup> He believed it was again said that Chief Bressette and the council of the Kettle & Stony Point First Nation did not support the occupiers.<sup>2044</sup>

Robert Runciman testified that there was some discussion in the dining room about the claim of a burial ground, but there was an indication “from the Attorney General’s office, through ONAS, that there was no merit” in that.<sup>2045</sup> Runciman thought the occupation was an effort to draw attention to the CFB Ipperwash situation.<sup>2046</sup> Mike Harris said he did not recall discussion in the dining room of a burial ground, “and if it was, it was in passing”.<sup>2047</sup> He said the subject of a possible burial ground was “not viewed as the reason for the occupation” because there had been “no claim like that made”, and no spokesperson for the occupiers was “making any claim as to why they were [in the Park] or that they were seeking something before they would leave. They were just there and they were occupying the Park.”<sup>2048</sup> He said the occupation was not viewed as a protest.<sup>2049</sup> The view that the occupation was illegal was also supported by the fact that, “[T]here were no claims by this group of ownership of the land”.<sup>2050</sup> He continued, “And so in that sense I think we viewed this as...not...an issue of...native versus

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<sup>2037</sup> Examination in chief of Mike Harris, February 14, 2005, p. 137: “If there were weapons fired, there were weapons fired and I don’t think what kind of weapons --- I recall my reaction being, what difference does it make.” See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 19-20.

<sup>2038</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 142-43.

<sup>2039</sup> Examination in chief of Mike Harris, February 14, 2005, p. 131. See also p. 153. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 210.

<sup>2040</sup> Examination in chief of Mike Harris, February 14, 2005, p. 116. See also p. 124.

<sup>2041</sup> Examination in chief of Mike Harris, February 14, 2005, p. 131. See also p. 153.

<sup>2042</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 236. See also pp. 237-38.

<sup>2043</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 236.

<sup>2044</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 139-40; Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 41.

<sup>2045</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 149; see also Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, pp. 265-66.

<sup>2046</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 150; see also Cross-examination of Robert Runciman by Mr. Scullion, January 11, 2006, p. 205.

<sup>2047</sup> Examination in chief of Mike Harris, February 14, 2005, p. 151.

<sup>2048</sup> Examination in chief of Mike Harris, February 14, 2005, p. 152.

<sup>2049</sup> Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 259.

<sup>2050</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 41.

non-native”, and that “the laws would be applied equally whether this was a group of native or a group of non-natives”.<sup>2051</sup>

### 13.04 THE INJUNCTION

Robert Runciman said that after the status update the meeting turned to discussion of the injunction.<sup>2052</sup> He recalled Larry Taman discussing the options to proceed on an expedited or ordinary basis. Although he did not have a “vivid recollection” of the discussion, he testified,

I don't think he was adamant about one or the other. I think his...view was that probably a...preference would have been to...go the longer route, but I'm not sure that...he said explicitly that that was what he would prefer to do. I think he simply laid out the facts and...my reading...at the time, I think was that -- that probably would have been his preference but he felt that it had a greater chance of success.<sup>2053</sup>

Jeff Bangs recalled that “most of the discussion led by Mr. Taman centred around the possibility of seeking an injunction”, that Taman reviewed the “nature of a normal injunction versus an *ex parte* injunction”,<sup>2054</sup> and that he did not know that Taman had a recommendation between the two.<sup>2055</sup> Deb Hutton recalled that Taman spoke about the injunction, but did not recall him making a recommendation as to which type of injunction should be pursued.<sup>2056</sup> Ron Fox recalled Taman presenting an overview of the injunction process.<sup>2057</sup> Fox said Taman made no “comment with respect to his personal opinion as to whether it should be *ex parte* or it should be by notice, but he indicated that it was prudent to obtain an injunction”.<sup>2058</sup> Scott Patrick recalled Taman “educating the Premier” about standard and *ex parte* injunctions.<sup>2059</sup>

Mike Harris recalled Larry Taman speaking about the injunction, and the difference between an injunction sought *ex parte* and an injunction sought with notice.<sup>2060</sup> He recalled that both Taman and Charles Harnick,

...spoke on this issue and...gave legal opinions that...both, they felt, were...doable, so to speak; that they could prepare...material to take to a judge to seek an injunction, both *ex parte* and...with notice. The timing was one where...the earliest...was Thursday morning. They felt they could seek an *ex parte* injunction. And I recall some discussion that...it was possible; they thought it was likely that it would be granted but it was

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<sup>2051</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 41-42.

<sup>2052</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 136.

<sup>2053</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 137.

<sup>2054</sup> Cross-examination of Jeff Bangs by Mr. Zbogor, November 3, 2005, p. 297.

<sup>2055</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 98.

<sup>2056</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 105, 106-07.

<sup>2057</sup> Examination in chief of Ron Fox, July 12, 2005, p. 69.

<sup>2058</sup> Examination in chief of Ron Fox, July 12, 2005, p. 69. See also pp. 136-37: “I think he [Larry Taman] presented all the options fairly and gave, certainly from -- from what I heard, what the positions were or could be, what was required to proceed in either the interim manner or *ex parte*.”

<sup>2059</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 103.

<sup>2060</sup> Examination in chief of Mike Harris, February 14, 2005, p. 131.



possible that...the judge would not grant the injunction *ex parte* and would require notice.<sup>2061</sup>

Mike Harris said Taman “very professionally laid out the slam dunk likelihood of success -- lawyers never give you 100 per cent, in my experience...that he was more certain of success with notice than he was *ex parte*”.<sup>2062</sup> He did not recall any discussion of the length of time it would take to remove the occupiers. His only recollection was that there was a discussion of the length of time it would take to get the injunction.<sup>2063</sup> Although Taman said he understood the government’s position to be that the occupiers should be removed within 24 hours, Mike Harris’ recollection was that the only reference to 24 hours was as a time frame in which it might be possible to obtain the injunction.<sup>2064</sup>

Mike Harris testified that he made an assessment that if an *ex parte* application was successful the government would have an injunction the next day, and if the court declined to grant the injunction *ex parte*, “that event would not set the process back very far”.<sup>2065</sup> He recalled,

...[F]irst choice was *ex parte* and that that was what the...lawyers for the Attorney General would be working towards...with the caveat that...as they began...to work on that, if they felt that was inappropriate...that they were free to do and...proceed with...an injunction with notice. But my clear understanding was that the feeling was we could proceed *ex parte* and that was what they were attempting to do.<sup>2066</sup>

He thought his assessment was consistent with the “collective view”<sup>2067</sup> and “consensus”<sup>2068</sup> of the meeting. He said he believed that his view “was shared by, if not

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<sup>2061</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 134-35. by Mr. Klippenstein, February 15, 2005, pp. 123, 125.

<sup>2062</sup> Examination in chief of Mike Harris, February 14, 2005, p. 139.

<sup>2063</sup> Examination in chief of Mike Harris, February 14, 2005, p. 140.

<sup>2064</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 140-41.

<sup>2065</sup> Examination in chief of Mike Harris, February 14, 2005, p. 135.

<sup>2066</sup> Cross-examination of Mike Harris by Mr. Smith, February 14, 2005, p. 212.

<sup>2067</sup> Examination in chief of Mike Harris, February 14, 2005, p. 135.

<sup>2068</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 176:

I believe that was the consensus of the group at the dining room table that was there. Now, if...that's incorrect, then so be it, but I...I believe to this day that was...the consensus of the group, yes.

Q: And it wasn't your decision?

A: I didn't view it as my decision. This wasn't one where I said, Okay, give me all the information and I will make the decision. I didn't view my role...as judge and jury, if that's what you mean. I think we tried to come to a consensus, the way we operated in...Cabinet. And that would have been the way we operated in a lot of the decisions that we made and I think that's the way we operated there.

Q: But you're in your dining room or your meeting room as you've described it. You're the Premier in the middle of this meeting but you didn't see it as a decision of yours; it was a committee decision? Is that what I understand?

unanimously, certainly the majority, that...the sooner this occupation could be ended, the more likely it would be ended peacefully with nobody being hurt, including the occupiers".<sup>2069</sup> He was aware that at the IMC meetings there had been "discussions over the advantages, one or the other", but he did not recall anyone disagreeing.<sup>2070</sup> He said he thought that "if anybody disagreed they would have spoken up" and said so.<sup>2071</sup> He was pressed in cross-examination as to whether the participants would have been reluctant to do so:

Q: All right. And, in fact, if you expressed that in a forceful manner, it's quite possible they would simply defer to you on that one and not object and go along. Is that fair?

A: It's not my recollection of either the Ministers or the deputies that were...in that meeting.

Q: But just take a step backwards. It's possible, right?

A: No, that's not my recollection. I've always recalled any time when we had a discussion...if there was a contrary view I never found either the deputies that were in that room, so I can give you my experience over ten years since, because...we were new, or the Ministers, that...they would have difficulty expressing a viewpoint, we would welcome.<sup>2072</sup>

Larry Taman testified that he considered the government could appropriately seek an *ex parte* injunction in the circumstances:

In my mind the urgency on the government view of the thing was that the situation was in danger of worsening, that there were other citizens around the Park who felt they were in danger, that there was a case to be put forward, that this was not an appropriate way of demonstrating or raising a grievance.<sup>2073</sup>

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A: I believed it was committee decision and I concurred with it and was comfortable with it and felt that was the right decision for...the government to make at that time, right.

<sup>2069</sup> Examination in chief of Mike Harris, February 14, 2005, p. 143.

<sup>2070</sup> Examination in chief of Mike Harris, February 14, 2005, p. 136. See also Cross-examination of Mike Harris by Mr. Horton, February 16, 2005, pp. 296-99

<sup>2071</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 126.

<sup>2072</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 128.

<sup>2073</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, p. 145. See also Examination of Ron Fox by Mr. Sandler, July 19, 2005, pp. 103-04:

Q: The argument that we've already discussed, that a quick injunction might stimulate discussion with the occupiers, again, arguably favours -- favours an *ex parte* injunction?

A: It could be, yes.

Q: Could be. Now people can take the exact opposite approach, that we need more time to stimulate discussion with the occupiers, favouring a longer period. Reasonable people can differ, that's all I'm suggesting to you on this.

A: Yes, sir.

Q: All right. And -- and also in favour of an *ex parte* injunction might be the argument that, down the road, notice has to be given in any event and there would be an opportunity for the status of the land to be litigated before a final injunction was granted, right?

A: Yes, sir.

He said that “all of these issues were matters that might be put to a judge and might prove persuasive”.<sup>2074</sup>

Larry Taman testified, “[J]ust so there’s no confusion, if anybody had asked me and said, “You understand this means we have to go *ex parte*,” I would have said fine.”<sup>2075</sup> In cross-examination he said that although pursuing an *ex parte* injunction was not his own preference,

I thought there was a case for getting an *ex parte* injunction and then when instructed to make it, I went and made it. And it's no different, in my perspective, from conversations that lawyers have with their clients everyday in which they give some advice, they get an instruction. And the only gloss of difference is the idea of the Attorney General having an independent accountability as a guardian of the law and I did not think it was engaged in this situation.

Q: Is it --

A: So I felt completely comfortable in giving my advice, getting an instruction and taking the appropriate steps, as instructed.

Q: Isn't it true your most senior litigator on the ground told you there wasn't a case for an *ex parte* injunction?

A: There are a thousand lawyers in the Ministry of the Attorney General, Mr. Falconer, a big part of my job was listening to senior litigators who almost always take different views, one from the other, sometimes one from the Government. My job as the Deputy was to resolve those issues. That's what I did in this case.

Q: What senior civil litigator on the ground took a different view from Mr. McCabe?

A: I took a different view.

Q: Were you on the ground?

A: Well, I know as much about injunctions as Mr. McCabe does. And I felt completely comfortable in making the decision that if this was what the Government wanted we could go to court and get it.<sup>2076</sup>

The cross-examiner later returned to this subject:

Q: And so, in saying it's important to be accountable, do you agree that you have to be accountable for the decision to disregard the advice you received from Tim McCabe

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Q: Okay. Now, as I say, the only point here that I'm suggesting to you is that people who are sensitive to First Nations issues could favour an *ex parte* or a more immediate injunction; fair enough?

A: That's...reasonable, yes.

<sup>2074</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, p. 145. See also pp. 146-47. See also p. 40: “I was always clear in my own mind that it was open to us to go to court and to ask for an injunction on that basis, the *ex parte* basis.”

<sup>2075</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, p. 146.

<sup>2076</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, pp. 113-15.

about *ex parte* injunctions and direct your people to go into court to seek something you were told you didn't have a case for? You're accountable for that aren't you?

A: I don't accept any of the premises on which that's based. I'm...responsible for the decision I made. I don't accept that I disregarded the advice. I don't accept any of the premises that you smuggled into that question.<sup>2077</sup>

Charles Harnick testified that the agreement at the end of the meeting was that an injunction would be sought as soon as possible.<sup>2078</sup> He said there was no discussion of the nature or type of injunctive relief to be sought.<sup>2079</sup> He accepted that the action decided upon by the government at the meeting was “perfectly appropriate”.<sup>2080</sup>

Robert Runciman said, “[T]here was a general assumption the expedited injunction would be sought”.<sup>2081</sup> He said that his understanding was that this was “the way to...deal with this before the situation becomes grave”.<sup>2082</sup>

Similarly, Jeff Bangs testified that upon leaving the meeting his understanding was that “an *ex parte* injunction would be sought and it appeared to be the consensus of the room”.<sup>2083</sup> His recollection was that the Premier consented to an *ex parte* injunction.<sup>2084</sup> Deb Hutton also understood that the lawyers would attempt to proceed *ex parte*,<sup>2085</sup> and that it would be up to them to determine when exactly they would be in court.<sup>2086</sup>

Deputy Solicitor General Elaine Todres testified that there was reference to “24 hours”, and, “[W]e took from the 24 hours, not necessarily a literal translation, but a go-as-quickly-as-possible, subject to what one has to do legally and ethically to get things done.”<sup>2087</sup> In cross-examination she added,

The impression I was left with was actually a complicated one. It was that there was direction to Legal to pursue injunction. Having spent a fair number of time with lawyers that wouldn't necessarily have been a fast pace. In other words there were still processes that had to be put through, information that had to be gathered. Again I'm speaking as a former Deputy Solicitor General who was desperately trying to understand the legal nuance that the Deputy Attorney General was putting forward, but even I would have

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<sup>2077</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, pp. 151-52.

<sup>2078</sup> Examination in chief of Charles Harnick, November 28, 2005, p. 20.

<sup>2079</sup> Examination in chief of Charles Harnick, November 28, 2005, pp. 21-22.

<sup>2080</sup> Cross-examination of Charles Harnick by Mr. Downard, November 28, 2005, p. 56. See also p. 57 (“I was content that we had done the right thing.”)

<sup>2081</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 140.

<sup>2082</sup> Examination in chief of Robert Runciman, January 9, 2006, pp. 140-41.

<sup>2083</sup> Examination in chief of Jeff Bangs, November 3, 2005, pp. 99, 102; see also Cross-examination of Jeff Bangs by Ms. Perschy, November 3, 2005, p. 197.

<sup>2084</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, pp. 241-42; Cross-examination of Jeff Bangs by Mr. Zbogor, November 3, 2005, p. 300.

<sup>2085</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 107.

<sup>2086</sup> Cross-examination of Deb Hutton by Mr. Klippenstein, November 22, 2005, pp. 258-59.

<sup>2087</sup> Cross-examination of Elaine Todres by Mr. Klippenstein, December 1, 2005, p. 15.

understood that the pursuit of moving something quickly was the direction to get lawyers to move quickly. It didn't, in my mind, mean that the conclusion of the lawyers' work would be speedy or that the laying of the injunction, or whatever the appropriate verb, would be necessarily. I think there was an inclination to say get on with the injunctions ASAP, for all that that entailed.<sup>2088</sup>

[...]

I don't want to trivialize this, but to me this was a bit like a fugue. So, theme one of the fugue was that nothing, as far as I was concerned, was going to change as a result of that meeting as to what it is that the police officers were doing on the ground, and up to that moment in time I believe that there were still in the mode of chatting and negotiating. I did not see from the second theme, the moving toward injunction, *ex parte* or other, that that would have necessarily precluded the first theme.<sup>2089</sup>

Todres testified that the meeting concluded on the basis that,

...[I]t was the political direction to proceed with injunction, to proceed with haste, to try to deal with this issue as quickly as possible, and at the end of the day I believed that the Deputy Attorney General was likely given...instruction to proceed not only with injunction but to certainly explore, with a great deal of vim and vigour, *ex parte* injunction. And then the meeting was over.<sup>2090</sup>

Charles Harnick had no recollection of any discussion of what would happen once an injunction was obtained.<sup>2091</sup> He said he assumed assumed "the court would provide certain instructions around that injunction", and that the injunction would allow "the courts to begin to supervise a resolution of any issues that might have been outstanding".<sup>2092</sup> At the conclusion of the meeting Larry Taman's understanding was that police "were going to stay the course and that they were, in my recollection, not committing one way or the other to what they would do when they saw the injunction".<sup>2093</sup> Although he was not present for the entirety of the meeting, Ron

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<sup>2088</sup> Cross-examination of Elaine Todres by Mr. Klippenstein, December 1, 2005, p. 12.

<sup>2089</sup> Cross-examination of Elaine Todres by Mr. Klippenstein, December 1, 2005, p. 13.

<sup>2090</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 54. See also p. 60:

I don't remember who said this, but I remember...walking out of the room with the impression that we would be -- that Larry, that the deputy Attorney General would be proceeding with an *ex parte* injunction within 24 hours. Now, my reaction to that was not a literal one of 24 hours because lawyers when working on injunctions have to work through a variety of issues. I took that as an indication of moving speedily.

Q: Did you hear the Premier say anything about any timeline?

A: I think he may have indicated that he wanted this matter dealt with quickly as well.

Q: And when you say, "quickly," did he indicate a timeline?

A: He may have said or someone said -- I can't attribute it to him, but someone said within 24 hours.

<sup>2091</sup> Examination in chief of Charles Harnick, November 28, 2005, p. 23.

<sup>2092</sup> Examination in chief of Charles Harnick, November 28, 2005, pp. 23-24.

<sup>2093</sup> Cross-examination of Larry Taman by Ms. Tuck-Jackson, November 15, 2005, pp. 81-82. See also Cross-examination of Mike Harris by Mr. Smith, February 14, 2005, p. 213.

Fox testified that he did not recall any discussion in the dining room as to what would happen if an injunction was in fact granted by the court.<sup>2094</sup>

Mike Harris testified that if the court confirmed that the occupation was illegal and issued the injunction, the government would intend that the injunction be enforced.<sup>2095</sup> The manner in which it would be enforced would be left to the judgement of the OPP.<sup>2096</sup> He said,

On September 6th I felt whenever the...injunction was obtained, that...it would then be served on those who were involved in the illegal occupation. And they would either leave or the OPP would have to take steps through negotiations or otherwise, to remove protesters from the Park.<sup>2097</sup>

He acknowledged that these negotiations would be limited to “the circumstances of leaving the Park and nothing else”, and that the OPP would not have authority to negotiate the substance of “any potential or future land claim”.<sup>2098</sup> Pressed in cross-examination whether action ‘otherwise’ by the OPP could include arrests, he said, “I’m not sure I had very much thought put into it but in hindsight yes, I suppose that if they refused to obey the court order which as I understand the injunction is then...the police have to deal with that”.<sup>2099</sup> He added,

Normally if somebody...wants to make a point by way of...protest as to why they're doing something then normally you like to have the cameras there and somebody is carrying people off and...they're going against their will, they prefer to stay, and...

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<sup>2094</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 97-98.

<sup>2095</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 206-07.

<sup>2096</sup> Cross-examination of Mike Harris by Mr. Smith, February 14, 2005, pp. 213-14.

<sup>2097</sup> Examination in chief of Mike Harris, February 14, 2005, p. 150; see also Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, pp. 59-63.

<sup>2098</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, pp. 63-64. See also Cross-examination of Mike Harris by Mr. Horton, February 16, 2005, pp. 305-06:

Q: And do you recall Ms. Hutton communicating to you that there was a need to negotiate with the people to the affect -- to affect the purpose required, and that was to ensure public safety?

A: Yes, I believe that we expected that negotiations would take place.

Q: And that the view was expressed at that meeting that one had to move slowly as we went through this, understanding that the police were not to negotiate a land claim per se, or a burial site, but they needed to negotiate...with the people?

A: I don't know if those exact words were relayed, but they're not inconsistent with -- with you know, the view of -- that I understood, that could follow any actions that we would take on injunction or -- or even previous to an injunction. I mean, I think there was some indication there...could be negotiations amongst the OPP and...the occupiers, prior to seeking the injunction, as well.

See also p. 325:

There'd be no negotiations of any substantive issues, vis-a-vis any special treaty rights or anything that may come out of...anything that was there. I think that was understood. I don't think it was dwelled on at great length and I think everybody -- that was discussed at the...Interministerial Committee meeting. So now you're down to the negotiations that everybody agreed would be the preferable way for this dispute to be resolved, would...as to how the occupation could come to a peaceful conclusion. I think everybody agreed that was preferable.

<sup>2099</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, pp. 64-65.

everybody gets their point out that way. That seems to be the way most of these things come to a conclusion.<sup>2100</sup>

Charles Harnick's Executive Assistant, David Moran, testified that the Premier "agreed with the recommendations of the Attorney General and left the room".<sup>2101</sup> Taman testified that the Premier left, and some discussion carried on.<sup>2102</sup> Elaine Todres testified that the meeting "fizzled" when the Premier left and others stayed.<sup>2103</sup> Robert Runciman recalled that the Premier left first.<sup>2104</sup> He accepted that some participants may have stayed and carried on conversation.<sup>2105</sup>

### 13.05 THE GOVERNMENT'S POLICY

Larry Taman testified, "The Premier made what I regarded as being a policy statement which was that...he believed that the people should be out of the Park."<sup>2106</sup>

For me this is fundamental. The system works on the basis that the people elect governments, they pay through their taxes for public officials to serve those elected governments and it's the job of elected officials to serve government within a framework of professional and legal responsibility.<sup>2107</sup>

Taman said, "The Premier is elected by the people of the province to make policy. It was up to the Premier to decide what that policy was."<sup>2108</sup> He added,

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<sup>2100</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 67. He continued, "I didn't think about it. I'm telling you now that seems to be the way these things take place. So if you're asking me my thought on September 6<sup>th</sup>, as I've clearly indicated to you, I really didn't have any thoughts. It wasn't discussed and it would be left to the OPP."

<sup>2101</sup> Examination in chief of David Moran, November 1, 2005, pp. 31, 27.

<sup>2102</sup> Examination in chief of Larry Taman, November 14, 2005, p. 118.

<sup>2103</sup> Cross-examination of Elaine Todres by Ms. Perschy, November 30, 2005, pp. 254-55.

<sup>2104</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 141.

<sup>2105</sup> Cross-examination of Robert Runciman by Ms. Tuck-Jackson, January 10, 2006, p. 126. Similarly, Charles Harnick's Executive Assistant, David Moran, said,

...[W]hen Mr. Harris said that...he agreed with the recommendations of the Attorney General and left the room, there really wasn't anything more to discuss that I can recall. Maybe, you know, it may have gone on a couple of minutes after he had left but the substance of the meeting had been concluded."

<sup>2106</sup> Examination in chief of Larry Taman, November 14, 2005, p. 126. Elaine Todres commented,

I could make the case that a land owner has the right to indicate its policy preference, and its policy preference is this is our Park, it has been our Park, we wish it to be the Park, and that is our long term objective. So I could view that quite comfortably in...not at all related to an operational matter in the slightest, that it is the articulation of a ministerial policy consideration quite removed from operation.

See Cross-examination of Elaine Todres by Mr. Rosenthal, December 1, 2005, p. 72.

<sup>2107</sup> Examination in chief of Larry Taman, November 14, 2005, p. 43.

<sup>2108</sup> Examination in chief of Larry Taman, November 14, 2005, p. 117.

I don't have the problem with the Premier wanting to pursue a policy. Whether it's one that he or I or you agree with is immaterial from the point of view of this discussion. He's the Premier; he's entitled to set policy.<sup>2109</sup>

Robert Runciman testified that the Premier was “clearly concerned, and I think we all were, especially in the wake of Mr. Vrancart’s observations about a potentially very dangerous situation evolving”.<sup>2110</sup> He said the meeting wanted to “see it brought to a resolution in a timely way”.<sup>2111</sup> He said the Premier was “anxious” about the matter.<sup>2112</sup> He continued:

I think he wasn't shy about expressing his concern and saying that I don't want this to deteriorate into a...difficult situation, and as I've mentioned, in referencing Oka, and I want you to get on with it, whatever legal tools are available to us, we should be utilizing them and deal with the situation.<sup>2113</sup>

Runciman accepted that the Premier was expressing “a level of concern or frustration” that the occupiers were still in the Park, and that he may have expressed a concern that they had gotten into the Park in the first place.<sup>2114</sup> Runciman testified that he believed the Premier said he did not want the situation at the Park to “turn into...an Oka-like situation”.<sup>2115</sup> Although he did not recall anything further that the Premier said, he said the Premier “was clearly encouraging the Attorney General and his office...to get on with the job...through the legal processes that were available”.<sup>2116</sup> He did not recall the Premier referring to “any specific time line”, but accepted that the Premier wanted it done as quickly as possible, “in an appropriate fashion”.<sup>2117</sup>

Elaine Todres recalled there “was a lot of frustration on the part of politicians”, and “a great deal of sense of urgency about dealing with this issue as promptly as possible”.<sup>2118</sup> She said she thought “the Premier was concerned”, and that “he would have liked to have had this issue resolved quickly”.<sup>2119</sup> She said Minister Hodgson was “clearly very, very upset”.<sup>2120</sup> She also said political staff “wanted the issue resolved as quickly as possible”.<sup>2121</sup>

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<sup>2109</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, pp. 136-37.

<sup>2110</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 139; see also Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, p. 302: “[T]here was concern that it was a rapidly deteriorating situation and that it could become as was suggested I believe by the Premier an Oka type situation...”

<sup>2111</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 139.

<sup>2112</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 143; see also Cross-examination of Robert Runciman by Ms. Tuck-Jackson, January 10, 2006, p. 126.

<sup>2113</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 144.

<sup>2114</sup> Cross-examination of Robert Runciman by Ms. Tuck-Jackson, January 10, 2006, pp. 127-28.

<sup>2115</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 139.

<sup>2116</sup> Examination in chief of Robert Runciman, January 9, 2006, pp. 139-40.

<sup>2117</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 144; see also Cross-examination of Robert Runciman by Mr. Horner, January 11, 2006, pp. 245-47.

<sup>2118</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 53.

<sup>2119</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 60.

<sup>2120</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 60.

<sup>2121</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 60.



### 13.06 NO INSTRUCTIONS TO POLICE

The evidence clearly establishes that the government did not instruct the Ontario Provincial Police as to how to conduct its operations at Ipperwash.

Larry Taman testified, "I don't recall the Premier giving instructions of any kind to the Ontario Provincial Police."<sup>2122</sup> The Deputy Solicitor General, Elaine Todres, accepted that there were no directions of any action to be taken by the OPP.<sup>2123</sup> The Solicitor General, Robert Runciman, said that political direction of the OPP never occurred.<sup>2124</sup> This was pursued in cross-examination:

Q: Right. As an observer, you didn't feel it was your role to control the information coming out at that meeting; isn't it true?

A: No, I -- I don't agree with that. I think if there had been some suggestion of...explicit direction to the police to...enter the Park and remove the...occupants...I don't think there's any doubt whatsoever that I would have intervened and would have interjected and made it clear that that was inappropriate.<sup>2125</sup>

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<sup>2122</sup> Examination in chief of Larry Taman, November 14, 2005, p. 117. See also Cross-examination of Larry Taman by Mr. Downard, November 15, 2005, p. 34:

Q: Now, it's been alleged for many years and the allegation has never been withdrawn, this an allegation of the public record, that the Premier of Ontario in this matter personally ordered the Ontario Provincial Police to utilize its Tactical Response Unit to take severe action against the occupiers at Ipperwash Provincial Park. To your knowledge, did the Premier ever give such an order?

A: I have no knowledge of anything of that sort.

See also Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, p. 125: "And so my concern was merely to make it clear to everyone that the government should not be giving concrete deployment type instructions to the police. And that was the point that was made in the...Premier's Office." And see p. 125: "I think what was effectively communicated by me and by the Deputy Solicitor General to the Premier was that it was inappropriate for the Government to give operational instructions to the OPP." See also Cross-examination of Larry Taman by Mr. Rosenthal, November 15, 2005, p. 193: "I don't know of any discussion requesting the OPP to remove people from the Park."

<sup>2123</sup> Cross-examination of Elaine Todres by Mr. Sulman, November 30, 2005, p. 219. See also Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005:

Q: In terms of your evidence to-date, as that person that's the guardian of the line of demarcation, you have testified that you did not think there was political interference in the police operations at Ipperwash; is that correct?

A: Yes.

<sup>2124</sup> Examination in chief of Robert Runciman, January 10, 2006, p. 32. See also Cross-examination of Robert Runciman by Mr. Zbogor, January 11, 2006, p. 281:

Q: And was it your position in 1995, that where there is an allegation of political interference, that both the Premier and the Solicitor General and possibly other Cabinet ministers have a responsibility to inquire about the details surrounding those allegations?

A: I guess one could make that argument and that's what you're doing, but I didn't see it in that way, still don't see it in that way. I was party to, I guess you could say, that...allegation in the sense that I attended the meeting which it seems to, essentially, have flowed from. And from my perspective there was -- these were nothing more than allegations and rumours and there was no merit to -- to the allegations and I stand by that today.

<sup>2125</sup> Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, p. 259.

He said that nothing he saw or heard in the meeting caused him undue concern.<sup>2126</sup> He did not recall anyone who attended in the dining room ever expressing concern to him about it.<sup>2127</sup>

The Minister of Natural Resources, Chris Hodgson, testified that there was never any direction by the Premier for police to take any particular action.<sup>2128</sup> The Deputy Minister of Natural Resources, Ron Vrancart, testified, “I didn’t think there was anything untoward in this meeting.”<sup>2129</sup> He did not recall the Premier saying anything that he considered to be an instruction to the OPP, or that might appear to a reasonable observer to be an instruction to the OPP.<sup>2130</sup> He said that if that had occurred, “Oh, I would have remembered that, yes, for sure.”<sup>2131</sup> He said that nothing in the meeting suggested to him that the government was telling the OPP “how to do their business”.<sup>2132</sup> Hodgson’s Executive Assistant, Jeff Bangs, did not recall the Premier saying anything that a reasonable observer might consider to be an instruction to the OPP as to the steps the OPP should take at Ipperwash.<sup>2133</sup> Charles Harnick’s Executive Assistant, David Moran, testified that he never formed a view in the dining room that the Premier was at any time giving direction to the OPP, or attempting to influence the OPP’s behaviour at Ipperwash.<sup>2134</sup>

In the course of his evidence Larry Taman was asked about alleged improper conduct by the Premier in the dining room meeting:

Q: Now, in this Inquiry it has been alleged that the Premier was attempting to ignore the independence of police and the rule of law. Is that what he was doing at this meeting?

A: No, I don't think that's a fair characterization of the meeting. I think that it -- it would be fairer to say that there was a discussion among the most senior politicians and bureaucrats in government and that in keeping with the spirit of all of those discussions, there was free and open exchange of views. And that when it was all over, the Premier mandated us in what I thought was a very fair and appropriate manner and I think I could put it even a little more strongly than you did in...your question to me, that he wanted it understood that he was there to set a broad framework but that we were the ones managing it and he expected us to use our judgment. And that, I think, it would apply in...all aspects of the matter including the one you'd mentioned, maintaining a...separation between the...police and...the political side.

Q: Right.

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<sup>2126</sup> Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, pp. 144-45. See also p. 241, 242-43.

<sup>2127</sup> Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, pp. 144-45. See also p. 241, 242-43.

<sup>2128</sup> Cross-examination of Chris Hodgson by Mr. Sandler, January 16, 2006, pp. 114-15.

<sup>2129</sup> Examination in chief of Ron Vrancart, October 27, 2005, pp. 62-63.

<sup>2130</sup> Cross-examination of Ron Vrancart by Mr. Downard, October 27, 2005, pp. 99-100.

<sup>2131</sup> Cross-examination of Ron Vrancart by Mr. Downard, October 27, 2005, p. 100.

<sup>2132</sup> Examination in chief of Ron Vrancart, October 27, 2005, p. 65-66.

<sup>2133</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, pp. 134-35.

<sup>2134</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, p. 62.

A: Now, that being said and...there was lots of discussion at the meeting, but I think that's the way government works.

Q: Well, is -- isn't that right? Isn't it important to decide what the right approach is to have a wide ranging discussion?

A: Absolutely.

Q: And to draw upon the best advice you can for the purpose of trying to reach the right conclusion?

A: Absolutely. And in my opinion what's important is not the discussion but where it ends up. And it ended up in...a very sensible and appropriate place.<sup>2135</sup>

Larry Taman testified that from the formation of the Harris government in late June of 1995 to September 6 he had already met the Premier many times.<sup>2136</sup> He said,

We talked about...the fact that it would be inappropriate to interfere with the OPP. And I think it was one of those discussions in which everybody thought they had said what they had to say and that life would then carry on. I would also just like to say to, you know, perhaps clarify a point for Counsel for the Premier, if I may, that I thought the Premier was very fair in the way that he left it with us. I'm not sure what else he could have done bearing in mind...what his opinions were. He said this is my opinion, but I'm counting on you to exercise your professional judgment to do the right thing within the framework of that opinion...I don't know whether he changed what he wanted or not, but I think he implicitly acknowledged that there were practical problems, that he expected us to deal with them responsibly.<sup>2137</sup>

Taman said that what the Premier's reference to "professional judgement", "meant to me was that we were to move as quickly as we could, consistent with what was going to work in the real

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<sup>2135</sup> Cross-examination of Larry Taman by Mr. Downard, November 15, 2005, pp. 32-33; see also Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, p. 112:

I would agree that it became clear in my mind that the Premier knew exactly what he wanted, that he had also been fair enough to say that you are to exercise some professional judgement. And that my professional judgement was that it was appropriate to act as counsel to get him what he wanted.

<sup>2136</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, pp. 92-93.

<sup>2137</sup> Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, p. 127. See also Cross-examination of Larry Taman by Mr. Rosenthal, November 15, 2005, p. 185: "I took it that he understood that there were limits to the role he had at that moment. And that he was both acknowledging those limits and saying that, within the big picture, this is what I would like you to do." See also p. 188:

Q: But nonetheless, Mr. Harris didn't say, Well, in that case, slow down?

A: He said, In that case, use your professional judgement.

Scott Patrick testified that just prior to leaving the meeting the Premier said, "I will leave you to your discussions and I expect you'll come to the right conclusion, words to that effect": see Examination in chief of Scott Patrick, October 17, 2005, pp. 106-07. See also Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 140:

Q: All right. But, in any event, when the Premier left the meeting it's -- it's your recollection that he was leaving it to the -- the meeting to come to the right conclusion with respect to the Ipperwash situation; right?

A: He said that, yes.

world”.<sup>2138</sup> Taman believed the Premier understood the principle that government could not interfere in the operations of the police.<sup>2139</sup> He understood that the Premier expected him to comply with the principle that the government could not direct OPP operations.<sup>2140</sup>

Mike Harris testified that he did not specifically recall saying, “I expect you to get on with it using your best professional judgment”, but:

I may very well have said words to the effect that, Okay...we're going to seek the *ex parte* injunction...you would use your best efforts and best judgment. I think there was still room for the officials in the Ministry of the Attorney General to come back and say, You know, we think this -- this case -- *ex parte* is going to be too difficult for us. I think there was...still room for that so I said, You -- you know the feeling of the room and use your best professional judgment.<sup>2141</sup>

The dining room gathering was the first occasion on which Deputy Solicitor General Todres had met privately with the Premier.<sup>2142</sup> She gave similar testimony. She said,

My recollection of...Premier Harris was that he'd heard the legal to-ing and fro-ing and had understood that the necessary deliberations would take place. He may have been frustrated at the beginning of the meeting that...we were where we were as of that morning but my recollection as he left was that he heard from all of the parties and he understood that appropriate action would take, whatever that took. Whatever length of time it took.<sup>2143</sup>

Todres testified that she left the office on September 6 feeling exactly as she had the previous day, and that there were “no alarm bells at all”.<sup>2144</sup> Ron Fox’s assistant, Scott Patrick, accepted that when he left the office that day, “[T]he police were going to stay the course, contain the situation and wait for the injunction application process to unfold the following day.”<sup>2145</sup>

### 13.07 THE POLICE’S MANAGEMENT OF THE OCCUPATION

Larry Taman said he recalled the Premier,

...indicated that he thought that the police, in other places, would have been in there quickly getting people out. And it was that that led me to say, well, I wasn't so sure that was right, that the police would move quickly and that I thought there were lots of

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<sup>2138</sup> Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, p. 126.

<sup>2139</sup> Cross-examination of Larry Taman by Mr. Rosenthal, November 15, 2005, pp. 184-85.

<sup>2140</sup> Cross-examination of Larry Taman by Mr. Downard, November 15, 2005, pp. 31-32.

<sup>2141</sup> Examination in chief of Mike Harris, February 14, 2005, p. 152; see also Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 130.

<sup>2142</sup> Cross-examination of Elaine Todres by Mr. Rosenthal, December 1, 2005, p. 117.

<sup>2143</sup> Cross-examination of Elaine Todres by Mr. Henderson, December 1, 2005, p. 139.

<sup>2144</sup> Examination in chief of Elaine Todres, November 30, 2005, pp. 70-71, 73.

<sup>2145</sup> Examination of Scott Patrick by Ms. Tuck-Jackson, October 18, 2005, p. 138.

examples of the police talking to people patiently, trying to make sure that nobody got hurt.<sup>2146</sup>

Ron Fox testified that the Premier,

...made comments with respect to the police operations thus far. He indicated, certainly, in my opinion that he was displeased that the matter had gone on as long as it had and that actions hadn't been taken and some other comments and left the room."

Q: Some other comments? I'm sorry, I'm not hearing you.

A: Other -- he made some other comments that I...really couldn't put in context and he left the room.

Q: All right. Now, can you recall more particularly what comments the Premier reportedly made which led you to the view that...he was concerned that the police operation had gone on too long?

A: There was comments with respect to, you know, why it had gone on so long and that it would likely come out in an Inquiry of some form.<sup>2147</sup>

Fox testified that he "took that as a criticism of the police operations that had gone on thus far".<sup>2148</sup>

Ron Fox's assistant, Scott Patrick, said that in speaking to Taman the Premier "seemed perplexed in terms of the time lines for resolving the matter",<sup>2149</sup> and that he was "frustrated".<sup>2150</sup> He said the Premier was concerned as to "why could it not be dealt with in a quicker fashion".<sup>2151</sup> He added that he "did make reference to something...post-event and it was along the lines of I suppose this story or this information will come out some day and at that time the OPP will have to account for their actions, or words to that effect".<sup>2152</sup> Patrick said that he did

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<sup>2146</sup> Examination in chief of Larry Taman, November 14, 2005, p. 135. See also Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, pp. 157-58:

I do remember the Premier saying something to the effect that in other situations the police would have gotten people out of this place very quickly. And I was saying, Well, I'm not sure that's right and that there's lots of -- of best practice that suggests patience and dialogue and we can think of hostage and other instances where the police have actually taken quite a lot of time in order to...solve things peacefully.

<sup>2147</sup> Examination in chief of Ron Fox, July 12, 2005, p. 67; see also Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, p. 98.

<sup>2148</sup> Examination in chief of Ron Fox, July 12, 2005, p. 68. Fox said he did not make any response to the Premier, and that, "I don't believe that he was there long enough for me to have done that."

<sup>2149</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 105.

<sup>2150</sup> Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, pp. 220; Cross-examination of Scott Patrick by Mr. Falconer, October 18, 2005, p. 27.

<sup>2151</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 105; Cross-examination of Scott Patrick by Mr. Falconer, October 18, 2005, p. 27.

<sup>2152</sup> Examination in chief of Scott Patrick, October 17, 2005, pp. 105-06.

not know that he would describe the Premier's comments "as criticism".<sup>2153</sup> In cross-examination Patrick said he was "somewhat defensive" when the Premier made the comment.<sup>2154</sup>

Larry Taman testified that he did not believe that the Premier had said anything inappropriate.<sup>2155</sup> Elsewhere in his evidence he stated,

I mean the fact of the matter is that the government needs to be involved in an issue like this. The government is responsible for the police, the government is responsible for the Park. People expect the Premier, the Attorney General, the Solicitor General to be accountable for these things and I think it would be wrong to say that they shouldn't have some involvement.<sup>2156</sup>

He subsequently added,

In my view, it's very important to keep up front the notion that the government is accountable for the actions of the police and when I hear people talk about the independence of the police or the police are independent, I think it's a statement that's too broad. I think that it's right to say that with respect to certain kinds of issues, that the government had best stay out of it and let the police do their job. For all I know, there may even be one or two issues where there is some legal impediment to the government being involved. But it's important to remember that overall, the police work for the government. They're accountable to the people through the government and, in my view, this is critical. And it may be easy for people to say that the police should be independent when they wish something else had happened, but people don't like it very much when the police do other things and the government doesn't seem to be anywhere to be found.<sup>2157</sup>

He continued,

So my advice to the Commission would be to keep very up front the proposition that the government is accountable for the police; that with respect to some matters like, for example, the investigation and prosecution of criminal cases, that the practice is very strong that the government should stay out of it. But that, as a general principle, the people are entitled to turn to their ministers and to their government to ask what the police are doing.<sup>2158</sup>

The Deputy Solicitor General, Elaine Todres, testified that while there was a "great deal of frustration" at the meeting, she did not recall the Premier, or anyone, being critical of OPP

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<sup>2153</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 105.

<sup>2154</sup> Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, p. 180.

<sup>2155</sup> Examination in chief of Larry Taman, November 14, 2005, p. 136.

<sup>2156</sup> Examination in chief of Larry Taman, November 14, 2005, p. 225.

<sup>2157</sup> Examination in chief of Larry Taman, November 14, 2005, p. 227. See also Cross-examination of Larry Taman by Mr. Sulman, November 15, 2005, p. 58.

<sup>2158</sup> Examination in chief of Larry Taman, November 14, 2005, p. 227. See also Cross-examination of Larry Taman by Mr. Sulman, November 15, 2005, p. 58.

operations at the meeting,<sup>2159</sup> and “I didn’t hear any direct criticism of the OPP”.<sup>2160</sup> This was pursued with her in cross-examination by counsel to Ron Fox:

Q: So the question is -- sounds like a -- a talk show -- and the question is: The sentiment of what the Premier was communicating was a level of frustration at the fact that the occupiers were still in the Park?

A: Yes.

Q: Yes. I thought you'd find it an easy question to answer. And...secondly, whether one characterizes it as...explicit criticism of the OPP...or not, and I -- I don't want to get into a kind of a linguistic battle, the sentiment that was being expressed by the Premier was a level of dissatisfaction over the performance by the OPP that it allowed that to happen, namely the occupiers occupying the Park; fair enough?

A: As I indicated when I spoke earlier on this subject, that's not how I took it. I took it as frustration with the current situation without attribution with respect to who might or might not be responsible for the length. It was a tricky issue. It was frustrating for all of those that it was persisting.

[...]

Q: Fair enough. Now, had the Premier expressed dissatisfaction over the OPP's performance to-date, or had he criticized the OPP for its performance to-date from a systemic perspective, would that have concerned you?

A: Well it's a hypothetical -- it's a hypothetical. I didn't take that to have occurred.<sup>2161</sup>

Charles Harnick’s Executive Assistant, David Moran, also recalled that “the substance” of the Premier’s comments was that,

...[H]e was disappointed that the OPP had allowed the situation to get this far. It was his understanding...from previous briefings that the OPP had the situation under control and that...everything was well in hand...I think that the Premier was expressing his frustration and disappointment that when officials knew a situation could potentially become...a real problem that the appropriate steps weren’t taken to diffuse it in advance...And so, what I took from the Premier’s comments was that it’s really important for officials to act before a tragedy occurs and it -- I think that maybe someone that was less familiar with the situation of the history could have taken those out of context and I think that’s what happened. But certainly I didn’t take anything that he said in a negative context with regard to that.<sup>2162</sup>

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<sup>2159</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 59, 64.

<sup>2160</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 59. See also Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 325:

Q: Did you know that...as far as Superintendent Fox was concerned, that in fact Premier Harris had offered an opinion on police operations at that dining room meeting?

A: Not until I read this.

<sup>2161</sup> Cross-examination of Elaine Todres by Mr. Sandler, November 30, 2005, pp. 263-64, 265-66.

<sup>2162</sup> Examination in chief of David Moran, November 1, 2005, pp. 27-30. See also Cross-examination of David Moran by Ms. Esmonde, November 1, 2005, p. 263. See also p. 264 (“he was frustrated that he was resigned to the occupation”).

Chris Hodgson testified that he did not recall the Premier criticizing the OPP.<sup>2163</sup> His Deputy Minister, Ron Vrancart, did not recall the Premier being critical of the OPP.<sup>2164</sup>

Mike Harris did not recall expressing concern about the length of time it was taking to get the occupiers out of the Park.<sup>2165</sup> He also did not recall saying to Larry Taman that he thought the police would have had the occupiers out of the Park by the time of the dining room discussion.<sup>2166</sup> He testified, however, that in the dining room or previously, "I would have wanted to ask or asked, at this meeting, for answers to what happened, how the occupation took place and...I think I needed to be prepared, the government needed to be prepared to...answer questions on that."<sup>2167</sup> He added,

...[C]ertainly I recall wanting to understand, when I left the meeting, what actions the OPP had taken...to keep the Park secure in the first place and...clearly...if the intent of MNR was that the occupiers not come into the Park, and if it was the intent of the OPP they not come into the Park, because there had been rumours, then something went wrong because the occupiers now had the Park and the Government did not. So we asked questions, how did this happen? And...at least I recall me wanting answers to that. And I can't recall whether those were questions I asked of Ms. Hutton to find out at the Interministerial Committee meeting or at this meeting, but certainly...by the end of this meeting, those questions were asked.<sup>2168</sup>

He added,

It may very well be that I or somebody asked, are we handling this situation in Ontario the same way as they would in other provinces or other jurisdictions; is there anything different there? Just so that we have that understanding. That may very well have been asked...in questioning what we were doing, and how we were handling it. But...I don't believe that -- and I know I would not have said, oh, I think others would have done a better job or anything to that effect.<sup>2169</sup>

Mike Harris said he had the impression that the MNR felt the OPP were not as prepared as the MNR would have liked them to have been, but he did not have that view.<sup>2170</sup> He said that he thought, "[W]e heard from the OPP that they were as prepared as they felt they should be, but

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<sup>2163</sup> Cross-examination of Chris Hodgson by Mr. Sandler, January 16, 2006, pp. 108-09.

<sup>2164</sup> Examination in chief of Ron Vrancart, October 27, 2005, p. 74.

<sup>2165</sup> Examination in chief of Mike Harris, February 14, 2005, p. 141.

<sup>2166</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 148-49; see also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 33-35.

<sup>2167</sup> Examination in chief of Mike Harris, February 14, 2005, p. 141.

<sup>2168</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 143-44. See also p. 148:

I will say that I'm sure I asked questions of Ms. Hutton and possibly myself at this meeting as to...what actions the police took to...keep the occupiers out of the Park if...one was coming and was there any action that they should have taken to restore the Park to the Ministry of Natural Resources. The answer was pretty straightforward that...they overwhelmed at the time and that before they...would remove or ask the occupiers to leave, they wished to have an injunction.

<sup>2169</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 36-37.

<sup>2170</sup> Examination in chief of Mike Harris, February 14, 2005, p. 144.



clearly they were...not able to maintain control of the Park for the Ministry of Natural Resources".<sup>2171</sup> He did not think he was "frustrated".<sup>2172</sup> He said,

I do want to say, I asked questions about what action was taken, how did this happen, how do I explain when I am asked the question...from the media? I need to be prepared to answer these. So I certainly wanted to be able to answer what had happened, what had transpired, and why a Park that belonged to the Ministry of Natural Resources was now in the hands of what we deemed to be an illegal occupation. So I asked those questions, but I...do not recall being dissatisfied with the answers or being critical.<sup>2173</sup>

He said,

I think I felt that the sooner we could end the occupation peacefully and...we saw no reason why...it couldn't be ended peacefully, that the better this would be; that it not escalate into anything more than what it was. So I don't know that frustration is the right word, but I thought all steps should be taken...to move as expeditiously as possible.<sup>2174</sup>

### 13.08 THE PRESENCE OF FOX AND PATRICK

*From "Ipserwash probe calls final witness", The Toronto Star, June 29, 2006:*

Falconer bluntly accused Harris of covering up knowledge that he and Hutton met with three plainclothes OPP officers in his dining room Sept. 6, 1995.  
[...]

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<sup>2171</sup> Examination in chief of Mike Harris, February 14, 2005, p. 144.

<sup>2172</sup> Examination in chief of Mike Harris, February 14, 2005, p. 142.

<sup>2173</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 145-46. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 35-36:

I think that...it is entirely appropriate that those who are not involved in any of these decisions, had not been involved before, were not involved operationally, but we're...now after the fact seeking answers are asking these questions.

And this was clearly for us as a government in a new situation, for Ms. Hutton, for myself, and I...think we...quite appropriately asked all of these questions to ascertain for ourselves where all - you know, what occurred and -- and were all the steps taken appropriate and getting a good understanding of that. And -- and that's -- that's our job now.

Now, if someone interpreted those questions as...taking a position I'm...sorry but I think that's the wrong conclusion.

<sup>2174</sup> Examination in chief of Mike Harris, February 14, 2005, p. 142. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 234-35:

No, I don't recall a level of frustration. I -- I've got to be honest with you. I don't want to minimize the...concern of the...occupiers. But back in Toronto at Queen's Park with the issues before us, it was not viewed as...a great crisis, as that huge a deal. It was something that was occurring, but it wasn't something that -- that had that...level...of urgency.

I think I was far more concerned at the time with...\$2 billion worth of cuts; could these be made? Could they be made without effecting programs? That...was probably more on the agenda. I think the...Quebec Referendum was...on the agenda, there were other things.

So I...don't sense a -- and don't feel to this day that...I was particularly frustrated.

Harris said he didn't realize Fox and two others at the meeting were plainclothes OPP officers.

A smear dies hard. The *Star's* suggestive reference, at the conclusion of the Inquiry's two years of hearings, to Mike Harris and Deb Hutton meeting "three plainclothes OPP officers" on the day of the shooting of Dudley George is, of course, consistent with the theory pursued by the *Star* throughout this matter that Premier Harris directed police operations at Ipperwash.

There can be no doubt that the *Star*, having maintained a presence at the Inquiry hearings throughout its process, knows or should know that this statement seriously misled the public. The Inquiry heard extensive evidence that the "plainclothes OPP officers" referred to served and acted as civil servants seconded to the Ministry of the Solicitor General and Correctional Services. As such they acted outside the OPP chain of command.<sup>2175</sup> They were not engaged in police operations.<sup>2176</sup> Ron Fox testified that he "stayed away from very direct operational information and I offered no opinions with respect to operational information, how it may be or should be acted on, to those who were in an operational role within the Ontario Provincial Police".<sup>2177</sup>

Deputy Solicitor General Elaine Todres testified that Fox and Patrick were,

...two seconded officers...to my office who were not police officers, who were not...acting in the...chain of command of the OPP. So they were civil servants...in a room with a group of other servants, civil servants. They may have had a particular background and they may have had a particular set of expertise, but they were civil servants like everybody else.<sup>2178</sup>

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<sup>2175</sup> Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, pp. 122-23; see also Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 185: "He operated, as I've mentioned many, many times, as a seconded staff person in the context of being a civil servant to me."

<sup>2176</sup> Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, pp. 204-05.

<sup>2177</sup> Examination in chief of Ron Fox, July 11, 2005, pp. 21-22. See also Examination of Ron Fox by Mr. Sandler, July 19, 2005, pp. 90-91:

Q: Now -- now, tell me this. Let's assume that John Carson had said to you on the phone on the evening of September the 6th, Well we're going to send the CMU down the road, and this is where we're going to go, and the observers are going to be here and the TRU is going to be over there. Would you have shared that information with Government?

A: I wouldn't have shared it with Government. And to be clear, he wouldn't have shared it with me. And if for some reason he felt the need to, I would have cut him off.

<sup>2178</sup> Cross-examination of Elaine Todres by Mr. Rosenthal, December 1, 2005, p. 50. See Examination in chief of Elaine Todres, November 29, 2005, pp. 277-79:

So it...became a custom for there to be a representative of Corrections seconded from that division and to have a staff officer seconded from the OPP. In this case it was Barbara Taylor.

So, I just want to be clear about my use of words. While Barbara Taylor had been an OPP officer and was retaining her rank and her pensionable rights and so on, with respect to her position, she was fully seconded to my office and took instructions from me alone.

That would be the same case for Ron Fox and Scott Patrick who were seconded officers; I wouldn't have even recalled, perhaps, their rank, but seconded officers from the...Ontario Provincial Police. They were attached to the unit called Aboriginal Policing or a title something like that.

The Deputy Minister of Natural Resources, Ron Vrancart, said he “didn’t view Ron Fox as being a member of the OPP. He was on secondment to the Solicitor General’s office and my view was that he was there in the capacity of a civil servant.”<sup>2179</sup>

Similarly, during cross-examination about the presence of Fox and Patrick, Larry Taman said:

And what confuses me a little bit about this, Mr. Falconer, is that the two officers were seconded to the Office of the Deputy Minister so it's not as if the Premier reached out into the street or anybody reached out into the street and brought in two officers. These were two officers who worked in the Office of the...Deputy. They had been at meetings throughout this process.<sup>2180</sup>

Mike Harris did not know that any OPP officers were seconded to the Ministry of the Solicitor General as advisers on First Nations issues until 1996, as part of a briefing to prepare him for Question Period in the legislature.<sup>2181</sup> He did not know that officers seconded to the civil service had participated in the September 5 and 6 IMC meetings,<sup>2182</sup> or that they were present in the dining room.<sup>2183</sup> He had no expectation that discussions in the dining room would be conveyed to the OPP’s Incident Commander at Ipperwash.<sup>2184</sup> He said,

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They would have retained their salary and compensation rights, but they were fully seconded to my office and took instructions from me alone and were not in that sense considered to be OPP officers.

Notwithstanding the fact that...I'm not a legal expert, but once sworn in as...an officer I believe that, seconded or not, should they witness a problem they are not absolved of their...oath to...be a peace officer.

I may not have gotten the legalities right, but...for the purposes of reporting relationships, authority, and...chains of command, those three staff people, like the Corrections people, reported to me and to me only.

See also p. 291:

Q: Did Mr. Fox or other seconded OPP officers have a reporting obligation to anybody else other than you, to your knowledge?

A: No.

Todres testified that she was unaware that the seconded OPP personnel retained their legal status of “peace officers” in 1995, and that she only became aware of that shortly before her appearance at the Inquiry: see Examination in chief of Elaine Todres, November 29, 2005, p. 279; Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, p. 149; Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 184.

<sup>2179</sup> Cross-examination of Ron Vrancart by Ms. Tuck-Jackson, October 27, 2005, p. 191.

<sup>2180</sup> Cross-examination of Larry Taman by Mr. Falconer, November 15, 2005, p. 302.

<sup>2181</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 61-62, 100.

<sup>2182</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 99-100.

<sup>2183</sup> Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 245.

<sup>2184</sup> Cross-examination of Mike Harris by Mr. Smith, February 14, 2005, p. 216:

Q: Did you expect, Mr. Harris, that after that meeting, that anyone present in the dining room meeting was going to report on the meeting directly to the Incident Commander?

A: Well, oh, no, but I would have expected that...the OPP would have been notified through whatever chain they use.

I can't recall anything that I said at the meeting that...I might not have said had there been OPP officers there, save and except I have no reason to understand why they would be there. This was not a police meeting, it's not a meeting that I would have expected them to be at. This was a meeting of the officials of the various Ministries and the politicians and the political staff.<sup>2185</sup>

Larry Taman testified that, "Premiers are in lots of meetings with lots of people they don't know."<sup>2186</sup>

The evidence of Ron Fox's assistant,<sup>2187</sup> Scott Patrick, was that neither he nor Fox were introduced as members of the OPP at the September 6 IMC Meeting.<sup>2188</sup> There is no evidence that Fox was introduced as a member of the OPP at the September 5 IMC meeting. Fox accepted in cross-examination that at the IMC meeting he introduced himself as "Ron Fox or Ron Fox, First Nations Special Advisor to the Ministry of the Solicitor General, something along those lines".<sup>2189</sup> In cross-examination by counsel to Ms. Hutton, Fox accepted that he had no evidence to contradict Deb Hutton's evidence that she did not know Fox was a police officer on secondment.<sup>2190</sup> Fox said that Hutton never gave him "an impression either way" whether she knew he was "from the OPP".<sup>2191</sup>

Ron Fox testified that he was introduced when he entered the dining room by either the Solicitor General or the Deputy Solicitor General, although he did not recall which.<sup>2192</sup> He said he "would assume" he was introduced as Special Advisor to the Attorney General.<sup>2193</sup>

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I was not aware of any chain other than...through the deputy Minister...to the Commissioner or the Commissioner's designate. That they would have relayed the...results of the meeting that...the government planned to seek an injunction and were hopeful of being in Court the next day. That would be the report.

See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 9; Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 226; Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, p. 248.

<sup>2185</sup> Examination in chief of Mike Harris, February 14, 2005, p. 157.

<sup>2186</sup> Cross-examination of Larry Taman by Mr. Falconer, November 15, 2005, pp. 250-51. See also pp. 254-55. In his evidence in chief, Ron Fox said that the only political staff in the September 5 IMC meeting were Deb Hutton and Kathryn Hunt (see Examination in chief of Ron Fox, July 11, 2005, p. 160). He was not aware that Jeff Bangs of the MNR and David Moran of the Attorney General's office were also political staff.

<sup>2187</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 55.

<sup>2188</sup> Examination in chief of Scott Patrick, October 17, 2005, pp. 69-70.

<sup>2189</sup> Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, p. 223.

<sup>2190</sup> Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, pp. 223-24. Deb Hutton had not known Fox prior to September of 1995. See also Examination in chief of Deb Hutton, November 22, 2005, p. 71; Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, pp. 285, 290, 327-28, 331.

<sup>2191</sup> Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, pp. 147-49.

<sup>2192</sup> Examination in chief of Ron Fox, July 12, 2005, pp. 65, 66; Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 84. Fox said (at p. 66) that Scott Patrick was also introduced. Patrick testified that he was not introduced: see Examination in chief of Scott Patrick, October 17, 2005, p. 101.

<sup>2193</sup> Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, p. 224.

Scott Patrick testified, however, that as he and Ron Fox walked into the dining room, the Premier's principal secretary, David Lindsay, said "Inspector Fox" in "quite a loud voice".<sup>2194</sup> He said that subsequently, Deputy Solicitor General Elaine Todres "asked the Premier if it would be appropriate at the time for Inspector Fox to provide an update in terms of the latest policing information".<sup>2195</sup>

Mike Harris unequivocally denied that Ron Fox was introduced in the dining room as "Inspector Fox" in his presence.<sup>2196</sup> He said he would have remembered that if it occurred.<sup>2197</sup> He did not recall anyone else, including Elaine Todres, introducing Fox at the meeting.<sup>2198</sup> In her testimony Elaine Todres was adamant that, "I never referred to him as Inspector Fox, he was Mr. Fox to me."<sup>2199</sup>

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<sup>2194</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 101; Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 140; Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, p. 202.

<sup>2195</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 104; Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, p. 207.

<sup>2196</sup> Examination in chief of Mike Harris, February 14, 2005, p. 133.

<sup>2197</sup> Examination in chief of Mike Harris, February 14, 2005, p. 133. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 20-21:

Q: Okay. Fair enough. Now, Ron Fox testified that before he provided the update, he was introduced. He did not say he was introduced as an OPP officer or by reference to his rank.

Now, in fairness, Scott Patrick's recollection was that Ron Fox was indeed introduced by his rank.

And would it be fair to summarize your position that Ron Fox may well have been introduced by name, you don't recollect one way or the other, but not by rank or in a way that communicated to you that he was an OPP officer. Is that a fair summary --

A: Yes, yeah.

Q: -- of where you're at?

A: That would be absolutely correct and...I can tell you that I would be very firm, that he was not introduced as an OPP officer or by his rank, because I think that would have alerted me to...believe that he was a member of OPP or even a former member of the OPP and...I did not have that impression.

See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, pp. 212-17: He recalled (at pp. 213-14) that,

...[A]bout a year later, when there was a newspaper report, I think, when I first learned that an allegation that there was a...police inspector or somebody who was...with the OPP in this meeting, I was very surprised at that.

And I...remember coming in to the morning meeting that day saying we've got to correct the record, they're wrong. And it turns out they were right, there was a seconded OPP officer, in fact two, maybe three I hear now, I was aware of two but I think yesterday I heard there was -- could have been a third. But that...was not known to me nor to a number of people at the meeting and I would have known that and I would have remembered that.

See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, p. 228.

<sup>2198</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 133-34.

<sup>2199</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 34. She was aware of Fox's rank: see Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 2-3. See also Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, pp. 149-50. Elaine Todres did not recall Fox being present at the meeting, and had no recollection of introducing him: Examination in chief of Elaine Todres, November 30, 2005, pp. 53-54, 68.

Fox accepted in cross-examination that, consistent with Elaine Todres' evidence, in the course of his duties at Queen's Park he was addressed as 'Ron', or 'Mr. Fox', and generally not as 'Inspector Fox'.<sup>2200</sup> No witness other than Scott Patrick recalled Ron Fox being introduced in the dining room as 'Inspector Fox'.<sup>2201</sup> In cross-examination Patrick accepted that at the time of the dining room meeting, over 10 years ago, he had no particular reason to focus on precisely what words were used to introduce Fox there.<sup>2202</sup> Given all of these circumstances, we respectfully submit that Patrick's unconfirmed evidence on this point should not be accepted as accurate.

### 13.09 "OUT OF THE PARK"

Charles Harnick testified:

When I got to the dining room, the --there were people there in their places around the table. And as I walked into the dining room, the Premier in a loud voice said, I want the fucking Indians out of the Park. And I was, at that point I think just taking my seat. I didn't hear who had spoken previously to -- to evoke that comment. But then there was a complete silence in the room. And after that, the Premier broke the silence in a very calm voice, indicating that once the occupiers were able to get into the Park, he didn't believe that there was any way that they could be removed from the Park. And, you know, his -- his demeanour changed. He became quiet.<sup>2203</sup>

Harnick admitted that he did not see the Premier make the inappropriate statement.<sup>2204</sup> Harnick testified that in addition to becoming quiet, the Premier became "more soft-spoken and philosophical".<sup>2205</sup> Harnick agreed with the suggestion that the Premier's second statement in

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<sup>2200</sup> Cross-examination of Ron Fox by Mr. Fredericks, July 13, 2005, p. 134:

Q: And I take it in the office, at that time, you would have been addressed as Ron, or Mr. Fox and generally not as Inspector Fox, would that be correct?

A: That is correct.

See also Cross-examination of Ron Fox by Mr. Downard, July 12, 2005, p. 211-12 (as to manner of dress).

<sup>2201</sup> Several witnesses spoke to the point specifically. Robert Runciman was aware that Fox held the rank of Inspector in the OPP: see Examination in chief of Robert Runciman, January 9, 2006, p. 59. He did not recall Fox being introduced in the dining room: see Examination in chief of Robert Runciman, January 9, 2006, p. 142. He did not recall Fox speaking in the dining room, or attending there: see Examination in chief of Robert Runciman, January 9, 2006, pp. 133, 142, 143. See also Cross-examination of Robert Runciman by Ms. Tuck-Jackson, January 10, 2006, pp. 120-22; Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, p. 221. See also p. 230. He did not recall meeting Scott Patrick until sometime after September 1995: see Examination in chief of Robert Runciman, January 9, 2006, pp. 59, 133. Chris Hodgson recalled Fox being present in the dining room, but did not recall him being introduced: Examination in chief of Chris Hodgson, January 10, 2006, pp. 177, 182. Hodgson's Deputy Minister, Ron Vrancart, did not recall Ron Fox being introduced, or participating at all: Cross-examination of Ron Vrancart by Mr. Downard, October 27, 2005, p. 98.

<sup>2202</sup> Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, pp. 138-39.

<sup>2203</sup> Examination in chief of Charles Harnick, November 28, 2005, pp. 9-10. See also pp. 11, 15, 16.

<sup>2204</sup> Cross-examination of Charles Harnick by Mr. Downard, November 28, 2005, p. 66.

<sup>2205</sup> Cross-examination of Charles Harnick by Mr. Downard, November 28, 2005, pp. 53-54.

the context of this demeanour amounted to an immediate retraction of the earlier inappropriate statement.<sup>2206</sup>

Charles Harnick testified that this statement was “out of character” for the Premier, because, “I’ve never seen him in any situation where there was a group assembled such as that...to have made a comment in any...way like that with the various people there who were not just the politicians or Cabinet Ministers but also the civil servants”.<sup>2207</sup> He said the statement was made shortly before Larry Taman began to speak to the Premier about the merits of seeking an injunction.<sup>2208</sup> He said the Premier agreed that an injunction should be sought as soon as possible “after a few minutes of discussion”,<sup>2209</sup> and that the Premier also said he believed there was no way the occupiers could be removed once they were in the Park.<sup>2210</sup> He said the Premier’s agreement was given “readily”, “without any difficulty”.<sup>2211</sup>

The other Cabinet ministers present in the dining room did not recall the Premier making any such statement. Robert Runciman did not recall “at all” the Premier making the comment described by Harnick.<sup>2212</sup> Chris Hodgson said he did not hear it.<sup>2213</sup>

The senior civil servants who were present in the dining room did not recall the Premier making any such statement. Although in cross-examination Charles Harnick testified that he and Larry Taman “looked at each other” when the inappropriate statement he described was made,<sup>2214</sup> Taman testified that he had no recollection of “anything like that” in the dining room, and that “it’s the sort of thing I’d probably remember”.<sup>2215</sup> The Deputy Solicitor General, Elaine Todres, testified that she did not hear the Premier make the inappropriate statement described by Harnick.<sup>2216</sup>

None of the Executive Assistants present in the dining room, including Deb Hutton,<sup>2217</sup> heard the Premier make any such statement. Ron Fox did not testify that he heard any such

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<sup>2206</sup> Cross-examination of Charles Harnick by Mr. Downard, November 28, 2005, p. 54. See also p. 57: “[T]he Premier is a human being, he made a mistake. And -- and at the end of the meeting, I think what was really important was the fact that he was, in effect, acknowledging that mistake by the change in his demeanour and by agreeing with the decision that we had made.”

<sup>2207</sup> Examination in chief of Charles Harnick, November 28, 2005, pp. 17-18.

<sup>2208</sup> Examination in chief of Charles Harnick, November 28, 2005, p. 11.

<sup>2209</sup> Examination in chief of Charles Harnick, November 28, 2005, p. 11.

<sup>2210</sup> Cross-examination of Charles Harnick by Mr. Downard, November 28, 2005, p. 66.

<sup>2211</sup> Examination in chief of Charles Harnick, November 28, 2005, p. 19.

<sup>2212</sup> Examination in chief of Robert Runciman, January 9, 2006, pp. 144, 145. See also Cross-examination of Robert Runciman by Mr. Rosenthal, January 11, 2006, pp. 76-78.

<sup>2213</sup> Examination in chief of Chris Hodgson, January 12, 2006, pp. 199-201.

<sup>2214</sup> Cross-examination of Charles Harnick by Mr. Downard, November 28, 2005, p. 66.

<sup>2215</sup> Examination in chief of Larry Taman, November 14, 2005, p. 134. See also p. 135: “I didn’t hear anything said in that crude way...I don’t recall the Premier saying anything inappropriate...”

<sup>2216</sup> Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, p. 122.

<sup>2217</sup> Cross-examination of Deb Hutton by Mr. Downard, November 22, 2005, p. 173.

language. His assistant, Scott Patrick, testified that he did not recall hearing “any obscenities or expletives” from any of the participants in the meeting.<sup>2218</sup>

Mike Harris testified that he certainly wanted the occupiers out of the Park,<sup>2219</sup> and that he communicated that in the dining room.<sup>2220</sup> He strongly denied, however, that he used such language.<sup>2221</sup> He said,

The word -- the adjective's not foreign to me but not...the kind of language I would use at...any kind of a meeting like the meeting we were at, not the kind of language that I ever think is...appropriate even if I have used it from time to time. But certainly not at...any meeting like this.<sup>2222</sup>

While she attributed no such remark to Premier Harris, Elaine Todres testified that the Minister of Natural Resources, Chris Hodgson, said during the course of the meeting,<sup>2223</sup> “Get the fucking Indians out of my Park.”<sup>2224</sup> Chris Hodgson strongly denied ever having said this.<sup>2225</sup> After the remark was made, she said, “I perceived a silence and then we moved right along into the substantive conversation.”<sup>2226</sup> She said no one else in the meeting said anything like that.<sup>2227</sup>

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<sup>2218</sup> Cross-examination of Scott Patrick by Mr. Myrka, October 17, 2005, p. 181.

<sup>2219</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 38-39; Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 58.

<sup>2220</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 38-39.

<sup>2221</sup> Examination in chief of Mike Harris, February 14, 2005, p. 154. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, pp. 178-198.

<sup>2222</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 154-55.

<sup>2223</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 61; Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, p. 181.

<sup>2224</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 57. See also Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, pp. 198-99:

Q: Now, during the meeting do you have any recollection of Mr. Hodgson advocating the use of violence?

A: No.

Q: Did Mr. Hodgson say anything that you saw as directing the OPP?

A: No.

Q: Did Mr. Hodgson take a position on how the OPP should carry out its responsibilities?

A: No.

Q: Was there anyone in the room who was there as a formal representative of the OPP in any event?

A: I'm sorry, could you repeat that?

Q: Was there anyone in the room who was there as a formal representative of the OPP?

A: No.

<sup>2225</sup> Examination in chief of Chris Hodgson, January 10, 2006, pp. 203-07.

<sup>2226</sup> Cross-examination of Elaine Todres by Mr. Lauwers, November 30, 2005, p. 190.

<sup>2227</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 57.



It is respectfully submitted that it is not realistically possible that the Premier could have made any such statement in a loud voice, followed by the silence described by Charles Harnick, if not a single other participant in the meeting can recall that statement being made. It is respectfully submitted that it is certainly not possible for a finding to be made that the Premier made the statement described by Harnick in the absence of a corroborating witness or corroborating documentation. There is none.

### 13.10 THE HOLOCAUST

Ron Fox testified that in the dining room, the Premier “made some comment about the Holocaust, and it was at about that time he left”.<sup>2228</sup> Fox said he could not “recall anything further in terms of comments and I can't put that comment into context”.<sup>2229</sup> This evidence came out of left field. It describes a reference to an event of terrible importance. The alleged reference by the Premier was not sufficiently described to have any meaning. No documentary record, in any form, exists which might assist in providing that meaning.

In cross-examination Fox admitted that in late August or early September of 2003 he was asked by lawyers for the province to provide a response for the purpose of civil litigation to a number of questions about the facts of this matter. These included the following question about the discussion in the dining room:

What did the Premier say at that meeting, if anything? Please provide your best recollection of what he said in as much detail as possible.<sup>2230</sup>

Fox's response was set out in a letter to counsel for the plaintiff in the civil litigation. Fox testified that he had previously seen the letter, and never complained about it containing any inaccuracies.<sup>2231</sup> Fox's reply to the question as set out in the letter was,

He cannot recall any specific words being used at the meeting. His impression was that the Premier was displeased because the matter had not yet been resolved.<sup>2232</sup>

Fox was asked when it came to him that the Premier had said something in the dining room about the Holocaust. He replied,

In July of...2003 I became aware that I had a taped conversation with Inspector Carson. Prior to that I had no specific recollection of the substance of my conversation with Carson, it served to refresh my memory.<sup>2233</sup>

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<sup>2228</sup> Examination in chief of Ron Fox, July 12, 2005, p. 68.

<sup>2229</sup> Examination in chief of Ron Fox, July 12, 2005, p. 69; see also Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 87.

<sup>2230</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 90, 92, 93.

<sup>2231</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 92.

<sup>2232</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 93.

<sup>2233</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 93.

The recorded conversation in question contains no reference to the Holocaust.<sup>2234</sup> In addition, Fox's statement - that he could not "recall any specific words being used at the meeting" by the Premier - was made *after* July of 2003, when he says his memory was refreshed on the point. The statement was in fact made only shortly thereafter, in late August or early September of 2003.<sup>2235</sup> When this was put to Fox in cross-examination his answer changed from stating that his memory had been refreshed in July of 2003, to a statement that he had first recalled the Premier's reference to the Holocaust sometime between September 2003 and July 2005.<sup>2236</sup>

Mike Harris recalled making no such reference.<sup>2237</sup> Of those present in the dining room, Elaine Todres testified that she did not hear the Premier make any remarks about the Holocaust. She added, "I should indicate to you that I'm a daughter of Holocaust survivors...It would definitely have been retained."<sup>2238</sup> Larry Taman did not recall the Premier saying anything about the Holocaust.<sup>2239</sup> David Moran did not hear it.<sup>2240</sup> Robert Runciman did not recall a reference to the Holocaust by the Premier.<sup>2241</sup> Chris Hodgson did not hear it, and believed he would recall it if he had.<sup>2242</sup> Ron Vrancart did not hear it, and said that if it had been said in his presence, "I would have recalled that, for sure."<sup>2243</sup> Jeff Bangs did not recall the Premier saying anything that referred to the Holocaust.<sup>2244</sup> Deb Hutton said she did not hear it.<sup>2245</sup>

When Ron Fox's assistant Scott Patrick testified, however, he corroborated Fox's evidence about this. Patrick said that during the meeting the Premier "made a reference to the Holocaust". He testified,

It's difficult to articulate, it appeared to be in the context of an analogy. He indicated that this was a test, that they were a new Government, and he said, This is how these things get started, and then he referenced the Holocaust.<sup>2246</sup>

Patrick said he did not recall that in the dining room the Premier "spoke directly" to himself and Fox.<sup>2247</sup> In fact, he said, he had difficulty hearing the Premier because the Premier

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<sup>2234</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 87.

<sup>2235</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 92.

<sup>2236</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 94.

<sup>2237</sup> Examination in chief of Mike Harris, February 14, 2005, p. 156.

<sup>2238</sup> Examination in chief of Elaine Todres, November 30, 2005, pp. 63-64.

<sup>2239</sup> Examination in chief of Larry Taman, November 14, 2005, p. 133.

<sup>2240</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, p. 63.

<sup>2241</sup> Examination in chief of Robert Runciman, January 9, 2006, p. 143.

<sup>2242</sup> Examination in chief of Chris Hodgson, January 12, 2006, p. 198.

<sup>2243</sup> Examination in chief of Ron Vrancart, October 27, 2005, p. 67.

<sup>2244</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, p. 135. See also Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, pp. 239-40.

<sup>2245</sup> Examination in chief of Deb Hutton, November 22, 2005, p. 114.

<sup>2246</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 108; Cross-examination of Scott Patrick by Mr. Falconer, October 18, 2005, p. 39.

<sup>2247</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 104.

had his back to Fox and Patrick when he was speaking.<sup>2248</sup> Patrick also said that when the Premier spoke he did so in a calm and “low conversational tone”, which contributed to Patrick’s difficulty in hearing him.<sup>2249</sup> Patrick testified that while the Premier was in the room he and Fox were seated in the far left corner of the room.<sup>2250</sup> He said the Premier sat to the left of the head of the table at the other end of the room, which was 20 to 30 feet in length.<sup>2251</sup> Patrick said he was also “seated directly next to...a window air conditioning unit, which wasn’t helpful; it didn’t allow me to hear all of the conversation”.<sup>2252</sup>

In July of 2003, Patrick had been asked in the context of civil litigation to provide his best recollection, in as much detail as possible, of what the Premier said, if anything, in the course of the dining room discussion. At that time Patrick answered, “I don’t recall.”<sup>2253</sup> In his testimony in this Inquiry he said that at that time he “did recall one reference and it was to the term, ‘holocaust’”.<sup>2254</sup> He said “I could not explain the relevance of that term so I chose not to convey that in my response.”<sup>2255</sup>

It is submitted that given the lack of substantive content of the alleged reference to the Holocaust it is not necessary for this Commission to make a finding on this controverted point. If the Commission were to take a different view it would be our submission that in light of the circumstances described above an adequate basis to find that the reference was made does not exist.

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<sup>2248</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 107; Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 130; Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, p. 212; Re-examination of Scott Patrick, October 18, 2005, p. 160.

<sup>2249</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 107; Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 131. Patrick was unique among the witnesses in that he testified that at the conclusion of the dining room meeting he understood that the government would be making a “standard application” for an injunction: see Cross-examination of Scott Patrick by Ms. Esmonde, October 18, 2005, pp. 112-13.

<sup>2250</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 101.

<sup>2251</sup> Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, pp. 129-30.

<sup>2252</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 107; Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, pp. 130, 131. See also p. 138: “...I couldn’t hear a great deal of what was transpiring in the room.”

<sup>2253</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 121; Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 132.

<sup>2254</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 108

<sup>2255</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 122.

## CHAPTER 14

# RON FOX CALLS THE COMMAND POST

*From a telephone conversation between Ron Fox and Mark Wright, September 6, 1995,  
12:06 p.m.:*

And that's as I said to John that's my big job is to keep the political folks out of the hair of  
the operational people...<sup>2256</sup>

*From the Cross-examination of former Deputy Attorney General Larry Taman:*

...[G]overnment needs to be able to discuss its policies, its problems, its reservations,  
without having the discussion find its way to the Incident Commander.<sup>2257</sup>

### 14.01 RON FOX CALLS THE COMMAND POST

At 2:00 p.m. on September 6, Ron Fox called Inspector Carson at the Command Post in Forest.<sup>2258</sup> Fox informed Carson that Tim McCabe would be handling the injunction application,<sup>2259</sup> and that the province was “making moves towards getting an *ex parte* injunction...one that doesn't have to be served.”<sup>2260</sup>

Fox told Carson that the government wished to lead *viva voce* (in person) evidence “from a police perspective” at the injunction hearing.<sup>2261</sup> Fox said, “What they have to do is show emergent circumstances...And the exigencies of the situation are kind of increasing exponentially.”<sup>2262</sup> Fox said, “[T]he political people are really pushing...[T]hey're pushing to

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<sup>2256</sup> Exhibit 444A, Tab 34 (Transcript).

<sup>2257</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, p. 140. Similarly, Deb Hutton stated, “I think it's very -- very difficult for Government to have an open and honest discussion about options outside of the bounds of -- of the Government. I just don't know how Government could do its job in that context.” See Cross-examination of Deb Hutton by Mr. Falconer, November 23, 2005, p. 330.

<sup>2258</sup> Exhibit 444A, Tab 37 (Transcript).

<sup>2259</sup> Exhibit 444A, Tab 37 (Transcript), pp. 258-59.

<sup>2260</sup> Exhibit 444A, Tab 37 (Transcript), p. 259.

<sup>2261</sup> Exhibit 444A, Tab 37 (Transcript), pp. 260, 261.

<sup>2262</sup> Exhibit 444A, Tab 37 (Transcript), p. 259.

get this done quick.”<sup>2263</sup> Fox said the government was “lining up a judge” in order to do “their presentation to the judge tomorrow or tonight”.<sup>2264</sup> Carson said he had “no problems” with appearing to testify, provided Chief Superintendent Coles and the OPP Commissioner had no objection.<sup>2265</sup>

At a later point in the conversation, Fox told Carson that McCabe wanted to know Carson’s opinion whether it could be said “with certainty to a court that there is a need for an emergent order that makes it an *ex parte* order”. Carson replied, “I think we can”.<sup>2266</sup> In his testimony John Carson said he thought this was so because he,

...felt that the progression of events...that had taken place to this point in time where, you know, there had been a...confrontation when the occupiers came into the Provincial Park and then there had been an altercation through the night with the cruiser windows being smashed and in the morning there's all the picnic tables on...the sandy parking lot ...and of course, the...gunfire that was heard back in the military base through the night, that when you put all those factors together there's such a progression of events that, hopefully, you would have enough to provide consideration for an emergent order.<sup>2267</sup>

After the initial discussion of the injunction application and *viva voce* evidence at the court hearing, Fox continued:

Fox: Okay, well then let me just give you the - I went through this meeting. John, we're dealing with a real redneck government. They are fucking barrel suckers. They just are in love with guns.

Carson: Okay.

Fox: There's no question they couldn't give a shit less about Indians.

Carson: All right. They just want us to go kick ass.

Fox: That's right.

Carson: We're not prepared to do that yet.

Fox: Well, I'll tell ya. I was then - when I left that meeting I got a page. Go to the Legislative building immediately.

Carson: Oh.

Fox: Meet the deputy. Well I went and I finally thread my way through all the media scrum and I meet with the deputy all right.

Carson: Yeah.

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<sup>2263</sup> Exhibit 444A, Tab 37 (Transcript), pp. 260-61. Fox testified in cross-examination that when he referred to the government “pushing to get this done quick” he was referring to the government wishing to obtain a court hearing promptly: Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 99-100.

<sup>2264</sup> Exhibit 444A, Tab 37 (Transcript), pp. 260-61.

<sup>2265</sup> Exhibit 444A, Tab 37 (Transcript), p. 262. At a later point in the conversation (see p. 268) Carson said, “I’m prepared to appear and give that evidence if the chief and Commissioner feel that’s the direction we should be going and I don’t see any reason that we can’t support that.”

<sup>2266</sup> Exhibit 444A, Tab 37 (Transcript), p. 267.

<sup>2267</sup> Examination in chief of John Carson, May 18, 2005, p. 219.

Fox: Our deputy. Sol Gen. AG. The deputy AG. Chris Hodgson -  
Carson: Oh yeah.  
Fox: Natural Affairs. Ah huh. Ah huh. And the fuckin' premier.  
Carson: Oh boy.  
Fox: Well, John I'm here to tell you. This guy is a redneck from way back.  
Carson: (laughs)  
Fox: And he came right out and said, I just walked in on the tail end of this, the OPP in my opinion made mistakes. They should have done something right at the time. And he said that will I'm sure all come out in an inquiry sometime after the fact.  
Carson: Yeah, yeah.  
Fox: He believes that he has the authority to direct the OPP.  
Carson: Oh! Okay.  
Fox: So --  
Carson: I hope he talks to the Commissioner about that.  
Fox: Umm pardon me?  
Carson: I hope he and the Commissioner have that discussion.  
Fox: Oh, yeah yeah well of course the Commissioner's already brought into the loop on this.  
Carson: Okay.  
Fox: So in any event, he makes a couple wild-ass comments, gets up and leaves the room...<sup>2268</sup>

Later in the telephone call John Carson handed the receiver to Chief Superintendent Coles, so that Fox could discuss with Coles the attendance of Carson at the injunction hearing to give *viva voce* evidence.<sup>2269</sup> The discussion between Fox and Coles included the following:

Fox: Oh, I do Chris. But I guess you - what I want to do is just tell you some more of what's gone on here.  
Coles: Okay.  
Fox: So that you know. I was called to meet with the - the Deputy Solicitor General over at the legislature.  
Coles: Yup.  
Fox: And I walked in. And there was the deputy Solicitor General and the Sol Gen and the AG. And the Deputy AG. And Hodgson, the Minister for MNR. And the Premier.

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<sup>2268</sup> Exhibit 444A, Tab 37 (Transcript), pp. 262-64.

<sup>2269</sup> Exhibit 444A, Tab 37 (Transcript), p. 268.

Coles: Okay.

Fox: Okay? The Premier was quite adamant that this is not an issue of native rights and in his words - I mean we've tried to pacify and pander to these people for too long. It's now time for swift affirmative action. I walked in the tail end Chris of him saying something like well I think the OPP made mistakes in this. They should have just gone in. He views it as a simple trespass to property. That's in his thinking. He's not getting the right advice. Or if he is getting right advice he sure is not listening to it in any way shape or form.

Coles: Okay.

Fox: The fellow who supported our position the best was the Deputy Attorney General. Larry Taman -

Coles: (interrupting) Ron - give me your phone number there.

Fox: Yup.

Coles: I'm going to give you a phone call. Hang on here. Give me - what's your phone number there. I'm going to call you back from another line.

## 14.02 “REDNECK GOVERNMENT”

Ron Fox testified that on September 6 he was in the same room as the Premier for three to five minutes.<sup>2270</sup> Fox had never spoken to the Premier about First Nations issues.<sup>2271</sup> He did not know the man at all.<sup>2272</sup> In cross-examination Fox was shown actual 1995 policy statements of the Progressive Conservative party under Mike Harris' leadership that spoke to First Nations issues. He acknowledged that they were not statements that would be made by people who could not care less about First Nations people.<sup>2273</sup> He accepted that the policies could not reasonably be described as “redneck”.<sup>2274</sup>

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<sup>2270</sup> Examination in chief of Ron Fox, July 12, 2005, p. 66. See also Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, p. 110.

<sup>2271</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 109.

<sup>2272</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 109.

<sup>2273</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 103-04. The following Ontario Progressive Conservative statements of policy were put to Fox. First, from a January 1995 document entitled “A Voice for the North”:

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. Many First Nation communities are now taking action to forge their own economic destinies. During a visit to the Rainy River First Nations at Manitou Rapids we discovered first hand the impressive innovation and entrepreneurship that's now taking place on reserves. Natives at Rainy River are running a sturgeon hatchery which general manager Russ Fortier told us is the only one of its kind in North America. It's a business with huge potential. This kind of initiative and entrepreneurship among the First Nations will be the key to their economic independence. The opportunities created for increased tourism will benefit not only native peoples, but nearby non-native communities.

[...]

Fox testified that he believed the government was “real redneck” because, “[T]he position of the government seemed to be, and this is my opinion, that there is one justice for all, and that there is no differential treatment for anybody.”<sup>2275</sup> Late in his cross-examination, however, Fox stated for the first time that he had intended to ascribe a relatively narrow meaning to the term:

Q: Now there's another phrase that you used, "redneck," and that is a phrase I think I'm familiar with and I just wanted to make sure that you used it in the same way as I would understand it, namely, as a phrase that emanated from the American south meaning a person who is racist and very aggressively so; is that roughly what you had in mind, sir?

A: Could be taken that way, sir. As I testified earlier, what my belief was in using the term "redneck" is it's to have one specific focus and point of view, and not considering others.

Q: But does it include an element of racism in your view and your use of the word?

A: I wasn't using it in that context here, sir.<sup>2276</sup>

Larry Taman testified that the Premier did not say anything, “to my hearing or recollection” that would justify a conclusion that he was “in love with guns”.<sup>2277</sup> Ron Vrancart testified that he “didn’t hear anything of that nature, anything that would have suggested that to

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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. 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.

Second, from a 1995 document regarding community development:

Native Canadians are a special group in our society with unique recognition in the Constitution and specific needs and concerns. As the federal government moves closer to recognizing self-government among native peoples, aboriginals' relationship with the Ontario government will continue to change.

It would take thousands of pages to deal with all of the issues that changing relationship will raise.

Here, we are only discussing some of the most important of the current issues facing Ontario's native population. Native Canadians have told us they want to resolve the ongoing conflicts over land claims and resource rights, but what's more important, they want to break the poverty cycle that traps so many aboriginal people in despair and bad health.

Our plan to provide new opportunities for native Canadian communities is explained in this section.

<sup>2274</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 105.

<sup>2275</sup> Examination in chief of Ron Fox, July 12, 2005, p. 106. Fox said that he described the Premier as “a redneck from way back.” Fox said he made this comment because of the Premier’s “opinion on differential treatment for First Nations”: see Examination in chief of Ron Fox, July 12, 2005, p. 109

<sup>2276</sup> Cross-examination of Ron Fox by Mr. Rosenthal, July 18, 2005, pp. 188-89.

<sup>2277</sup> Examination in chief of Larry Taman, November 14, 2005, p. 34.



me”.<sup>2278</sup> As to his reference to “barrel suckers”, Fox accepted that he was speaking emotionally.<sup>2279</sup>

In cross-examination Fox accepted that in making this inappropriate statement<sup>2280</sup> he was not referring to the Premier specifically, but to “the government of the day” as a whole, although the Premier would of course fall within this broad brushstroke as the leader of the government.<sup>2281</sup> He said he “wasn’t passing judgment on him *per se*, as an individual”.<sup>2282</sup>

### 14.03 “THEY JUST WANT US TO GO KICK ASS”

Ron Fox also said he referred to the government of the day as “barrel suckers” because:

In the meetings of the IMC and certainly in the most recent meeting that we were addressing at this point in time in my testimony there, in my opinion, was...an over-emphasis placed on weaponry, on firearms.<sup>2283</sup>

What I was saying there, what I was really intending to say, is that this was an indication that there was one way to solve problems and that was with force.<sup>2284</sup>

Fox clearly communicated his opinion about this to Carson. As indicated above, after Fox pronounced the government of the day rednecks, barrel suckers and people who couldn’t give a shit less about Indians, Carson responded, “All right. They just want us to go kick ass.” Fox said, “That’s right”. Carson responded, “We’re not prepared to do that yet.”

No other witness testified that the government’s view in the dining room was that the OPP should use force to remove the occupiers. Elaine Todres testified that as she perceived the situation in the dining room, the injunction “was the best method by which to see to it that, as quickly as possible, within reason, and with no harm to anyone, that the Park would become vacated”.<sup>2285</sup> Pressed in cross-examination whether Minister Hodgson or the Premier identified “the idea...of no harm to anyone”, she replied:

...I can’t speak to that directly but that was in every single note that we had. It would have been a view that would have been expressed by the Deputy Attorney, it could very well have been expressed by Mr. Harnick; that was the...implicit base of everything it is that we were talking about. This was meant...to be peaceful.<sup>2286</sup>

Larry Taman testified as follows:

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<sup>2278</sup> Examination in chief of Ron Vrancart, October 27, 2005, p. 65.

<sup>2279</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 109.

<sup>2280</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 108.

<sup>2281</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 110.

<sup>2282</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 110.

<sup>2283</sup> Examination in chief of Ron Fox, July 12, 2005, p. 107.

<sup>2284</sup> Examination in chief of Ron Fox, July 12, 2005, p. 107.

<sup>2285</sup> Cross-examination of Elaine Todres by Mr. Klippenstein, December 1, 2005, p. 18.

<sup>2286</sup> Cross-examination of Elaine Todres by Mr. Klippenstein, December 1, 2005, p. 18.

Q: Do you recall the Attorney General ever expressing an opinion regarding police operational matters?

A: No. I mean, again, the...general tenor of these meetings was that everyone in them agreed, the Solicitor General, the Attorney General, the Deputies, that the OPP approach was one of moderation and that that was the right approach. And there were no instructions being given. So, I think it's fair to say we were aware of the approach, we agreed with the approach but we weren't being asked to give an opinion on it either and we weren't communicating at the senior levels.<sup>2287</sup>

In his testimony at this Inquiry, Ron Fox accepted that the bottom line at the end of the discussion in the dining room was that “an injunction would be sought”, and “that was what the OPP had advised from the beginning”.<sup>2288</sup> In cross-examination by Chris Hodgson’s counsel, Fox testified:

Q: But at this point of the day, when you're having this conversation with Inspector Carson, the decision had already been made to go for the injunction, correct?

A: It had.

Q: And this was the approach that you'd been advocating for all along, and the advice of Mr. Taman and others had already been accepted to that effect, isn't that correct?

A: It had.

[...]

Q: And no one in the government was telling the police what to do, the matter was firmly in the hands of the Attorney General and the police, where it should be, correct?

A: It was.<sup>2289</sup>

No participant in the IMC meetings testified that they agreed with Ron Fox’s opinion that the government just wanted the OPP to go “kick ass”. Ron Fox’s own assistant, Scott Patrick, testified that there was no discussion of the use of force by the OPP, and that it was not implied in any of the discussions he heard at the September 6 IMC meeting.<sup>2290</sup> David Moran did not recall any discussion at the meeting of using force to remove the occupiers.<sup>2291</sup> Scott Hutchison had no recollection of anyone saying that weapons or other physical force should be used to remove the occupiers.<sup>2292</sup>

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<sup>2287</sup> Cross-examination of Larry Taman by Ms. Horvat, November 15, 2005, p. 46.

<sup>2288</sup> Cross-examination of Ron Fox by Mr. Smith, July 13, 2005, p. 132.

<sup>2289</sup> Cross-examination of Ron Fox by Mr. Fredericks, July 13, 2005, pp. 191-93.

<sup>2290</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 96.

<sup>2291</sup> Examination in chief of David Moran, October 31, 2005, p. 221.

<sup>2292</sup> Cross-examination of Scott Hutchison by Ms. Perschy, August 29, 2005, p. 94: “I would have recalled that if that kind of specific direction was being suggested. It would have been inconsistent with the ultimate recommendation.”

Mike Harris testified that the impression conveyed by Fox to Carson that the government “just want us to go kick ass” was “100 per cent the wrong view”.<sup>2293</sup> He said,

It would concern me if he believed this was the view of the Government. The only evidence I have...heard is that he believed this was Mr. Fox's view. I can't imagine that anybody would think that...this would be the view of the Government.<sup>2294</sup>

He understood that the result of the meeting was that the government would “go forward with the option of two types of injunction”.<sup>2295</sup>

In our submission Ron Fox’s depiction to John Carson of the government of the day as one that wanted the OPP to just “go kick ass” – like his other colourful epithets - was a simplistic and false caricature. It may well have been driven by a passionate opposition to the government’s conservative viewpoint, but it was wrong.

#### **14.04 “HE BELIEVES THAT HE HAS THE AUTHORITY TO DIRECT THE OPP”**

As to his comment that the Premier believed “he has the authority to direct the OPP”, Ron Fox said, “Obviously, it would refer to the Premier, but I would suggest that it refers to the Government-at-large, or it did.”<sup>2296</sup>

The observation that Mike Harris believed “he has the authority to direct the OPP”, was not made by any other participant in the dining room discussion who testified in this Inquiry.

The Deputy Solicitor General, Elaine Todres, who discussed the separation of politicians and police in the dining room, testified that she did not conclude from the meeting that the Premier believed he had the authority to direct the OPP.<sup>2297</sup> Ron Fox’s assistant, Scott Patrick, was specifically asked whether he reached the conclusion, based on what he saw and heard in the dining room, that the Premier believed he had the authority to direct the OPP. He said, “I don’t recall that I thought of it in that fashion, no.”<sup>2298</sup>

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<sup>2293</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 108.

<sup>2294</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 110. See also p. 112: “If he communicates to anybody and anybody believes it, that’s a big concern....[I]t would be a concern if it was -- anybody felt that was the view of the Government.””

<sup>2295</sup> Cross-examination of Mike Harris by Mr. Klippenstein, February 15, 2005, p. 108.

<sup>2296</sup> Examination in chief of Ron Fox, July 12, 2005, p. 111.

<sup>2297</sup> Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, p. 124:

Q: Okay. But to take it one step further, what I'm wondering about is this -- take it from me that Fox said to Carson after the meeting the Premier believes he has the authority to direct the OPP. Now, I take it you didn't conclude from the meeting that the Premier believed he had the authority to direct the OPP, right?

A: Correct, I did not.

<sup>2298</sup> Cross-examination of Scott Patrick by Ms. Esmonde, October 18, 2005, p. 98.

The Executive Assistant to the Solicitor General, Kathryn Hunt, was present in the dining room. She was acutely aware of the principle of non-interference by politicians with the operations of the OPP, having talked about it at the September 6 IMC meeting. She testified that she did not form any view that the Premier believed he had the authority to direct the OPP.<sup>2299</sup> She did not recall anything that would justify such a conclusion.<sup>2300</sup>

As previously stated, Larry Taman testified that he believed the Premier understood the principle that government could not interfere in the operations of the police.<sup>2301</sup> He understood that the Premier expected him to comply with the principle that the government could not direct OPP operations.<sup>2302</sup> The Deputy Minister of Natural Resources, Ron Vrancart, testified that nothing in the meeting suggested to him that the government was telling the OPP “how to do their business”.<sup>2303</sup> Charles Harnick’s Executive Assistant, David Moran, testified that he never formed a view in the dining room that the Premier was at any time giving direction to the OPP or attempting to influence the OPP’s behaviour at Ipperwash.<sup>2304</sup>

Ron Fox testified that he “extrapolated” the comment that the Premier “believes he has the authority to direct the OPP”, “from conversations that there had been a presentation presumably by the Deputy Attorney General with respect to police and government relations”.<sup>2305</sup> Fox admitted, however, that what he knew about those conversations was precisely that, “[T]he meeting had come to the conclusion that what the police should do next was to remain in only in the purview of the police”.<sup>2306</sup>

Larry Taman testified that Ron Fox “came up to me after the meeting and said that I’d been very clear on the issue that the...operational management of this was for the OPP and that he was glad that I had reinforced that idea”.<sup>2307</sup> Ron Fox informed Julie Jai that at the dining room meeting, Larry Taman had “made the point that you cannot interfere with police discretion”.<sup>2308</sup> Ron Fox testified that after the Premier left the dining room and before Fox left it, it became clear to him, on the basis of comments made to him by Chris Hodgson, that

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<sup>2299</sup> Cross-examination of Kathryn Hunt by Mr. Downard, November 2, 2005, pp. 116-17.

<sup>2300</sup> Cross-examination of Kathryn Hunt by Mr. Downard, November 2, 2005, pp. 116-17.

<sup>2301</sup> Cross-examination of Larry Taman by Mr. Rosenthal, November 15, 2005, pp. 184-85.

<sup>2302</sup> Cross-examination of Larry Taman by Mr. Downard, November 15, 2005, pp. 31-32.

<sup>2303</sup> Examination in chief of Ron Vrancart, October 27, 2005, p. 65-66.

<sup>2304</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, p. 62.

<sup>2305</sup> Examination in chief of Ron Fox, July 12, 2005, p. 112.

<sup>2306</sup> Examination in chief of Ron Fox, July 12, 2005, p. 115. The word “prevue” is in the transcript – when Fox testified he used the word “purview”. See also Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 86-87:

Q: Well you said yesterday that, and this is at page 115 of yesterday's transcript, in the Examination by Ms. Vella, that you believe that the meeting in the dining room came to the conclusion that what the police should do next was to remain only in the prevue [*sic*] of the police; correct?

A: That's correct.

<sup>2307</sup> Examination in chief of Larry Taman, November 14, 2005, p. 118.

<sup>2308</sup> Contemporary handwritten note of Julie Jai, Exhibit P-515; Examination in chief of Julie Jai, August 31, 2005, p. 119; Examination in chief of Ron Fox, July 12, 2005, pp. 136-37.

“[T]here had been discussions with respect to how the police should manage situations and what the involvement of government should be with the police.”<sup>2309</sup> He testified that Hodgson told him that the government could “have no influence over the police doing their job”.<sup>2310</sup>

Ron Fox’s expression of opinion to John Carson about the Premier’s state of mind as to his authority over the OPP was not reasonable. It may well have been driven by an emotional reaction on Fox’s part to the Premier raising questions about whether the OPP had taken adequate preparatory measures regarding the takeover of the Park, a matter discussed further below.

Ron Fox testified that he came into the meeting when it was already in progress.<sup>2311</sup> It is likely that he arrived after Elaine Todres had spoken about the ground rules applicable to relations between government and police. The reality, however, is that Ron Fox also testified that he did not observe the Premier make any comment in the dining room regarding the relationship between the OPP and the government.<sup>2312</sup> In cross-examination by counsel for Chris Hodgson, it was put to Fox that Hodgson would give testimony including a statement attributed to Premier Harris in the dining room that, “The government is not directing the police and the government is taking direction on the injunction.” Fox accepted that this was “reasonably accurate”.<sup>2313</sup>

Mike Harris never directed police operations at Ipperwash directly or indirectly, and he never made any attempt to do so.<sup>2314</sup> As of September 1995 Mike Harris was well aware of the separation between politicians and police.<sup>2315</sup> He understood that “politicians, including the Solicitor General would have no involvement in...any operational decisions” of the police.<sup>2316</sup> He understood generally that:

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<sup>2309</sup> Examination in chief of Ron Fox, July 12, 2005, p. 71.

<sup>2310</sup> Examination in chief of Ron Fox, July 12, 2005, p. 117. See also p. 72: “Minister Hodgson...indicated to me that we have just been told that we can't direct the police, so you don't bother worrying yourselves or yourself or words to that effect, with politics.” See also Cross-examination of Ron Fox by Mr. Fredericks, July 13, 2005, p. 175: Fox testified Hodgson told him, “I’ve been told I can't interfere with the police, don't you be bothered worrying about political matters.” See also p. 176: “I’m agreeing that he did not give me direction as to what the police should do. He told me that he was told he could not direct the police.”

<sup>2311</sup> Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, p. 84.

<sup>2312</sup> Examination in chief of Ron Fox, July 12, 2005, p. 73.

<sup>2313</sup> Cross-examination of Ron Fox by Mr. Fredericks, July 13, 2005, pp. 176-77. In his testimony Chris Hodgson did give evidence to this effect. Asked whether he heard Premier Harris say anything that would give him the impression that the Premier thought he had the authority to direct the OPP, Hodgson testified:

Quite the opposite. As I testified, the meeting somewhat concluded with the Premier stating, unequivocally and in a rather loud voice, that it was a police matter, that no politician, including himself, should be directing, and we're accepting the advice of the Attorney General.

That's how the matter was left and that was pretty clear in the meeting, in my recollection.

See Cross-examination of Chris Hodgson by Ms. McAleer, January 16, 2006, p. 51.

<sup>2314</sup> Cross-examination of Mike Harris by Ms. Perschy, February 14, 2005, pp. 239-40; Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 8.

<sup>2315</sup> Examination in chief of Mike Harris, February 14, 2005, p. 44. See also p. 46.

<sup>2316</sup> Examination in chief of Mike Harris, February 14, 2005, p. 45. See also p. 46:

...policy, setting of laws, the regulatory process, those policy decisions were the purview of the politicians; that -- that the police would have their own authority and as to how they would uphold those laws and how they would deal with it and that there was a separation there. And we were certainly well aware, I think, that was one of the fundamental tenets of democracy that...made Canada so attractive to...so many immigrants to the country. So we understood that.<sup>2317</sup>

The Executive Assistant to the Minister of Natural Resources, Jeff Bangs, testified that at one point the Premier asked "why he was here if he was being told by these people that there was no role for him", and that if "he didn't have a role in directing the OPP, what was he being asked to do?"<sup>2318</sup> Bangs said he never came to the view, however, that the Premier was seeking in any way to improperly influence police operations, or do anything to justify the conclusion that the Premier believed he had the authority to direct the OPP.<sup>2319</sup> In cross-examination he said he did not perceive that the Premier made statements or suggested that he wished to take any role "beyond the subject of injunctions".<sup>2320</sup>

No other witness recalled the Premier stating the words attributed to him by Jeff Bangs. Mike Harris strongly disagreed that he had made that statement in the dining room. Asked whether he had, he answered,

Absolutely not. I mean, I knew why I was there. I was there to get a briefing. I was there to be prepared to talk to the media about the events that had happened and I was there as one of the participants to make a decision on what type of an injunction we would seek, to give the OPP the authority to end the occupation.<sup>2321</sup>

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Q: Today, how would you -- what's your understanding of what's operational as opposed to policy?

A: Well any...situation that...required intervention by the OPP, Ontario Provincial Police, I think it would apply to all police, municipality to police force and certainly Federal Government to RCMP, that there would be no involvement in...any operational matters, any of -- how the OPP conducted their affairs or investigations.

Q: And how they carried out a response to an occupation?

A: Absolutely.

See also Cross-examination of Mike Harris by Mr. Smith, February 14, 2005, pp. 210-11.

<sup>2317</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 44-45.

<sup>2318</sup> Examination in chief of Jeff Bangs, November 3, 2005, p. 100; see also Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, pp. 236-37, 240; Cross-examination of Jeff Bangs by Mr. Henderson, November 21, 2005, pp. 263-65.

<sup>2319</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, p. 135.

<sup>2320</sup> Cross-examination of Jeff Bangs by Mr. Henderson, November 21, 2005, p. 36.

<sup>2321</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 150-51. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 51-52:

...[W]e were asking questions of police operation after the fact so we could understand what happened. It is...possible...that somebody had said, Well, you're not involved in operational decisions; we all understood that; nobody was asking to be involved...But after the fact I think it was fair for us to ask what happened? What action was taken? Clearly occupation took place. How do we explain this to the media and to the public? Those are questions that are likely to be asked.

## 14.05 “THE OPP IN MY OPINION MADE MISTAKES”

In his telephone conversation with John Carson, Ron Fox reported about the Premier as follows:

And he came right out and said, I just walked in on the tail end of this. The OPP in my opinion made mistakes. They should have done something right at the time. And he said that will I'm sure all come out in an inquiry sometime after the fact.

In his examination in chief Ron Fox testified that he based this statement to Carson on the Premier's “belief...that something should have been done immediately at the time and the situation managed from a police perspective immediately at the time”.<sup>2322</sup> In cross-examination by counsel to a party critical of the former Premier he sharpened his point, saying he believed his attribution to the Premier of this statement was “as close to verbatim as it could be”.<sup>2323</sup>

Fox said he had an emotional reaction to the Premier. He testified, “I can tell you I knew that I was an OPP member and I can tell you that I took some offence to the notion that the OPP had heretofore in this particular matter, dropped the ball.”<sup>2324</sup>

Chris Hodgson testified that he did not hear Premier Harris say that the OPP had “made mistakes”, and “should have done something right at the time”.<sup>2325</sup> He did not recall the Premier criticizing the OPP.<sup>2326</sup> His Deputy Minister, Ron Vrancart, did not recall the Premier saying the words,<sup>2327</sup> and also did not recall the Premier being critical of the OPP.<sup>2328</sup> Jeff Bangs, the Executive Assistant to the Minister of Natural Resources, did not recall the words attributed to the Premier by Fox and believed he would have remembered it if it had been said.<sup>2329</sup> He did not recall the Premier indicating criticism of the OPP, or displeasure that they had allowed the occupation to take place.<sup>2330</sup>

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I think those are fair questions and if anybody interpreted that as...wanting to go further into the future they're very, very mistaken. I think everybody including me understood that we were not and would not be involved in any operational decisions of the OPP.

<sup>2322</sup> Examination in chief of Ron Fox, July 12, 2005, p. 110.

<sup>2323</sup> Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, pp. 142, 143.

<sup>2324</sup> Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, pp. 114-15. See also p. 115 : “It was certainly my feeling the OPP were criticized, or being criticized, and I believed wrongly so.” See also Examination in chief of Ron Fox, July 12, 2005, p. 68. Fox said he did not make any response to the Premier, and, “I don't believe that he was there long enough for me to have done that.”

<sup>2325</sup> Cross-examination of Chris Hodgson by Ms. McAleer, January 16, 2006, pp. 50-51.

<sup>2326</sup> Cross-examination of Chris Hodgson by Mr. Sandler, January 16, 2006, pp. 108-09.

<sup>2327</sup> Cross-examination of Ron Vrancart by Mr. Downard, October 27, 2005, p. 99.

<sup>2328</sup> Examination in chief of Ron Vrancart, October 27, 2005, p. 74.

<sup>2329</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, p. 134.

<sup>2330</sup> Cross-examination of Jeff Bangs by Mr. Rosenthal, November 3, 2005, p. 237.

The Deputy Solicitor General, Elaine Todres, had no recollection of the words described by Fox.<sup>2331</sup> She testified that while there was a “great deal of frustration” at the meeting, she did not recall the Premier, or anyone, being critical of OPP operations at the meeting,<sup>2332</sup> and “I didn’t hear any direct criticism of the OPP”.<sup>2333</sup> Deb Hutton said she did not recall hearing the Premier say anything that indicated he was unhappy with the way the OPP had handled the occupation, or that he thought the OPP made mistakes.<sup>2334</sup> She said she did not “believe I ever heard him speak about that type of thing in any situation at any time that I worked for him”.<sup>2335</sup> Charles Harnick’s Executive Assistant, David Moran, did not recall the Premier stating that the OPP had made mistakes.<sup>2336</sup>

Larry Taman said he did not recall the Premier saying these words.<sup>2337</sup> In particular, he had no recollection of the Premier saying that the OPP would possibly have to account for their actions at the Park in an inquiry.<sup>2338</sup> He did say, however, that these words were “consistent with the sense” he had of the Premier’s comments.<sup>2339</sup> As stated above, Taman recalled that the Premier,

...indicated that he thought that the police, in other places, would have been in there quickly getting people out. And it was that that led me to say, well, I wasn't so sure that was right, that the police would move quickly and that I thought there were lots of examples of the police talking to people patiently, trying to make sure that nobody got hurt.<sup>2340</sup>

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<sup>2331</sup> Cross-examination of Elaine Todres by Mr. Rosenthal, December 1, 2005, p. 36.

<sup>2332</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 59, 64. See also Cross-examination of Elaine Todres by Mr. Sandler, November 30, 2005, pp. 263-64, 265-66.

<sup>2333</sup> Examination in chief of Elaine Todres, November 30, 2005, p. 59. See also Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 325:

Q: Did you know that...as far as Superintendent Fox was concerned, that in fact Premier Harris had offered an opinion on police operations at that dining room meeting?

A: Not until I read this.

<sup>2334</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 112-13; see also Cross-examination of Deb Hutton by Mr. Downard, November 22, 2005, pp. 168-69.

<sup>2335</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 112-13.

<sup>2336</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, pp. 59-60.

<sup>2337</sup> Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, p. 181.

<sup>2338</sup> Cross-examination of Larry Taman by Mr. Downard, November 15, 2005, pp. 34-35; Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, pp. 181-82.

<sup>2339</sup> Cross-examination of Larry Taman by Mr. Rosenthal, November 15, 2005, p. 181.

<sup>2340</sup> Examination in chief of Larry Taman, November 14, 2005, p. 135. See also Cross-examination of Larry Taman by Mr. Klippenstein, November 15, 2005, pp. 157-58:

I do remember the Premier saying something to the effect that in other situations the police would have gotten people out of this place very quickly. And I was saying, Well, I'm not sure that's right and that there's lots of -- of best practice that suggests patience and dialogue and we can think of hostage and other instances where the police have actually taken quite a lot of time in order...to solve things peacefully.



Ron Fox's assistant, Scott Patrick, said that in speaking to Taman, the Premier "seemed perplexed in terms of the time lines for resolving the matter",<sup>2341</sup> and was "frustrated".<sup>2342</sup> He said the Premier was concerned as to "why could it not be dealt with in a quicker fashion".<sup>2343</sup> He added that he "did make reference to something...post-event and it was along the lines of I suppose this story or this information will come out some day and at that time the OPP will have to account for their actions, or words to that effect".<sup>2344</sup> Patrick said that he did not know that he would describe the Premier's comments "as criticism".<sup>2345</sup> In cross-examination Patrick said he was "somewhat defensive" when the Premier made the comment.<sup>2346</sup>

As stated previously, Larry Taman testified that he did not believe that the Premier had said anything inappropriate with respect to the OPP's management of the takeover of the Park.<sup>2347</sup> In his view, the government had a legitimate interest in the matter.<sup>2348</sup> He said the government is accountable to the public for the police, and "people are entitled to turn to their ministers and to their government to ask what the police are doing".<sup>2349</sup>

In cross-examination Larry Taman also placed the Premier's comment in context:

The...Premier did, as I recall, say words to the effect that if this were in any other country or any other setting that the police would have acted more quickly...But, Mr. Rosenthal, could I just add that it was also part of the discussion that the government needed to be cautious about interfering with the operational role of the OPP. So that was very much part of the setting...And...I think it would be fair to add that as the sense of his comments when he was talking about consistent with your professional responsibilities including the operational management...of the police.<sup>2350</sup>

David Moran said the Premier expressed the view that "it's easier to avoid confrontations than it is to remove people from an area".<sup>2351</sup> He said "the substance" of the Premier's comments was that:

...[H]e was disappointed that the OPP had allowed the situation to get this far. It was his understanding...from previous briefings that the OPP had the situation under control and that...everything was well in hand...I think that the Premier was expressing his

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<sup>2341</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 105.

<sup>2342</sup> Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, pp. 220; Cross-examination of Scott Patrick by Mr. Falconer, October 18, 2005, p. 27.

<sup>2343</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 105; Cross-examination of Scott Patrick by Mr. Falconer, October 18, 2005, p. 27.

<sup>2344</sup> Examination in chief of Scott Patrick, October 17, 2005, pp. 105-06.

<sup>2345</sup> Examination in chief of Scott Patrick, October 17, 2005, p. 105.

<sup>2346</sup> Cross-examination of Scott Patrick by Ms. Perschy, October 17, 2005, p. 180.

<sup>2347</sup> Examination in chief of Larry Taman, November 14, 2005, p. 136.

<sup>2348</sup> Examination in chief of Larry Taman, November 14, 2005, p. 225.

<sup>2349</sup> Examination in chief of Larry Taman, November 14, 2005, p. 227. See also Cross-examination of Larry Taman by Mr. Sulman, November 15, 2005, p. 58.

<sup>2350</sup> Cross-examination of Larry Taman by Mr. Rosenthal, November 15, 2005, pp. 183-84.

<sup>2351</sup> Cross-examination of Chris Hodgson by Ms. McAleer, January 16, 2006, p. 51.

frustration and disappointment that when officials knew a situation could potentially become...a real problem that the appropriate steps weren't taken to diffuse it in advance...And so, what I took from the Premier's comments was that it's really important for officials to act before a tragedy occurs and it -- I think that maybe someone that was less familiar with the situation or the history could have taken those out of context and I think that's what happened. But certainly I didn't take anything that he said in a negative context with regard to that.<sup>2352</sup>

Mike Harris did not recall expressing concern about the length of time it was taking to get the occupiers out of the Park.<sup>2353</sup> He also did not recall saying to Larry Taman that he thought the police would have had the occupiers out of the Park by the time of the dining room discussion.<sup>2354</sup> He testified, however, that in the dining room or previously, "I would have wanted to ask or asked, at this meeting, for answers to what happened, how the occupation took place and...I think I needed to be prepared, the government needed to be prepared to...answer questions on that."<sup>2355</sup> He added,

...[C]ertainly I recall wanting to understand, when I left the meeting, what actions the OPP had taken...to keep the Park secure in the first place and...clearly...if the intent of MNR was that the occupiers not come into the Park, and if it was the intent of the OPP they not come into the Park, because there had been rumours, then something went wrong because the occupiers now had the Park and the government did not. So we asked questions, how did this happen? And...at least I recall me wanting answers to that. And I can't recall whether those were questions I asked of Ms. Hutton to find out at the Interministerial Committee meeting or at this meeting, but certainly...by the end of this meeting, those questions were asked.<sup>2356</sup>

He added,

It may very well be that I or somebody asked, are we handling this situation in Ontario the same way as they would in other provinces or other jurisdictions; is there anything different there? Just so that we have that understanding. That may very well have been asked...in questioning what we were doing, and how we were handling it. But...I don't believe that -- and I know I would not have said, oh, I think others would have done a better job or anything to that effect.<sup>2357</sup>

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<sup>2352</sup> Examination in chief of David Moran, November 1, 2005, pp. 27-30. See also Cross-examination of David Moran by Ms. Esmonde, November 1, 2005, p. 263. See also p. 264 ("[H]e was frustrated that he was resigned to the occupation.")

<sup>2353</sup> Examination in chief of Mike Harris, February 14, 2005, p. 141.

<sup>2354</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 148-49; see also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 33-35.

<sup>2355</sup> Examination in chief of Mike Harris, February 14, 2005, p. 141.

<sup>2356</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 143-44. See also p. 148:

I will say that I'm sure I asked questions of Ms. Hutton and possibly myself at this meeting as to...what actions the police took to...keep the occupiers out of the Park if...one was coming and was there any action that they should have taken to restore the Park to the Ministry of Natural Resources. The answer was pretty straightforward that...they were overwhelmed at the time and that before they...would remove or ask the occupiers to leave, they wished to have an injunction.

<sup>2357</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 36-37.

Mike Harris said he had the impression that the MNR felt the OPP were not as prepared as the MNR would have liked them to have been, but he did not have that view.<sup>2358</sup> He said that he thought, “[W]e heard from the OPP that they were as prepared as they felt they should be, but clearly they were...not able to maintain control of the Park for the Ministry of Natural Resources.”<sup>2359</sup> He did not think he was “frustrated”.<sup>2360</sup> He said,

I do want to say, I asked questions about what action was taken, how did this happen, how do I explain when I am asked the question...from the media? I need to be prepared to answer these. So I certainly wanted to be able to answer what had happened, what had transpired, and why a Park that belonged to the Ministry of Natural Resources was now in the hands of what we deemed to be an illegal occupation. So I asked those questions, but I...do not recall being dissatisfied with the answers or being critical.<sup>2361</sup>

He said,

I think I felt that the sooner we could end the occupation peacefully and...we saw no reason why...it couldn't be ended peacefully, that the better this would be; that it not escalate into anything more than what it was. So I don't know that frustration is the right word, but I thought all steps should be taken...to move as expeditiously as possible.<sup>2362</sup>

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<sup>2358</sup> Examination in chief of Mike Harris, February 14, 2005, p. 144.

<sup>2359</sup> Examination in chief of Mike Harris, February 14, 2005, p. 144.

<sup>2360</sup> Examination in chief of Mike Harris, February 14, 2005, p. 142.

<sup>2361</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 145-46. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 35-36:

I think that...it is entirely appropriate that those who are not involved in any of these decisions, had not been involved before, were not involved operationally, but we're...now after the fact seeking answers are asking these questions.

And this was clearly for us as a government in a new situation, for Ms. Hutton, for myself, and...I think...quite appropriately asked all of these questions to ascertain for ourselves where all -- you know, what occurred and...were all the steps taken appropriate and getting a good understanding of that. And...that's our job now.

Now, if someone interpreted those questions as...taking a position...I'm sorry but I think that's the wrong conclusion.

<sup>2362</sup> Examination in chief of Mike Harris, February 14, 2005, p. 142. See also Cross-examination of Mike Harris by Mr. Scullion, February 16, 2005, pp. 234-35:

No, I don't recall a level of frustration....I've got to be honest with you. I don't want to minimize the...concern of...the occupiers. But back in Toronto at Queen's Park with the issues before us, it was not viewed as...a great crisis, as that huge a deal. It was something that was occurring, but it wasn't something that...had that...level of...urgency. I think I was far more concerned at the time with...\$2 billion worth of cuts; could these be made? Could they be made without effecting programs? That...was probably more on the agenda. I think the...Quebec Referendum was...on the agenda, there were other things. So...I don't sense a -- and don't feel to this day that...I was particularly frustrated.

Mike Harris said that although it is “possible” he made the statement attributed to him by Fox, he did not recall “saying anything like that”.<sup>2363</sup> In particular he could not “imagine ever using the word ‘inquiry’”.<sup>2364</sup> He said,

I don't recall saying that anybody made mistakes. I recall disappointment that it occurred, that the occupation occurred. And I think my sentiment that I did agree could have been my sentiment at the time, that after the fact...we can ask all the questions we want and...everybody will be accountable as to why the occupation occurred. I don't think at that point in time that I was passing any judgment that there were mistakes made by the OPP.<sup>2365</sup>

Mike Harris accepted that he may have believed that “it is easier to prevent these situations than...correct them after the fact”, and that he may have conveyed this in the dining room.<sup>2366</sup> He did not accept that this would have been “any criticism of the OPP role”.<sup>2367</sup> He did believe he had asked questions as to how the occupation had taken place so that he could respond to public questions about that. He said,

And asking the questions, what happened, and what can I say, what can we report to the public, that -- and I don't think we took any position, whether the OPP were right or they were wrong or the Ministry of Natural Resources were right or they were wrong; that would be for others to...pass judgment on. What I wanted to be able to make sure is that I had the facts and that I could report what happened as best I could because I felt I would be speaking to the media on this issue.<sup>2368</sup>

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<sup>2363</sup> Examination in chief of Mike Harris, February 14, 2005, p. 146.

<sup>2364</sup> Examination in chief of Mike Harris, February 14, 2005, p. 146.

<sup>2365</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 31-32. See also p. 28: “I think the words are not words that I would have used at the time but the sentiment that if there were mistakes that were made that could have prevented the occupation, there would be a time and a place to look at that.”

<sup>2366</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 29.

<sup>2367</sup> Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, p. 32.

<sup>2368</sup> Examination in chief of Mike Harris, February 14, 2005, p. 146. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 23-24: “[T]he OPP always has to, after the fact, account for their actions and they always do. And I...don't recall saying that but I may have and I see nothing wrong if somebody or I said that.” He accepted that he was “displeased” that the occupation had occurred in the first place: see pp. 25-26. See also p. 27:

Q: And -- and just putting together everything that you've said yesterday and today we have you saying you wanted answers about what actions the OPP had taken to keep the Park secure in the first place, right?

A: Right.

Q: You were aware that the OPP had some foreknowledge that the occupation was possible, right?

A: Yes.

Q: That you did question whether the potential was being taken, or had been taken seriously enough by the OPP, right?

A: I...don't know whether that's exactly the...wording but I think given --

Q: That sentiment?

A: -- I think that sentiment, yes, is correct.

Robert Runciman did not recall the Premier talking about the OPP making mistakes. He also didn't recall the Premier making any reference to an inquiry.<sup>2369</sup> He said "the language used is not necessarily reflective of the language that the Premier may have used".<sup>2370</sup> He accepted, however, that the Premier's comments could have been interpreted this way.<sup>2371</sup> He thought the Premier "was concerned that the situation had gotten to the point it was in but I don't think he was critical of anyone".<sup>2372</sup> He did not think the Premier "was happy with the fact that it had evolved the way it had evolved...The fact that the occupation had...occurred...and was, at least struck us at that point and time, a worsening situation."<sup>2373</sup>

Robert Runciman testified that he did not think the Premier should have attended in the dining room because,

Well, I think the...fact that anything he said and you have, you know, eight, nine, ten people -- people can interpret, infer, and sometimes those can be...skewed and misunderstood, and in my view that's exactly, perhaps, what happened.

Q: And when you say can be skewed or misinterpreted, you meant by...some or one of the 10 people present?

A: That's right.<sup>2374</sup>

Asked whether Ron Fox had misconstrued what he had heard from the Premier, Runciman said, "I don't think there's any doubt about it."<sup>2375</sup>

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Q: Fair enough. That if the intent was to keep the occupiers out of the Park, something had gone wrong?

A: Yes.

Q: You indicated that sentiment?

A: Yes.

Q: And that you had the impression at the end of the meeting that the OPP was not as prepared as the MNR would have liked them to be, right?

A: That was my sense, yes.

<sup>2369</sup>Examination in chief of Robert Runciman, January 9, 2006, p. 154.

<sup>2370</sup>Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, p. 269.

<sup>2371</sup>Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, p. 267. Robert Runciman's Executive Assistant, Kathryn Hunt, testified that she did not recall the Premier saying the OPP had "made mistakes", or referring to the OPP having to account for their actions someday. It should be noted, however, that she generally had very little recollection of the meeting: see Cross-examination of Kathryn Hunt by Mr. Downard, November 1, 2005, pp. 116.

<sup>2372</sup>Examination in chief of Robert Runciman, January 9, 2006, p. 147. See also p. 154: Asked whether the Premier made a comment about "the matter having gone on for so long", he said, "He may well have said something about it going on and the fact that, you know, he was...certainly, obviously, concerned and so I -- it may well have been one of his comments."

<sup>2373</sup>Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, p. 267.

<sup>2374</sup>Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, pp. 169-70.

<sup>2375</sup>Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, pp. 211-12.

In cross-examination, however, again by a party critical of Mike Harris, Ron Fox raised the stakes, implying that the Premier had acted improperly as a matter of fundamental principle:

Q: I'm going to suggest to you, Superintendent Fox, that your impression as reflected in this transcript was one of pure surprise that you would have been presented to a Premier and his Cabinet and that you would have been presented with the Premier's opinions on the actions of the OPP, true?

A: That's fair.

Q: I'm going to suggest to you that it ran completely contrary to all understandings you had about the important divisions that are supposed to happen between government and police, true?

A: True.<sup>2376</sup>

Fox pitched his criticism of the propriety of Mike Harris' conduct even higher:

Q: ...When Mr. Downard asked you about your venting and your frustration, would you agree with me that the very thing Mr. Downard was asking you about, on behalf of Michael Harris, arose because of the conduct of his client?

A: Correct.

Q: That you had never been presented with the scenario where, as far as you were concerned, a Premier of the Province of Ontario was attempting to influence police operations?

A: Correct.<sup>2377</sup>

And again:

Q: So, going back to my question, when you expressed the frustration you did, it was in part, because as far as you were concerned, the Premier was seeking to improperly influence police operations, correct?

A: Yes.<sup>2378</sup>

How the Premier could have been attempting to influence police operations in a government meeting in which no operational OPP officers were present, where no one was instructed to convey instructions to the OPP, and where, as discussed further below, it was contrary to the applicable protocol for anyone to convey opinions expressed in the meeting to the operational OPP, is a question we will have to leave to finer minds. It is not a conclusion anyone else in the dining room came to. In our submission it is not a reasonable conclusion on the facts.

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<sup>2376</sup> Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, pp. 121-22.

<sup>2377</sup> Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, p. 104.

<sup>2378</sup> Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, pp. 109-10.

## 14.06 “PACIFY AND PANDER”

In his telephone conversation with Chief Superintendent Chris Coles, Ron Fox also reported:

The Premier was quite adamant that this is not an issue of native rights and in his words - I mean we've tried to pacify and pander to these people for too long. It's now time for swift affirmative action.

Ron Fox testified in this Inquiry that the Premier said, "I mean we've tried to pacify and pander these people for too long" in the dining room.<sup>2379</sup> He said he believed his attribution to the Premier of this statement "is as close to verbatim as it could be".<sup>2380</sup>

Larry Taman had no recollection of the Premier saying this.<sup>2381</sup> Asked whether these words were "consistent with the attitude that was expressed" by the Premier, he said,

I'm not sure I could agree with that. I...mean...the emotion-laden language about pandering and so on is not something I'd really want to sign onto. I...would just put it more neutrally that it was clear that he thought this should be dealt with swiftly.

Q: And you don't recall the word 'pandering' certainly?

A: No. And I don't recall that being the spirit of it either.<sup>2382</sup>

Elaine Todres did not recall any of the words described by Fox, although she accepted that "one of the themes was that this was a matter of occupancy of a Park, this not a native issue".<sup>2383</sup>

Robert Runciman did not recall the Premier saying "these people" had been "pampered and pandered for too long and that it was time for swift action".<sup>2384</sup> Asked whether he recalled the Premier saying, "[W]e've tried to pacify and pander to these people for too long", Runciman said, "I doubt that he would have put it that way, but I can't recall specifics with respect to any comments made along those lines."<sup>2385</sup> He said, "[T]hat just didn't sound like the Premier to me".<sup>2386</sup> He also did not recall the Premier "having that kind of attitude".<sup>2387</sup>

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<sup>2379</sup> Examination in chief of Ron Fox, July 12, 2005, pp. 131-32; see also Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, pp. 98, 141-43.

<sup>2380</sup> Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, pp. 142, 143.

<sup>2381</sup> Examination in chief of Larry Taman, November 14, 2005, p. 34.

<sup>2382</sup> Cross-examination of Larry Taman by Mr. Rosenthal, November 15, 2005, p. 180.

<sup>2383</sup> Cross-examination of Elaine Todres by Mr. Rosenthal, December 1, 2005, p. 46.

<sup>2384</sup> Cross-examination of Robert Runciman by Ms. Johnson, January 11, 2006, pp. 238-39, 232.

<sup>2385</sup> Cross-examination of Robert Runciman by Mr. Falconer, January 10, 2006, p. 266.

<sup>2386</sup> Cross-examination of Robert Runciman by Ms. Johnson, January 11, 2006, p. 237.

<sup>2387</sup> Cross-examination of Robert Runciman by Ms. Johnson, January 11, 2006, p. 238.

Chris Hodgson did not recall the Premier, or anyone, saying in the dining room that “We’ve tried to pacify and pander to these people for too long.”<sup>2388</sup> He did not recall the Premier, or anyone, saying in the dining room that it was time for “swift affirmative action”.<sup>2389</sup>

The Deputy Minister of Natural Resources, Ron Vrancart, did not recall the Premier saying these words. He thought he would recall it if the Premier had.<sup>2390</sup> The Executive Assistant to the Minister of Natural Resources, Jeff Bangs, did not recall these words and believed he would remember it if the Premier had said this.<sup>2391</sup>

Charles Harnick’s Executive Assistant, David Moran, did not recall the Premier saying, “We’ve tried to pacify and pander to these people for too long”, and it was time for “swift affirmative action”.<sup>2392</sup> He accepted that if this had been said by the Premier he would have remembered it.<sup>2393</sup> Deb Hutton did not recall the Premier saying it.<sup>2394</sup>

In the course of his testimony Ron Fox’s assistant, Scott Patrick, did not corroborate this statement by Fox in the telephone call.

Mike Harris was asked whether he had said these words. He testified as follows:

No, I don't recall those words at all. But I...would say that...the occupation we viewed as illegal. And not an issue of Native rights as per the Constitution, as to their land claim, as to any other rights that are granted under the Constitution to...natives. This was an occupation. It was government property, it was illegal and whether it was occupied by natives or non-natives, we should be treating that type of action, that type of illegal activity the same. That was our view.

Q: And do you recall saying, It's now time for swift affirmative action, or words to that effect?

A: No, because we were leaving this meeting hoping to swiftly get to the courts to seek an injunction; that was the action.<sup>2395</sup>

In our submission it is difficult to accept that the Premier could have made the ringing and emotive statement attributed to him by Fox when not a single other participant in the dining room discussion recalls it. In our submission Ron Fox’s statement to John Carson was a case of

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<sup>2388</sup> Cross-examination of Chris Hodgson by Ms. McAleer, January 16, 2006, pp. 52-53.

<sup>2389</sup> Cross-examination of Chris Hodgson by Ms. McAleer, January 16, 2006, p. 53.

<sup>2390</sup> Cross-examination of Ron Vrancart by Mr. Downard, October 27, 2005, p. 100.

<sup>2391</sup> Cross-examination of Jeff Bangs by Mr. Downard, November 3, 2005, pp. 133-34.

<sup>2392</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, p. 60.

<sup>2393</sup> Cross-examination of David Moran by Mr. Downard, November 1, 2005, pp. 60-61. Robert Runciman’s Executive Assistant, Kathryn Hunt, testified that she did not recall the Premier saying this. It should be noted, however, that she generally had very little recollection of the meeting: see Cross-examination of Kathryn Hunt by M. Downard, November 1, 2005, pp. 115-16.

<sup>2394</sup> Examination in chief of Deb Hutton, November 22, 2005, pp. 170-71.

<sup>2395</sup> Examination in chief of Mike Harris, February 14, 2005, pp. 147-48. See also Cross-examination of Mike Harris by Mr. Sandler, February 15, 2005, pp. 42-44. See also Cross-examination of Mike Harris by Mr. Rosenthal, February 15, 2005, pp. 209-212.



Fox taking rhetorical licence, again driven by a passionate opposition to the government's conservative viewpoint. In our submission it cannot reasonably be concluded that the statement was made by the Premier.

#### **14.07 THE APPLICABLE PROTOCOL**

The suggestion that participants in the dining room discussion should have expected statements made by politicians there to have been communicated to operational police officers is made more difficult by the fact that Ron Fox's comments to John Carson about the discussion in the dining room were a clear violation of the protocol the Deputy Solicitor General expected Fox to observe in his communications with operational police officers.

Elaine Todres accepted in cross-examination that she had expected that in conversations between Ron Fox and John Carson on September 5 and 6, the protocols applicable to communications between her ministry on the one hand and OPP operational officers on the other would have been followed.<sup>2396</sup> As previously stated, Todres accepted that it would be inconsistent with the applicable protocol for there to be communications from the Ministry of the Solicitor General to the OPP regarding political views or discussions prior to any governmental decision being made.<sup>2397</sup> She testified further as follows:

Q: Okay. Now, we've heard evidence in this Inquiry that after the dining room meeting, Mr. Fox called incident commander Carson and he said a number of things, but one thing he said was that...the Premier believes he has the authority to direct the OPP. Fox said that to Carson in the call after the dining room meeting. Now, Mr. Harris disputes the accuracy of that and for the purpose of my question I just want to set aside the accuracy of that. But setting aside whether the statement is accurate or not, would that communication from Fox to Carson be consistent with the protocol applicable to communications as between your Ministry on the one hand and operational OPP on the other?

A: Well, let me just step back and remind myself that I wasn't -- I didn't recall him being in the room.

Q: Oh and indeed --

A: Right.

Q: And --

A: Right. And...I wouldn't have known that he made the call. That would -- there was nothing in that meeting, in my opinion, that would have required any conversation at all from Mr. Fox to the incident commander.

Q: Okay. But to take it one step further, what I'm wondering about is this -- take it from me that Fox said to Carson after the meeting the Premier believes he has the authority to

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<sup>2396</sup> Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, p. 123.

<sup>2397</sup> Cross-examination of Elaine Todres by Ms. Perschy, November 30, 2005, pp. 228-29. She also accepted at p. 229 that she would expect that "discussions regarding possible government policy and specifically references to governments' legal rights and/or political considerations, that those sorts of discussions would be confidential".

direct the OPP. Now, I take it you didn't conclude from the meeting that the Premier believed he had the authority to direct the OPP, right?

A: Correct, I did not.

Q: But accepting that Fox said that to Carson, was that a statement that would be consistent with the applicable protocols?

A: I believe it was a -- a lapse of judgment on Mr. Fox's part.

Q: And you said in your evidence that you did not take from the dining room meeting any understanding that there were comments there indicating displeasure with the way the OPP had handled the situation, right?

A: That was my take of the meeting, sir.

Q: Right. All right. [Accepting]<sup>2398</sup> for me and setting aside the question of its accuracy or -- or not, that Fox after the dining room meeting said to Carson that the Premier had been critical of the way the OPP had handled the Ipperwash occupation to date would that have been consistent with the applicable protocol?

A: No.<sup>2399</sup>

This was pursued in cross-examination of Elaine Todres by other counsel:

Q: But you described to my friend Mr. Downard that Mr. Fox -- Mr. Fox, in speaking to Super -- I guess, Inspector Carson at the time, with regard to what had occurred in the dining room meeting, had a lapse in judgment?

A: Yes.

Q: Did I quote you fairly.

A: Yes.

Q: And do you -- to be frank, and I know you're not comfortable with some of the language that's been used by -- by some people, some intemperate language if I might put it that way, right, but I'm -- I'm going to have to put it to you. And that is, to be very frank, what -- what Inspector Fox said was, he came out of, what you described as a confidential meeting. I think those were your words, right?

A: Yes.

Q: And he called Inspector Carson. And what Inspector Fox did was call the Premier of the Province of Ontario, elected by the people of Ontario and at least one of his ministers, I -- I don't think he was referring to Minister Runciman, but he called the Premier and one of his Ministers and advisors in, quotation marks, "fucking barrel suckers". And I suggest to you that that's what you meant by a lapse of judgment, using those intemperate words?

A: Actually, I thought the lapse of judgment was the phone call itself.

Q: I thought so. But, the words, I take it, would also be --

A: Would be --

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<sup>2398</sup> The transcript inaccurately reads "Excepting".

<sup>2399</sup> Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, pp. 123-25.

Q: -- in your view a lapse of judgment?

A: Unquestionably.

Q: Okay. And it didn't seem to me that that's good professional judgment. Did you have the same opinion?

A: It was a lapse of judgment.<sup>2400</sup>

Referring to the government's policy regarding the takeover of the Park, Larry Taman commented, "I think what needs to be focussed on in this setting is the alarming way that -- that policy statement seems to have found its way directly to the frontline, oddly enough by the person who described himself as the buffer."<sup>2401</sup>

## 14.08 THE EFFECT OF THE CALL ON THE OPP

The views Ron Fox characterized to John Carson were, obviously, views that Fox disagreed with. It is submitted that Fox would not have conveyed those views to Carson if he thought for one moment that Carson would regard them as directions to the OPP, or that Carson would alter his management of police operations at Ipperwash as a result.

In examination by his own counsel, Ron Fox testified as follows:

Q: For example, would you have...gotten on the phone with MNR employees...and told them that those were the views that you held of comments made by the Premier or those close to the Premier?

A: No, sir.

Q: What, if anything, does...the fact that you were prepared to share those views with John Carson and Chris Coles tell us about your perception of their susceptibility to political pressure?

A: I believe what it indicates is, my view was...and continues to be, they wouldn't capitulate to political pressure.<sup>2402</sup>

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<sup>2400</sup> Cross-examination of Elaine Todres by Mr. Sulman, November 30, 2005, pp. 213-14. It was suggested in cross-examination to Scott Patrick, Fox's assistant, that Fox should not have told Carson of the Premier's views in the dining room. He responded, "That's a difficult question. I knew that then Inspector Carson and Inspector Fox were colleagues. They were commissioned officers. There was information being exchanged. It...was likely not helpful, no." See Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, p. 222. Deb Hutton said she was surprised by Fox's comments to Carson. She was surprised because:

[I]t is my very clear understanding that each of us, whether civil service or political staff, swear an oath of confidentiality when we enter government and so a conversation of this nature, generally, I forget the specific words that were used, would not be something that would be appropriate for him to have had with anyone outside of government.

See Cross-examination of Deb Hutton by Mr. Downard, November 22, 2005, pp. 171-72.

<sup>2401</sup> Cross-examination of Larry Taman by Mr. Falconer, November 16, 2005, p. 137.

<sup>2402</sup> Examination of Ron Fox by Mr. Sandler, July 19, 2005, p. 84.

John Carson testified that at no point did his instructions with respect to the injunction change.<sup>2403</sup> He said, “I had no direction from anyone.”<sup>2404</sup> He described Ron Fox’s comments on matters at Queen’s Park as “venting” and “spewing”.<sup>2405</sup>

When John Carson went off duty later that day, early in the evening of September 6, the plan continued to be that the MNR would obtain an injunction before the OPP did anything to remove the occupiers. “[T]hat has been our position from the outset,” Inspector Carson testified. “[T]hat continued to be our position and we were proceeding with that direction.”<sup>2406</sup>

Chief Superintendent Coles testified that he did not give any instruction to John Carson to alter his operational plan, or make any suggestion to him in that regard, as a result of his conversation with Ron Fox.<sup>2407</sup> Coles never believed Carson’s command had been compromised.<sup>2408</sup> Coles said he was not concerned “that [OPP Commissioner] Thomas O’Grady or myself would have been politically directed to do anything”.<sup>2409</sup>

In response to Fox’s statement in the September 6 telephone call that the Premier “believes he has the authority to direct the OPP”, Inspector Carson responded, “I hope he and the Commissioner have that discussion.” Carson said, “[I]t’s my understanding under the *Police Services Act* that the Commissioner is responsible for the operations of the Ontario Provincial Police and I, personally, as an inspector at that time, take my direction through the chain of command from the Commissioner’s office.”<sup>2410</sup>

In response to Fox purporting to confirm that the view of the government was that, “They just want to go kick ass,” Carson responded, “We’re not prepared to do that yet.” Carson testified that he was “just pointing out to Inspector Fox that despite the various opinions that may

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<sup>2403</sup> Examination in chief of John Carson, May 18, 2005, p. 211.

<sup>2404</sup> Examination in chief of John Carson, May 18, 2005, p. 211.

<sup>2405</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, p. 213.

<sup>2406</sup> Examination in chief of John Carson, May 18, 2005, p. 212. In particular, Inspector Carson testified, the deployment of an OPP Crowd Management Unit outside the Park on the night of September 6 “had absolutely nothing to do with this telephone call of any other telephone call with Ron Fox”: see Examination in chief of John Carson, May 18, 2005, p. 216.

<sup>2407</sup> Cross-examination of Christopher Coles by Ms. McAleer, August 16, 2005, pp. 255-56. Coles testified that neither he nor Superintendent Parkin provided any operational direction to Inspector Carson from any external source, including the Premier’s Office: Examination in chief of Christopher Coles, August 16, 2005, p. 101; see also pp. 103-04. He testified that neither the Premier, any minister, or any member of their staffs ever attempted to give him direction regarding the OPP’s operations at Ipperwash: Cross-examination of Christopher Coles by Ms. McAleer, August 16, 2005, p. 259. He never thought there was any operational direction from government officials to Inspector Carson: Cross-examination of Christopher Coles by Mr. Frederick, August 16, 2005, p. 200; see also p. 202. He did not think there had been any government direction to any OPP officer: Cross-examination of Christopher Coles by Ms. McAleer, August 16, 2005, p. 259. He said Inspector Carson never complained to him that any third party had pressured him to do anything in connection with his incident command that he did not wish to do: Cross-examination of Christopher Coles by Mr. Frederick, August 16, 2005, p. 202.

<sup>2408</sup> Cross-examination of Christopher Coles by Mr. Frederick, August 16, 2005, p. 199; see also p. 202.

<sup>2409</sup> Cross-examination of Christopher Coles by Ms. Twohig, August 16, 2005, p. 248.

<sup>2410</sup> Examination in chief of John Carson, May 18, 2005, p. 218; see also Examination of John Carson by Mr. Sandler, June 29, 2005, p. 238.

be at play here, that we had no intention of going into the Park, that -- the long and short of it is, until such as we had received the appropriate injunction, that simply wasn't going to happen".<sup>2411</sup> He said that before "anything like that would have happened", he would have had discussions with and concurrence from Chief Superintendent Coles and Superintendent Parkin.<sup>2412</sup>

Asked what he did, if anything, as a result of the reference to the Premier and other politicians by Ron Fox, Inspector Carson said, "Quite frankly, nothing."<sup>2413</sup> He said he would have no memory whatsoever of the call if not for some notes he took regarding other aspects of the conversation.<sup>2414</sup> He said the call from Ron Fox, "had no effect on my actions other than working towards the injunction and making sure I was attempting to get Mark Wright prepared to attend the application process for the next morning".<sup>2415</sup> He testified, "I certainly didn't take this discussion as anything that Inspector Fox was telling me that I should take in regards in how I handle this situation".<sup>2416</sup> The call from Ron Fox did not cause any change in any of his plans.<sup>2417</sup>

In cross-examination, John Carson was pressed to admit that he understood from Fox's assertion that Premier Harris had referred to matters coming "out in an inquiry some time after the fact", that he understood the Premier to be referring to an inquiry into the OPP's failure to prevent the occupiers from entering the Park. Carson said he did not know what kind of inquiry Fox was referring to.<sup>2418</sup> The only inquiry he would have thought of was a public inquiry, and he "didn't take it that he was going to be having an investigation into the conduct of the Ontario Provincial Police".<sup>2419</sup>

Carson continued:

Well, I hate to...disagree with you, but quite frankly, it makes no matter to me, one way or the other, whether he calls an inquiry into this incident, into my decision making, or whatever. As an incident commander on any incident, I report to my region commander, at that time was Chris Coles, thereby through to the Commissioner of the OPP. And

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<sup>2411</sup> Examination in chief of John Carson, May 18, 2005, pp. 209-10.

<sup>2412</sup> Examination in chief of John Carson, May 18, 2005, pp. 210-11.

<sup>2413</sup> Examination in chief of John Carson, May 18, 2005, pp. 212-13.

<sup>2414</sup> Examination in chief of John Carson, May 18, 2005, p. 215. Inspector Carson pointed out that he included nothing that Ron Fox said about the views of politicians in his notes. He said,

Quite frankly, the commentary that Ron Fox goes into in regards to his meetings, in my humble opinion, is the -- a matter of -- of personal discussion that he was sharing with someone. I would suggest that not only were we colleagues, we were somewhat friends from over the years, was -- was more a blurting out of frustrations as a result of the task that he was assigned to. And quite frankly, all of that discussion that he shared with me in regards to his meetings, they...really lacked importance to the degree that I made no note of it.

See pp. 213-14.

<sup>2415</sup> Examination in chief of John Carson, May 18, 2005, p. 216.

<sup>2416</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, p. 184.

<sup>2417</sup> Examination in chief of John Carson, May 18, 2005, p. 216.

<sup>2418</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, p. 206.

<sup>2419</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, pp. 191-94.

quite frankly, the opinion, disagreement or agreement of any political person in this province has no impact on the decision making of an incident commander. If the Premier is not happy with the Ontario Provincial Police, he certainly is well within his rights to take it up with the Commissioner. But to think that a field incident commander is going to worry about everyone being happy or not happy with their decisions, absolutely is erroneous.<sup>2420</sup>

John Carson was pressed to accept that he would have to be “a pretty superhuman being to not at least implicitly be affected somehow by the information that the Premier is watching this incident very closely, and has already come to the opinion that you did not act decisively enough, and is considering an inquiry into that aspect”. Carson replied,

Well, I -- I disagreed with you before, and I will continue to disagree with, and you obviously have no concept of what we're working through as an Incident Commander if you believe that.<sup>2421</sup>

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<sup>2420</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, p. 195. See also Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 217-18:

I didn't feel I was being questioned personally, quite frankly, but maybe Ontario Provincial Police in a general way, I guess you might interpret that...I guess when you look at all the circumstances, we were probably being criticised from every which angle. I mean, there was no one who was happy about this, regardless whether you're talking...the local community, the municipality, the First Nations Band, I mean everyone had an opinion. And we're not necessarily agreed that we were handling it they would have each -- would prefer it to be handled.

<sup>2421</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, pp. 195-96. Pressed on this point again, Inspector Carson testified,

Quite frankly, I don't believe that the Incident Commander, any Incident Commander, would be affected. Where they would be affected by, is if their superiors had a concern for how they were handling the issue,...that's the area they've got to be concerned about. I mean, that's who they report to...

See pp. 199-200. Pressed again on the point as to any possible effect upon police officers generally, he said, “My opinion is that most officers would say that the Commissioner's going to have a problem on his hands, because that's what the issues...going to rest with.” See pp. 202-04. Later a similar point was pursued:

Q: Yes. You, as the Incident Commander who was told this information that the Premier's already looking at you.

A: A police officer's always accountable, sir. I mean that's -- that's why I'm here today.

Q: Sir, have you ever before been in a situation where you were being observed by the Premier as to your actions, directly?

A: I have no idea.

Q: Not that -- you were never aware of such a situation before this, were you?

A: Correct.

Q: And I'm suggesting to you that the awareness of that, unusual as it is and high level as it is, must have made some impact on you and you're denying that entirely, are you sir?

A: Absolutely I am.

Q: And when you heard about an inquiry, you didn't have thoughts to the effect of, Oh, if something happens here, this is a real problem, sir?

A: No.

See Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, pp. 206-07.

## CHAPTER 15

# THE AFTERNOON OF SEPTEMBER 6

### 15.01 INSPECTOR CARSON AND INSPECTOR HUTCHINSON

At 2:36 p.m., while he was meeting with Chief Superintendent Coles and Superintendent Parkin, Inspector Carson received a call from Tim McCabe, the government lawyer responsible for the injunction application.<sup>2422</sup> McCabe told Carson that he expected “to get confirmed instructions later on this afternoon to seek an *ex parte* interlocutory injunction”, and that he understood the court in Sarnia was available for 9:00 a.m. the next morning.<sup>2423</sup>

John Carson was asked by McCabe whether as a professional police officer Carson could tell a judge he thought an injunction should be granted on an urgent basis. Carson replied, “Yes, absolutely.”<sup>2424</sup> In his testimony Carson explained his view that he thought an *ex parte* injunction should be sought:

I believe in the discussions with Ron Fox, he I believe indicated that, you know, the one type of injunction may take as long as two [*sic*] to achieve. 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 week period. And I felt the progression of events, the confrontation that took place when they first came into the Park and 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.<sup>2425</sup>

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<sup>2422</sup> Examination in chief of John Carson, May 18, 2005, pp. 230-31; Exhibit 444B, Tab 39 (Transcript). In the course of this call, McCabe told Carson that the report of automatic gunfire had gotten people particularly concerned. Asked whether this caused him to feel pressured to conform to the view point of politicians, Carson said, “No, not at all.” See Examination of John Carson by Mr. Sandler, June 29, 2005, p. 283.

<sup>2423</sup> Exhibit 444B, Tab 39, p. 268.

<sup>2424</sup> Exhibit 444B, Tab 39, p. 274. In her evidence, for reasons that are unclear, Julie Jai argued about this statement of Carson, saying, “That's different when you're told by your political masters that you have to do something, you try to do it. That's different from doing a general assessment of the situation and being told either that it is or is not urgent.” There is no evidence that Carson perceived he had “political masters”, that they told him he had to support an *ex parte* injunction, or that she had any basis for attributing this motive to Carson. See Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 89. She subsequently stated that she was not suggesting that when Carson said accepted that it was an urgent situation, that he was doing so because he had direction from “political masters” to do that: see Cross-examination of Julie Jai by Mr. Downard, September 12, 2005, p. 95.

<sup>2425</sup> Cross-examination of John Carson by Ms. Twohig, June 2, 2005, pp. 33-34. See also Examination of John Carson by Mr. Sandler, June 29, 2005, p. 280.

Later that afternoon Inspector Carson spoke again to McCabe, and confirmed that Mark Wright would attend court the following morning to give evidence on the injunction application.<sup>2426</sup>

At 3:41 p.m. Inspector Carson returned a call from Inspector Hutchinson in British Columbia. They discussed the obtaining of armoured vehicles and their use at Gustafsen Lake.<sup>2427</sup> At the outset of the conversation the following exchange occurred:

Carson: Hi Jim John Carson here.  
Hutchinson: Yeah hi John how are you doing.  
Carson: Sorry to be so slow to get back to you here.  
Hutchinson: Oh that's fine I understand you being behind closed doors there.  
Carson: Well we've had some alligators.  
Hutchinson: Oh is that right.  
Carson: (laughs)  
Hutchinson: Friendly ones or ones on the outside.  
Carson: Oh well we just just some political pressures if you would.  
Hutchinson: Well that's what I was wondering ah.  
Carson: Yeah.

Carson testified that this comment about “political pressures”, “was just as a result of a discussion between Fox and Coles”.<sup>2428</sup> He said his intentions remained unchanged.<sup>2429</sup>

Carson told Hutchinson, “[I]t looks like...we’re going to see...an application for injunction tomorrow morning”, and “[H]ow that will shake out I don’t know but...we will see.”<sup>2430</sup> He testified that it remained the OPP’s position that the occupiers would remain in the Park until there was an injunction granted ordering the OPP to do something.<sup>2431</sup> It remained his position that as long as the occupiers stayed in the Park the OPP were not going to go into the Park without a court order.<sup>2432</sup> He said, “[T]he view was, as long as the occupiers stayed in the

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<sup>2426</sup> Exhibit 444B, Tab 45 (Transcript). Chief Superintendent Chris Coles had a general recollection of a conversation to the effect that it would be better to have someone other than Inspector Carson appear to give evidence, since this would have involved “taking [Carson] out of the loop” of incident command. He did not recall specifically when that conversation occurred, or with whom: see Examination in chief of Christopher Coles, August 16, 2005, pp. 63-64.

<sup>2427</sup> Exhibit 444B, Tab 42 (Transcript). See also Examination in chief of John Carson, May 18, 2006, p. 256.

<sup>2428</sup> Examination in chief of John Carson, May 18, 2006, p. 258.

<sup>2429</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 239-42.

<sup>2430</sup> Exhibit 444B, Tab 42, p. 287.

<sup>2431</sup> Examination in chief of John Carson, May 19, 2006, p. 24.

<sup>2432</sup> Examination in chief of John Carson, May 19, 2006, p. 24.



Park, the process would be proceed with the injunction, stay the course, just maintain the security in the area and for lack of a better term, it's kind of business as usual."<sup>2433</sup>

John Carson said that in his view, "[T]he sandy parking lot is a very different issue from the Provincial Park."<sup>2434</sup> He said he believed the OPP had "made the point", by removing the picnic tables from there earlier in the day, that the OPP were not prepared to allow activity there, "criminal activity in particular".<sup>2435</sup> He considered that to be "untenable", given "its proximity to the cottages and the information we had received up to that point about the cottages being next".<sup>2436</sup>

## 15.02 "WE'LL DO OUR TALKING WITH GUNS"

At about 3:02 p.m., while Inspector Carson was still meeting with Superintendent Parkin and Chief Coles, Detective Sergeant Mark Wright went back to the Park with Sergeant Marg Eve to make another attempt to initiate dialogue with the occupiers.<sup>2437</sup> Eve was a trained negotiator. It was also thought that a woman might meet with more success than a man in initiating dialogue.<sup>2438</sup> Wright was aware of a tradition in First Nations culture that females "were seen as people who may be representing their community".<sup>2439</sup>

Mark Wright and Marg Eve went to the same location at which Wright had attempted to establish dialogue the previous day, outside the Park fence at the northeast corner of the Park.<sup>2440</sup> Wright described a number of people, including men, women and children, at the Park store "yelling things at us".<sup>2441</sup> He said young people were "deflecting or reflecting the sun's light back into" the officers' eyes with mirrors.<sup>2442</sup>

Mark Wright spoke to "a young lad" who he asked to contact Glenn George.<sup>2443</sup> He said there was some "conversation back and forth" with the people who remained sitting at the Park store.<sup>2444</sup> A number of vehicles were being driven around the grass in the Park.<sup>2445</sup> Eventually a black Camaro drove up near the officers within a "reasonably close" distance of the Park fence, inside the Park.<sup>2446</sup> Wright testified,

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<sup>2433</sup> Examination in chief of John Carson, May 19, 2006, p. 25.

<sup>2434</sup> Examination in chief of John Carson, May 19, 2006, p. 24.

<sup>2435</sup> Examination in chief of John Carson, May 19, 2006, p. 25.

<sup>2436</sup> Examination in chief of John Carson, May 19, 2006, p. 44.

<sup>2437</sup> Examination in chief of Mark Wright, February 22, 2006, p. 227.

<sup>2438</sup> Examination in chief of Mark Wright, February 22, 2006, p. 241.

<sup>2439</sup> Examination in chief of Mark Wright, February 22, 2006, p. 241.

<sup>2440</sup> Examination in chief of Mark Wright, February 22, 2006, p. 228, 229-30; Exhibit P-1104.

<sup>2441</sup> Examination in chief of Mark Wright, February 22, 2006, p. 228.

<sup>2442</sup> Examination in chief of Mark Wright, February 22, 2006, p. 228.

<sup>2443</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 228-29.

<sup>2444</sup> Examination in chief of Mark Wright, February 22, 2006, p. 231.

<sup>2445</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 231-32.

<sup>2446</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 231-32.

I had a conversation with the passenger of the motor vehicle, and my notes are such that it says the passenger said to me: "Scott Ewart sends his regards." And I replied: "I hope he wasn't acting as a bailiff in Lambton County." And then I've got in brackets, as a note to myself, he's a bailiff for Elgin County but...he was a bailiff for Middlesex County only, so that's an error. The...native asked, Did I speak for my people, and I said, Yes. And I asked him if he spoke for his people and he responded, We'll do our talking with guns. So that was basically that, after he said that. I...took that as a threat to our safety so Marg and I left.

Q: And what was the demeanour of the person who...responded to you, We will do our talking with guns?

A: Well, he wasn't...mad or yelling or -- it was just -- wasn't anything extraordinary, it was...a conversation. It was...said in a conversational tone, it wasn't said in a menacing tone.

Q: Yes?

A: But I took the threat as legitimate and we left.<sup>2447</sup>

At 4:42 p.m. Mark Wright and Marg Eve returned to the Command Post.<sup>2448</sup> Wright and Eve described the refusal of occupiers to speak to them, and the statement that the occupiers would "do our talking with guns".<sup>2449</sup> John Carson did not believe the statement was made in jest.<sup>2450</sup>

At about 4:45 p.m. John Carson informed Mark Wright that Wright would attend court the next morning to give evidence in support of the MNR's application for an injunction.<sup>2451</sup> Carson also instructed Wright to attend a meeting of people from the Port Franks area, to the east of the Park.<sup>2452</sup> At 4:55 p.m. Inspector Carson spoke of going "in with a court order and they run. We will tack it on one of the sheds. They will eventually come and read it."<sup>2453</sup>

At 6:37 p.m. Sergeant Brad Seltzer and Lorne Smith returned to the Command Post from Kettle Point. Inspector Carson said his recollection was that Sergeant Seltzer "indicated that he had made some inroads at Kettle Point and he felt he was going to be able to establish some discussion the following morning".<sup>2454</sup>

John Carson cautioned that the OPP checkpoints should not be too close to the Park, since, "[I]f they were too close, that...creates the situation where they become the target and I

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<sup>2447</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 232-33. See also pp. 236-37, 239, 242, 246; Exhibit P-1062 (Wright/Parkin telephone conversation, September 7, 4:07 a.m.).

<sup>2448</sup> Examination in chief of John Carson, May 19, 2006, p. 28.

<sup>2449</sup> Examination in chief of John Carson, May 19, 2006, p. 30. In a 4:48 p.m. telephone conversation with Sergeant Doug Babbitt, Inspector Carson described how "between you and me the only ones that would talk to them were the kids".

<sup>2450</sup> Examination in chief of John Carson, May 19, 2006, p. 32.

<sup>2451</sup> Examination in chief of Mark Wright, February 22, 2006, p. 243.

<sup>2452</sup> Examination in chief of Mark Wright, February 22, 2006, p. 248.

<sup>2453</sup> Examination in chief of John Carson, May 19, 2006, p. 52.

<sup>2454</sup> Examination in chief of John Carson, May 19, 2005, pp. 63-64.

didn't want that to happen. We were just trying to maintain the *status quo* here and not get into any of the confrontations.”<sup>2455</sup>

### 15.03 MARCEL BEAUBIEN AT THE COMMAND POST

At 6:42 p.m. a meeting at the Command Post in Forest was attended by Inspector Carson, Inspector Linton, Les Kobayashi and Marcel Beaubien. Inspector Carson said Beaubien was there “to discuss the issues as...he knew it in regards to his constituents”.<sup>2456</sup> Inspector Carson testified that Beaubien said he had sent a fax to the Premier, and that he was looking for a phone call regarding his fax.<sup>2457</sup> Carson did not know what the fax contained.<sup>2458</sup> A contemporary note indicates that Beaubien said, “Premier is in constant touch. Good communications.”<sup>2459</sup>

Asked if he took anything from this, Inspector Carson said,

Quite frankly, I didn't take much from it at all. It's just a matter of his commentary that he had been in communication with the Premier's Office and he was communicating to me the information as he knew it. It was just further information about what he had been doing personally.<sup>2460</sup>

A contemporary scribe note indicates, “Inspector Linton questioned if there was anything from the Solicitor General”, and, “Marcel Beaubien advised that they were meeting today”. It was suggested to John Carson in cross-examination that he, Linton, and other officers “were expecting some direction” from the Solicitor General. Carson said this was not fair. “Quite frankly, I don't know what he was looking for from the Solicitor General,” he said. “I'm not sure I can appreciate the relevance of a discussion with Marcel Beaubien and the Solicitor General having anything to do with the OPP.”<sup>2461</sup> Carson said he did not have any further discussion with Linton about Beaubien, or Beaubien's references to the Premier.<sup>2462</sup> He did not believe that he made any mention to Linton of Ron Fox's telephone call earlier that afternoon.<sup>2463</sup>

John Carson said he explained to Marcel Beaubien that the injunction application was proceeding the next morning.<sup>2464</sup> Beaubien told him that the “property owners are very

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<sup>2455</sup> Examination in chief of John Carson, May 19, 2005, pp. 64-65.

<sup>2456</sup> Examination in chief of John Carson, May 19, 2005, p. 82.

<sup>2457</sup> Examination in chief of John Carson, May 19, 2005, pp. 83, 94. See also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 21-22: “I mean he sent a fax to the Premier, obviously with some concerns, and he was looking for a call back...Exactly the expectations that Mr. Beaubien had, quite frankly I don't even recall the comment, other than it's in the notes here.”

<sup>2458</sup> Cross-examination of John Carson by Mr. Falconer, June 28, 2005, p. 244.

<sup>2459</sup> Examination in chief of John Carson, May 19, 2005, pp. 95-96.

<sup>2460</sup> Examination in chief of John Carson, May 19, 2005, p. 96.

<sup>2461</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 26-27.

<sup>2462</sup> Examination in chief of John Carson, May 19, 2005, pp. 96-97.

<sup>2463</sup> Examination in chief of John Carson, May 19, 2005, pp. 96-97.

<sup>2464</sup> Examination in chief of John Carson, May 19, 2005, p. 83. See also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 25.

concerned, they're frustrated, and feel that they're not being treated equally".<sup>2465</sup> Carson said that he sought to assure Beaubien that the OPP understood the concerns of the residents.<sup>2466</sup> He said the OPP was patrolling the area, and public safety was important.<sup>2467</sup> Carson testified that Beaubien "indicated he didn't mind taking controversy if the situation can't be handled by the police services, something has to be done to handle the situation".<sup>2468</sup> Carson said he responded by reassuring Beaubien that, "[W]e wanted to get it resolved. We don't want anyone to get hurt. We want to do everything we can to...stress that point, nobody gets hurt."<sup>2469</sup> Carson testified,

Well, I was trying to inform him of the process that was underway, and the steps we were taking to try to alleviate the concerns, on everyone's part, so that he could allay concerns with his constituents to the degree he could. And so that he understood what the process was, that we're moving forward towards an injunction.<sup>2470</sup>

John Carson denied a suggestion in cross-examination that Marcel Beaubien's comment would have "put a fair amount of pressure" on him. He continued:

I have a job to do. I have a Commander to report to, and that's who I concern myself with. If the...Region Commander, the Commissioner of the Ontario Provincial Police, feels there's a better way of doing it, and chooses to relieve me of that Command and do it a different way, that's certainly their decision. And that's not something as the Incident Commander...can be concerned about.<sup>2471</sup>

Acting Staff Sergeant Kent Skinner, the TRU team leader, was asked in chief whether he became aware of Marcel Beaubien's attendance at the Command Post at any time from September 4 through 6. He said, "I have some recollection that there was something but I...don't have any specific recall as to somebody telling me that."<sup>2472</sup> Skinner said that information to the effect "that a local MPP had the ear of the Premier" would not have had an effect upon his decisions as a TRU team leader.<sup>2473</sup> He testified, "My role as a police officer is not dependent upon a politician's viewpoint. My role is to as I said, provide options to the Incident Commander and follow his direction."<sup>2474</sup> This was pursued in cross-examination:

Q: Do you remember much discussion about the political influences, who thought what in the Premier's office or the Solicitor General's office? Do you remember much discussion about that?

A: No, sir.

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<sup>2465</sup> Examination in chief of John Carson, May 19, 2005, p. 83; see also pp. 88-89.

<sup>2466</sup> Examination in chief of John Carson, May 19, 2005, p. 84.

<sup>2467</sup> Examination in chief of John Carson, May 19, 2005, p. 84.

<sup>2468</sup> Examination in chief of John Carson, May 19, 2005, p. 84.

<sup>2469</sup> Examination in chief of John Carson, May 19, 2005, pp. 85, 90-91.

<sup>2470</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, p. 249.

<sup>2471</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 31.

<sup>2472</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 270.

<sup>2473</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 270.

<sup>2474</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 270.

Q: Is that something that you would be interested in?

A: I wouldn't care about it.

Q: Should the Premier's views or the views of other politicians about the situation at Ipperwash affect how an officer conducts himself or herself?

A: It should not.

Q: Is there any reason on earth you can think of why an incident commander -- as an incident commander now and as part of the command team then, was there any reason on earth you can think of why the political views and the political climate would be something that would be communicated, political views of the Premier or others, would be communicated to the rest of the Command Team?

A: I can't think of one, sir.<sup>2475</sup>

John Carson said Marcel Beaubien had reported on a meeting of over 100 residents who were "very frustrated".<sup>2476</sup> "[I]t was very clear from Beaubien, these...residents...were getting extremely anxious as I recall," he said.<sup>2477</sup> Carson spoke to Beaubien about sitting down to "talk about peaceful resolution without confrontation".<sup>2478</sup> He also told Beaubien that if occupiers did not leave once an injunction was granted, they would be committing offences under the *Criminal Code*.<sup>2479</sup> He informed Beaubien that Chief Bressette "had no support for incidents at the Park".<sup>2480</sup>

Marcel Beaubien left the Command Post at 7:05 p.m.<sup>2481</sup> John Carson did not feel that Beaubien had told him how to do his job.<sup>2482</sup> Although he understood that Beaubien thought the occupiers "should be out of the Park", he said Beaubien "never, ever indicated that I should do anything in particular".<sup>2483</sup>

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<sup>2475</sup> Cross-examination of Kent Skinner by Mr. Falconer, April 20, 2006, pp. 167-68.

<sup>2476</sup> Examination in chief of John Carson, May 19, 2005, pp. 86, 92. Inspector Carson did not know whether this was the meeting that had occurred in the MNR parking lot. A note indicates that Beaubien was referring to a meeting "on Saturday": see p. 92.

<sup>2477</sup> Examination in chief of John Carson, May 19, 2005, p. 86.

<sup>2478</sup> Examination in chief of John Carson, May 19, 2005, p. 87.

<sup>2479</sup> Examination in chief of John Carson, May 19, 2005, pp. 87-88.

<sup>2480</sup> Examination in chief of John Carson, May 19, 2005, p. 89.

<sup>2481</sup> Examination in chief of John Carson, May 19, 2005, p. 97.

<sup>2482</sup> Cross-examination of John Carson by Mr. Sulman, June 2, 2005, pp. 130-31.

<sup>2483</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 36-37. See also pp. 38-43.

## 15.04 CARSON DEPARTS

Shortly afterward John Carson briefed Dale Linton on the operational matters that were occurring that day.<sup>2484</sup> He told him of the injunction hearing scheduled for the next morning, and that Mark Wright would attend court to give evidence.<sup>2485</sup>

John Carson left the Command Post between 7:20 and 7:30 p.m. He testified that he had not been given any instructions to remove the occupiers from the Park.<sup>2486</sup> He had given Linton no instructions regarding any action inside the Park.<sup>2487</sup> His expectation for the evening was that “[I]t would be *status quo*, it would be similar to the evening prior.”<sup>2488</sup> The OPP would maintain checkpoints and patrols, monitor the situation, and “see what happens with the injunction in the morning”.<sup>2489</sup>

As to the injunction, Inspector Carson said the OPP “had no specific plans relative to the court injunction because, quite frankly, we had no idea what the court injunction may direct”.<sup>2490</sup> That was to be the next step, depending on the outcome of the court hearing.<sup>2491</sup>

Inspector Carson went to a friend’s private residence for dinner, about one kilometer away from the Command Post at Forest Detachment.<sup>2492</sup>

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<sup>2484</sup> Examination in chief of John Carson, May 19, 2005, p. 97.

<sup>2485</sup> Examination in chief of John Carson, May 19, 2005, pp. 103-04.

<sup>2486</sup> Examination in chief of John Carson, May 19, 2005, pp. 105-06, 107.

<sup>2487</sup> Examination in chief of John Carson, May 19, 2005, p. 105.

<sup>2488</sup> Examination in chief of John Carson, May 19, 2005, p. 105.

<sup>2489</sup> Examination in chief of John Carson, May 19, 2005, p. 105.

<sup>2490</sup> Examination in chief of John Carson, May 19, 2005, pp. 106-07.

<sup>2491</sup> Examination in chief of John Carson, May 19, 2005, p. 107.

<sup>2492</sup> Examination in chief of John Carson, May 19, 2005, pp. 107-08. See also Cross-examination of John Carson by Mr. Falconer, June 29, 2005, pp. 177-78: Inspector Carson testified that this was not a friend who had any “political involvement in the region or in the province or locally in any way”. See also Cross-examination of John Carson by Mr. Henderson, June 28, 2005, p. 150 (Inspector Carson did not consume alcohol at dinner).

## CHAPTER 16

# THE DEATH OF DUDLEY GEORGE

### 16.01 THE MEETING IN THE MNR PARKING LOT

Roughly two hours before Inspector Carson went off duty, Detective Sergeant Mark Wright had driven to Port Franks to attend a community meeting as instructed by Carson. Wright understood that, “[S]ome community members were coming together and they were going to discuss this and it was good that, you know, we should have a representative down there.”<sup>2493</sup>

When Wright got to Port Franks he could not find the meeting.<sup>2494</sup> At about 5:40 p.m. he was informed by radio that motorists in the area of the MNR parking lot to the west of the Park, on East Parkway Drive, had informed police at a checkpoint that the meeting was taking place.<sup>2495</sup>

Mark Wright drove to East Parkway Drive and into the MNR parking lot.<sup>2496</sup> He found a group of 30 to 40 people, including Mayor Fred Thomas and other men, women and children, who told him they were “about ready to march on the Park”.<sup>2497</sup> A number of the people had signs with them.<sup>2498</sup> They were not an “angry mob”, Wright said, but, “They were just intent on marching towards the Park and expressing their frustration with what was going on.”<sup>2499</sup>

Mark Wright testified, “I remember being shocked about this gathering, ‘cause this was the last thing I expected at this time.”<sup>2500</sup> He said the prospect of the people marching on the Park “caused me great concern”.<sup>2501</sup> He identified himself to the group as a police officer and explained the efforts that police were making, that police were going to “stay there...until the

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<sup>2493</sup> Examination in chief of Mark Wright, February 22, 2006, p. 259.

<sup>2494</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 248-49.

<sup>2495</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 249-56; Exhibit P-1105.

<sup>2496</sup> Examination in chief of Mark Wright, February 22, 2006, p. 256.

<sup>2497</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 256-57, 260. Wright was not certain whether he learned Mayor Thomas was present before or after the event, but a contemporaneous scribe note reports on a radio report that Wright was at the MNR parking lot “talking to Mayor Fred Thomas”: see pp. 261-63.

<sup>2498</sup> Examination in chief of Mark Wright, February 22, 2006, p. 256. Wright testified that there was “nothing provocative” on the signs: see p. 260.

<sup>2499</sup> Examination in chief of Mark Wright, February 22, 2006, p. 257.

<sup>2500</sup> Examination in chief of Mark Wright, February 22, 2006, p. 256. See also pp. 259, 260.

<sup>2501</sup> Examination in chief of Mark Wright, February 22, 2006, p. 257.

problem was solved”, and the OPP’s intention was “to treat everyone fairly”.<sup>2502</sup> He told the group that it would not be illegal for them to march on the Park, but it would “certainly complicate the situation”.<sup>2503</sup> He also said the march “would be dangerous and we couldn’t guarantee their safety”.<sup>2504</sup>

Mark Wright said he eventually persuaded the people that “this wasn’t a good idea and that it was best if they go home”.<sup>2505</sup> Wright stayed at the MNR parking lot until the last member of the group left.<sup>2506</sup> Wright was at the MNR parking lot for around an hour.<sup>2507</sup>

## 16.02 THE PEOPLE BY THE ROAD

When Mark Wright left the MNR parking lot he turned right on East Parkway Drive and headed toward the Park.<sup>2508</sup> He drove an unmarked car<sup>2509</sup> and wore jeans and a T-shirt.<sup>2510</sup> As he drove around the corner of East Parkway Drive and Army Camp Road, outside the northwest corner of the Park and just south of the sandy parking lot, Wright saw a number of First Nations people outside the Park fence.<sup>2511</sup> They were standing “in a string, if you will, from the fence to the edge of the sandy parking lot”, where the parking lot met the roadway.<sup>2512</sup> He saw eight to 10 people, four or five of whom were “holding clubs, sticks, axe, bat -- bats, something to that effect”.<sup>2513</sup> Wright did not know who any of the people were.<sup>2514</sup>

Wright stopped his car.<sup>2515</sup> He continued,

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<sup>2502</sup> Examination in chief of Mark Wright, February 22, 2006, pp. 257-58.

<sup>2503</sup> Examination in chief of Mark Wright, February 22, 2006, p. 258.

<sup>2504</sup> Examination in chief of Mark Wright, February 22, 2006, p. 258.

<sup>2505</sup> Examination in chief of Mark Wright, February 22, 2006, p. 258.

<sup>2506</sup> Examination in chief of Mark Wright, February 22, 2006, 259.

<sup>2507</sup> Examination in chief of Mark Wright, February 22, 2006, p. 262. He reported that he was finished at the MNR parking lot at about 7:25 p.m.: see pp. 266-67.

<sup>2508</sup> Examination in chief of Mark Wright, February 23, 2006, p. 19.

<sup>2509</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 22-23. He said his car was “more akin to a surveillance vehicle” because it was unidentifiable as a police car.

<sup>2510</sup> Examination in chief of Mark Wright, February 23, 2006, p. 23.

<sup>2511</sup> Examination in chief of Mark Wright, February 23, 2006, p. 21.

<sup>2512</sup> Examination in chief of Mark Wright, February 23, 2006, p. 21; see also p. 27.

<sup>2513</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 22, 25-26. At 7:37 and 7:39 p.m. an OPP cruiser in the beach area adjacent to the Park reported “four males” outside the Park on the Army Camp Road, “a few...with bats”: see Exhibits P-1110, 1111; see also Examination in chief of Mark Wright, February 23, 2006, pp. 34-38. Wright did not observe a cruiser in the area when he was stopped at the intersection of East Parkway Drive and Army Camp Road, and was not in a position to observe one on the beach if it was there at the time: see Examination in chief of Mark Wright, February 23, 2006, p. 34. See also the attribution to Wright in a contemporary scribe note, referred to at Examination in chief of John Carson, May 19, 2005, pp. 179-80: “I see eight people at the corner and at least four had bats or something like that.”

<sup>2514</sup> Examination in chief of Mark Wright, February 23, 2006, p. 21.

<sup>2515</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 27-28.



In any event, an individual -- one of the individuals came up close to the car. He wasn't right up at...the door of the car, but he was close to the car, and we had some conversation. I...asked him what they were doing and he told me to leave, it wasn't my problem and I would best get out of there. I asked them if I could go where they were into the parking lot of the Park and they said no, they told me to leave, and as they were telling me to this, they were tapping their clubs into their open palm.<sup>2516</sup>

Wright testified that the person speaking to him was tapping the "bat or axe" in his hand, and that more than one of the people were doing so.<sup>2517</sup> He had asked the person if he could go into the sandy parking lot because it appeared to him that the group was taking control of it.<sup>2518</sup>

Mark Wright saw another First Nations person approaching his car. Wright recognized his face and was concerned that the person might recognize him, so he left the area.<sup>2519</sup> Wright had stopped at the intersection for less than a minute.<sup>2520</sup> He went to the first checkpoint to the south on Army Camp Road and "told the ERT members what I just encountered and I told them to be careful", and that "it looked to me like things were escalating because of what I saw down at the curve".<sup>2521</sup> Wright then proceeded to the next OPP checkpoint, at the corner of Army Camp Road and Highway 21, near the southwest corner of CFB Ipperwash, and told the officers there the same thing.<sup>2522</sup>

At 7:42 p.m. Inspector Linton called Superintendent Parkin.

Linton: Well we're it looks like we're in the thick of it.  
Parkin: Oh Jesus.  
Linton: Uhm about two hours ago ah a car went down ah it was on the Army Camp Road...  
Parkin: Yeah.  
Linton: There was a group of people Bosanquet Township people met ah citizens and they expressed their displeasure, now this was the people that Fred Thomas was leading he's the Mayor of Bosanquet...  
Parkin: Yes.  
Linton: And they were irate that nobody's doing anything in the meeting earlier and I guess one of the people from that meeting, we believe from that meeting drove ah down Parkway and onto right at the corner there at ah Army Camp Road, just in front of the the gate to the Park.

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<sup>2516</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 23-24. Wright testified that the person who came up close to the car was on the roadway: pp. 26-27.

<sup>2517</sup> Examination in chief of Mark Wright, February 23, 2006, p. 24.

<sup>2518</sup> Examination in chief of Mark Wright, February 23, 2006, p. 24.

<sup>2519</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 28-29.

<sup>2520</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 25, 26.

<sup>2521</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 31-32; and see generally, pp. 29-31. Wright testified that the checkpoint "wasn't anywhere near me when I stopped and talked to those individuals" at the intersection: see p. 30.

<sup>2522</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 32-33.

Parkin: Hmm hmm.

Linton: And there were eight Native males out there with baseball bats, four of them had bats and stuff and they started banging on her car and ah so...

Parkin: On her her car?

Linton: Yeah, so she had a damaged vehicle so we're taking a statement on that and and ah this which is outside the Park ah that's where where the fire was this morning.

Parkin: Hmm hmm.

Linton: And ah Mark Wright had driven down they told him to get out of there, that you know to get off the road, so we were so we were we ah were planning on sending ERT down to make arrests and while we were doing that ah they they were moving their ah bus back to that area and the dump truck back to that area...

Parkin: Hmm hmm.

Linton: And they were in the kiosk pulling down the blinds, so it looked like they were setting us up like come on down here...

Parkin: Hmm hmm.

Linton: And ah so we called the TRU guys, we didn't bring the vans into town but...all the women and children on the base were at the...front gate up at 21 Highway and they were all supposed to be evacuated, they said they were all leaving ah earlier this evening cause there was going to be trouble tonight. And now there's ah bonfires down at the at the bottom by the entrance to the Park...

Parkin: Hmm hmm.

Linton: Ah and there's maybe ten/twelve people down there and more congregating and there's another big bonfire up at 21 and there's twenty or thirty people congregating there.

Parkin: Up at 21?

Linton: Right up at you know...

Parkin: At the Military Base.

Linton: Military Base gate.

Parkin: Yeah.

Linton: So...

Parkin: But inside the grounds?

Linton: Yeah.

Parkin: Yeah.

Linton: But the ones down below are are out or were out so we've got ah TRU is down at the TOC and they've got two Sierra Teams...

Parkin: Hmm hmm.

Linton: Ah doing surveillance we just want to know what we got, we don't want to go in there and arrest the ah the guys out ah out in front of Ipperwash if we're going to get sniper fire.

Parkin: Well and the other thing is too probably if you start sending people down there, they're going to retreat back into the camp into the bush.

Linton: Well they may but the other thing was, we had a whole list of automatic weapons that that ah somebody gave us ah this evening too that are supposed to be down there.

Parkin: Supposed to be yeah well I heard ah we were there today and ah talking to John and ah that that's the information that this Buck Doxtator has supposedly brought...

Linton: Yeah.

Parkin: Some weapons out.

Linton: Yeah, well John...is down at the ah the TOC and I'm at the Command Post up here.

Parkin: Oh okay.

Linton: And ah so what's happening now is TRU is going to do their ah their observations and see what they got and see if there's any threat to us and ah...

Parkin: Well is is there any threat to us...

Linton: Well this we you know I mean they defiantly were out on the road and...

Parkin: Yeah.

Linton: And ah...

Parkin: We can block the road off, right?

Linton: Yeah we have.

Parkin: Okay, ah this woman...

Linton: Yeah.

Parkin: Ah that that went down there...

Linton: Yeah.

Parkin: You say that she was at ah some kind of a council meeting tonight?

Linton: No she was at ah just like a public meeting...

Parkin: Public meeting.

Linton: It was actually it turned out to be right by our TOC area...

Parkin: Oh okay.

Linton: Unbeknownst to us.

Parkin: Alright alright and the Mayor was there?

Linton: And ah I understand that Fred was there and...

Parkin: Alright.

Linton: And the people were quite irate and what what's going on and...

Parkin: Okay so then she drives from there...

Linton: But ah...

Parkin: How...

Linton: But he got them settled down like they're they're not a problem to us now, they're gone home.

Parkin: Oh okay.

Linton: Okay.

Parkin: But then she drove down from there...

Linton: She...yeah.

Parkin: And that by...

Linton: I believe she was one of the people at the meeting and then she gets her vehicle damaged with baseball bats as she drives by the entrance.

Parkin: She was driving by or...

Linton: Yeah.

Parkin: Yeah, mmh.

Linton: And there's eight or ten people on the road and they whacked the vehicle and ah...but at the same time like when we're going to respond then they really build up big time inside so that you know our original plan was go down and arrest these guys, unlawful assembly, mischief, ah willful damage that kind of stuff.

Parkin: Whatever yeah.

Linton: But they've built us so fast inside and were pulling the blinds down in the kiosk so that you know it became obvious that they were probably setting us up.

Parkin: What are you getting on the videos back in Grand Bend?

Linton: The videos are getting almost nothing out of that kiosk, they're blurry and you know you can't see people coming and going, uhm...

Parkin: I was in the ah...we stopped at Grand Bend too and I took a look took a look at the videos and they were very clear pictures...

Linton: Yeah.

Parkin: But they due to the lack of lights or whatever...

Linton: Yeah, but ah so what's happening now is ah the TRU Team is down there and they're doing that those observations...

Parkin: Hmm hmm.

Linton: And if anybody is out ah there's a lot of traffic along the beach too from Ipperwash to ah Army Camp Road...

Parkin: From Ipperwash to ah okay...

Linton: With their vehicles and ah if the people are outside the fence and lighting fires and got clubs and stuff then they're going to make arrests.

Parkin: Hmm hmm.

Linton: Ah going to use ah the Three and Six District ERT Teams with the TRU Team and then they're going to use ah One and One and Two Teams just as a [Inaudible] stuff.

Parkin: Okay so basically I mean you're you're kind of saying that if if something happens on the road or off of the Park...

Linton: Yes.

Parkin: Proper...

Linton: Yeah.

Parkin: You're going to take whatever action is reasonable.

Linton: Yeah.

Parkin: And but if it stays inside the Park...

Linton: Yeah.

Parkin: We we're not planning on going in?

Linton: No.

Parkin: Okay. Ah well you've already talked to John then and I guess you're aware that they're going for the injunction...

Linton: Okay I have copies of all that stuff that ah a guy named McCabe sent me down, ah Tim McCabe...

Parkin: Hmm hmm.

Linton: Ah about forty pages and he just faxed it and he he called and he said he'd like us to try to serve it on them tonight, I just about...

Parkin: Serve what?

Linton: Serve copies...

Parkin: Oh.

Linton: Of the ah notice that they're seeking an injunction with all the grounds and I just called him back and said we ah we can't get near the place they're ah...so he said well that's even better probably than serving it the mere fact that...

Parkin: Who who sent that down ah Dale?

Linton: Tim McCabe.

Parkin: And and who is he?

Linton: He's the Ministry Ministry Attorney General...and it's the full ah the full application for an injunction.

Parkin: Well you (I/A) it, yeah see the... (inaudible background conversation)

Parkin: But they were trying to get time early tomorrow morning...

Linton: Huh huh.

Parkin: In the in the courts to go ahead with the ah the emergency injunction.

Linton: It's on for 9:00 o'clock in Sarnia.

Parkin: 9:00 o'clock.

Linton: Yeah.

Parkin: But ah...that's a little ridiculous to send us out to serve.

Linton: He just wanted to make sure that they ah...

Parkin: When you think of it.

Linton: Knew what was happening but when when he that he didn't he wasn't aware that ah neither we were that this ah ah disturbance was going to take place.

Parkin: Yeah.

Linton: But right now I mean there's no way you can go in there it's ah...

Parkin: No, not to try and serve papers on a bunch and and they're probably all boozed up they're probably drinking.<sup>2523</sup>

Linton: Yeah yeah, they're setting fires and there's some rumour they stole thousand gallons of gas of whatever gas they could today from ah from an MNR tank

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<sup>2523</sup> Superintendent Parkin testified that he said this because he had previously received information from Inspector Carson that some officers had observed alcohol in the Park: “[The] individuals, whoever they were or wherever they were from, were certainly acting out of character, banging a vehicle with bats or whatever on the roadway. And you know, after 30 plus years of policing, my experience would tell me that usually when people act out like that, that alcohol is, at least, something you have to be concerned about.” See Examination in chief of Anthony Parkin, February 7, 2006, pp. 129-30. See also Cross-examination of Anthony Parkin by Mr. Falconer, February 8, 2006, pp. 133-38.

in there as well. And ah you know the rumours of Molotov Cocktails and that kind of stuff so...

Parkin: Yeah but ah...

Linton: So it looks like ah tonight's the night, they're they're revved up for action the women and kids and leaving and it really surprised me that they'd ah you know be this aggressive.

Parkin: Yeah...the women and kids are leaving that's that's a bit unusual too.

Linton: So I'll ah I'll let you know when we have ah...

Parkin: Well...that that injunction surprises me because the one the one that they were going for, ah and I guess John told you what happened today about me going up the MNR side about the possibility of automatic weapons.

Linton: Yeah.

Parkin: And then that hit the fan down in Toronto.

Linton: Yeah. Well that didn't come from us I'm just wondering how that ah...

Parkin: No no, no it went up through the MNR side, Kobayashi reported that up...

Linton: Okay.

Parkin: But I can't really blame him I mean he's he's working in amongst our people and he heard it and ah...

Linton: Yeah.

Parkin: You know and he reported it and of course it but it went up that side...

Linton: Yeah.

Parkin: And then it got...the next thing it was ah sitting in the ah in the ah Deputy Solicitor General's Office, ah so there was some concern that you know maybe we weren't doing the right thing.<sup>2524</sup>

Linton: Marcel Beaubien was in tonight and he had talked to the Solicitor General and ah...

Parkin: Yeah.

Linton: The Attorney General and they were comfortable but he, he...

Parkin: Well that's right we we called the Commissioner ah tonight...

Linton: Yeah.

Parkin: And he had been talking to Runciman and they were more than pleased with what they OPP were doing so it was no problem there.<sup>2525</sup> What happened though by that by that ah information about the automatic weapons going up the MNR side, they went from that that regular type of injunction ash to the emergency type...which ah you know which isn't really in our favour.<sup>2526</sup>

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<sup>2524</sup> Superintendent Parkin accepted in cross-examination that his information about this was "second hand at best". He said he may have gotten the information from Chief Superintendent Coles or Ron Fox, but he did not recall who provided it to him: see Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 19-20.

<sup>2525</sup> Superintendent Parkin testified that in this passage he was likely paraphrasing something Chief Superintendent Coles had told him. He said it was part of Coles' role to keep the Commissioner's office updated on what was taking place: see Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 20-22. See also Cross-examination of Anthony Parkin by Mr. Rosenthal, February 9, 2006, pp. 160-63.

<sup>2526</sup> Superintendent Parkin testified that he believed he got this information from Chief Superintendent Coles, who he said had been in discussion with the Commissioner at some point in time: see Examination in chief of

Linton: Yeah.

Parkin: We want a little bit more time.

Linton: Yeah.

Parkin: But but they've they've they've gone for that and then that's why those papers must have come down tonight for us to serve, but I would suggest that it's not up to us to serve those initially.

Linton: No.

Parkin: It's up to the MNR to serve those.

Linton: Yeah.

Parkin: It's an MNR injunction...

Linton: Yeah.

Parkin: And we would assist them in serving that.

Linton: Yeah.

Parkin: Uhm you know but this is typical where we get kind of caught and well ultimately the ball's going to be in our lap anyway if they get this injunction tomorrow. [Inaudible]

Parkin: Uhm but I guess what we would rather have happen is if we can if you can lock that place down so that you know the general public isn't put in any danger...

Linton: Yeah.

Parkin: And ah you know if they went to burn picnic tables if they want to act like yahoos back in there, fine. If they come out into your turf and we can safely make arrest well then that's fine too.

Linton: Yeah. Well...

Parkin: So...

Linton: It looks like if it stays as active down on the point as it is right now we're going to have to evacuate ah six or eight houses probably and and ah that's going to really....well I mean it's for their own safety but it's really going to piss them off because ah I've already had...

Parkin: It probably will.

Linton: Conversation with them today and they're you know the attitude well you know you're moving me out of my house it's...those guys should be moving not me type of thing but but we'll go ahead and do it anyways it's it's a safety issue we'll we'll have to do it.

Parkin: Yeah. Well yeah you're right I mean you're going to at least have to try.

Linton: Yeah.

Parkin: And okay so John's down in the TOC.

Linton: He's down in TOC, I'm up at the Command Post and ah we've got ah sixty ERT guys and ah ten TRU people and Wade, Wade Lacroix's' in. Ah...

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Anthony Parkin, February 7, 2006, pp. 131-32. As to the statement that an emergency injunction was not “really in our favour”, Superintendent Parkin acknowledged in cross-examination that the night before he did not have a concern whether an injunction was granted the next day. He was asked whether he had an explanation for that difference and said, “I don’t think I can explain it to any satisfaction, it’s just the comments I made at the time.” See Cross-examination of Anthony Parkin by Mr. Downard, February 8, 2006, pp. 22-23.

Parkin: What's Wade doing?  
Linton: He's looking after the Team they suited him up, he knows the area really well so...  
Parkin: Mmm okay well just ah...ah alright Wade's a good guy and I've worked with Wade a long time...uhm just make sure that you or John control it...  
Linton: Oh yeah John...is right down at the TOC where they were and Wade'll be there.  
Parkin: Yeah, okay.  
Linton: Okay so ah...you know it's not ah that things are going to get away on us I don't think.  
Parkin: No no, okay ah alright ah just let me know if things start to to really take a tumble.  
Linton: Alright unless ah unless it unless we have something really ah horrendous I won't bother you again but ah...  
Parkin: Well ah don't ever worry about calling but ah you know ah especially if things really start to get bad.<sup>2527</sup>

With respect to the injunction, Superintendent Parkin testified, “We were prepared to take as much time as required”, and that while the injunction would provide some direction from the court, “it would still come to us as far as the safety issues as to when we would do anything about it”.<sup>2528</sup>

### 16.03 THE DAMAGED VEHICLE

While Detective Sergeant Wright was at the OPP checkpoint at the corner of Army Camp Road and Highway 21, Constable Poole, one of the constables Wright had just warned at the checkpoint closer to the Park, called on the radio.<sup>2529</sup> He said a male individual had arrived at that checkpoint complaining of damage to his vehicle, which Wright recalled was “damage as a result of stones”.<sup>2530</sup> Wright said the damage was reported to have been caused by “the individuals that I had just been speaking to on the corner at the sandy parking lot”.<sup>2531</sup>

At about 7:51 p.m. Mark Wright sent a message back to the checkpoint that he wanted Constable Poole to take a statement from the complainant.<sup>2532</sup> He said he “knew Constable Poole to be diligent in the taking of statements so he was somebody I knew and I felt this was important and I wanted to make sure there was some quality control in who was taking the statement”.<sup>2533</sup>

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<sup>2527</sup> Exhibit P-469.

<sup>2528</sup> Examination in chief of Anthony Parkin, February 7, 2006, p. 133.

<sup>2529</sup> Examination in chief of Mark Wright, February 23, 2006, p. 33.

<sup>2530</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 33, 50-51.

<sup>2531</sup> Examination in chief of Mark Wright, February 23, 2006, p. 50.

<sup>2532</sup> Exhibit P-1114; Examination in chief of Mark Wright, February 23, 2006, pp. 33, 47-48.

<sup>2533</sup> Examination in chief of Mark Wright, February 23, 2006, p. 33.



At 7:54 p.m., while driving on Highway 21 on his way back to the Command Post in Forest, Mark Wright reported to the Command Post by radio that,

Yeah we got about ah, up to eight individuals, ah, at the picnic table area, I assume you know what that is, and they're just about on the edge of the road. They got some bats and stuff in their hands and apparently they've damaged some ah, an individual's vehicle so we got some mischief right now or willful damage. And I talked to them for a while they weren't sure who I was, and it appears to me, it appears to me that they're ah up to something so can you talk to ah your ERT guy in there with the Inspector, I'm on my way back and I'll give you a full rep when I get back but I think we should be moving ah, some people down that way, I think we should be moving some people down that way, I'm about ten away, ten minutes away from the command post.<sup>2534</sup>

Wright testified that by "moving...some people down that way", he intended that the OPP should be "putting some additional people down at that checkpoint, closest to the area where those individuals were...supplementing those checkpoints, those two inner checkpoints" closest to the Park on Army Camp Road and East Parkway Drive.<sup>2535</sup>

#### **16.04 THE DEPLOYMENT OF THE CROWD MANAGEMENT UNIT**

Detective Sergeant Wright arrived at the Command Post at about 8:00 p.m.<sup>2536</sup> He instructed Sergeant Korosec to hold back the two ERT teams that were just completing their day shift.<sup>2537</sup> Wright said he did this because, "I was cognizant that we had a potential problem down there. I was very concerned about what was going on and I was harkening back to exactly...what had taken place around seven o'clock that very same day when we had the people with the picnic tables out on the road."<sup>2538</sup> He said Inspector Carson had held back the ERT night shift that morning so they could deal with that matter, and that he thought he should have the ERT day shift held back so the Incident Commander could do "whatever he felt necessary in order to deal with that situation down at the sandy parking lot as quickly as possible".<sup>2539</sup>

Mark Wright went into the Command Post to speak to Inspector Linton.<sup>2540</sup> Wright told Linton about the "individuals out on the roadway"; that a number of them were "armed with bats or axe handles or that sort of thing"; that there had been damage to a vehicle; and that they had told Wright he could not go to the beach when he spoke to them.<sup>2541</sup>

Detective Sergeant Wright testified that Inspector Linton suggested sending ERT officers from one of the checkpoints in helmets and an OPP canine unit to the intersection of East

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<sup>2534</sup> Exhibit P-1115; see also Examination in chief of Mark Wright, February 23, 2006, p. 55.

<sup>2535</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 56-57.

<sup>2536</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 57-58.

<sup>2537</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 57-58, 59.

<sup>2538</sup> Examination in chief of Mark Wright, February 23, 2006, p. 58.

<sup>2539</sup> Examination in chief of Mark Wright, February 23, 2006, p. 59.

<sup>2540</sup> Examination in chief of Mark Wright, February 23, 2006, p. 59.

<sup>2541</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 60, 62.

Parkway Drive and Army Camp Road, to “deal with those individuals on the roadway”.<sup>2542</sup> Wright said he responded to this by saying he just wanted the individuals on the road to be told to move back into the Park with a “significant number” of officers present.<sup>2543</sup> Wright testified that his main concern at the time was preparing for his court attendance the next morning and, “I was really hoping we could deal with this immediately so I can move on to the matter at hand.”<sup>2544</sup> Wright said Linton told him he did not want to do that, and that he did not want to take any action until he received a statement from the person who complained of a damaged vehicle. Wright said Linton expressed the concern that apart from that offence, “[T]hose individuals weren’t doing anything wrong.”<sup>2545</sup>

At this point, at about 8:05 p.m.,<sup>2546</sup> John Carson called the Command Post and asked to speak to Mark Wright. He did so in response to a page from Wright.

Wright: Hi John.  
Carson: Hi how are you doing?  
Wright: Well not bad, we got a bit of a situation here.  
Carson: Okay.  
Wright: Right at the curve there where the picnic tables are...  
Carson: Right.  
Wright: I just I took care of the public for now, but if we don't deal this we're back.<sup>2547</sup> [Inaudible] [Background radio transmissions]  
Wright: They got about eight of them there with baseball bats right on the road edge you know.  
Carson: Well who are they?  
Wright: Well I don't know just a bunch of natives you know what I mean.  
Carson: Oh, oh I see oh they're out on the ah road.  
Wright: Right just on the edge okay.  
Carson: Yeah.  
Wright: The school bus is roaring around...  
Carson: Yeah.  
Wright: And...I told the two checkpoints and ah I didn't get I got ah the one at the top year twenty-one.  
Carson: Yeah.

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<sup>2542</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 60-63; see also pp. 66-67.

<sup>2543</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 63-64. He did not raise the possibility of using a bullhorn or some other means of communication for this purpose: see p. 64.

<sup>2544</sup> Examination in chief of Mark Wright, February 23, 2006, p. 64.

<sup>2545</sup> Examination in chief of Mark Wright, February 23, 2006, p. 65.

<sup>2546</sup> Examination in chief of Mark Wright, February 23, 2006, p. 75.

<sup>2547</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 99-101.

Wright: And and Zack comes back and he says we just got a vehicle it's been pelted with mischief... oh hang on a sec, what?

Background:(Okay the school bus and the dump truck are looking like they're moving toward the roadway now.)

Wright: The school bus and the dump truck look like they're moving towards the road now, so they're going to try and take that position again, we got that house there...

Carson: Okay.

Wright: We got the whole day shift ERT Team here and Canine.

Carson: Okay, just just ah...

Background:[Inaudible] [Background audio transmission]

Wright: Just [Inaudible]

Carson: Yeah.

Wright: Listen, boss, I've got Linton here and well -- if -- if those people can identify the guys who threw rocks, we can do something but if they can't then they're not doing anything wrong.<sup>2548</sup>

Carson: Well if they if they're going out there with baseball bats you got them for weapons dangerous.

Wright: You got them for weapons dangerous, you got them for ah you got them for fucking mischief to the road, you got them for unlawful assembly, we got that house right next door...[T]hey got the school bus there and the dump truck right there moving moving towards the roadway.

Carson: Okay.

Wright: So...

Carson: Are they are they coming out of the park?

Wright: I don't know yet...we got anymore are they out?

Background: [Inaudible]

Wright: We want to be...want a sit rep<sup>2549</sup> on those things the instant that they move out, I want to know about it.

Background: [Inaudible] [Radio transmission]

Wright: And I got the whole day shift here with Canine.

Carson: Okay so what's Dale want to do then?

Wright: Oh fuck I don't know, waffle, we'll be here<sup>2550</sup> till fucking daylight figuring it out and daylight's a-wasting.<sup>2551</sup>

Carson: Okay well you let me know if you want me to come back.

Wright: Well don't you want to be briefed about the citizens?

Carson: Well I do but ah...

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<sup>2548</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 108-09.

<sup>2549</sup> A situation report, which is a status update: see Examination in chief of John Carson, May 19, 2005, pp. 116, 121.

<sup>2550</sup> Examination in chief of John Carson, May 19, 2005, p. 115.

<sup>2551</sup> Examination in chief of John Carson, May 19, 2005, p. 115.

Wright: Let him run it.  
Carson: We got, to get, we got to get together and talk about your meeting tomorrow morning.  
Wright: Yeah okay well where are you?  
Carson: Well I'm having dinner right now.  
Wright: Where at ah...  
Carson: I'm in town here.  
Wright: For at Forest/  
Carson: Yeah at ah at a residence.  
Wright: Okay well...what if he asked me what did you say what do you want me to tell him?  
Carson: Well it's it's not my [Inaudible]  
Wright: Don't you say we go get those fucking guys?  
Carson: Well we got to deal with them we can't let them out in that area with that stuff.  
Wright: No.  
Carson: So if he wants I'll come back...but he's got to make that call for me to come back.  
Wright: Okay.  
Carson: That's his problem.  
Wright: Alright.  
Carson: Okay.  
Wright: Okay.  
Carson: But if not ah I'll meet you over at the motel here in a while...  
Wright: I'll see you there.  
Carson: Ah...  
Wright: Is that what you said, you were broken a bit.  
Carson: Yeah.  
Wright: Yeah.  
Carson: How about quarter to nine.  
Wright: Pardon me?  
Carson: Quarter to nine.  
Wright: Ah if I'm out of here.  
Carson: Okay well you call me if not okay, I'm on I'm on my cell phone.  
Wright: Okay and that give it to me again John your cell phone.  
Carson: Ah 671...  
Wright: Yeah.  
Carson: 6086.  
Wright: 6086.  
Carson: Yeah.  
Wright: He's calling out TRU...

Carson: What?<sup>2552</sup>  
Wright: (loud humming noise) okay so I'll call you ah at what time if I'm not there?  
Carson: Quarter to nine.  
Wright: Okay.  
Carson: If if if he if he's calling out TRU...  
Wright: Yeah.  
Carson: You advise him I should be notified.  
Wright: Okay.

Mark Wright testified that when he said, "I just I took care of the public for now, but if we don't deal this we're back", he meant that although he had "soothed" the concerns of the citizens in the MNR parking lot, he was concerned that if the OPP did not "deal with...this situation that we have", "[T]he cottagers would come back and we'd have that problem with cottagers potentially moving upon the First Nations people out in that area or towards the Park."<sup>2553</sup> Wright said his main concern was public safety and public order "because of what was going on and we needed to deal with this immediately".<sup>2554</sup> He said he appreciated that the situation was "connected to the land claim issue, but it was separate and distinct in my mind because there was criminal offences and a threat to public order there and it had to be dealt with".<sup>2555</sup>

At the same time Mark Wright was "frustrated" because he felt he was receiving "confusing mixed messages" from Inspector Linton, since Linton's position had gone from going "down there with individuals with helmets" and a canine unit, to "we're not going to do anything because they're not...doing anything wrong if we can't identify the individual who did damage to that vehicle".<sup>2556</sup> He referred to Linton "waffling" because Wright felt the OPP needed to deal with the situation "right away", and Linton "seemed to be moving from an overly aggressive position to the farthest from that, a very passive position".<sup>2557</sup> Wright was concerned that the people he had seen outside the Park "were armed and had taken control of that area", and that Linton didn't seem "to grasp that those were offences separate and distinct from the public safety issue in general".<sup>2558</sup>

Mark Wright testified that he became concerned again when he heard Inspector Linton calling out the TRU team in the course of his conversation with John Carson. He did not think this was appropriate, and that it,

...just didn't make sense to me to use a Tactical Rescue Unit to deal with a number of individuals, some of them who may be armed with bats, or axe handles, or whatever, on

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<sup>2552</sup> Examination in chief of John Carson, May 19, 2005, p. 116.

<sup>2553</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 101-02.

<sup>2554</sup> Examination in chief of Mark Wright, February 23, 2006, p. 102.

<sup>2555</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 102-03.

<sup>2556</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 104-05.

<sup>2557</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 105-06.

<sup>2558</sup> Examination in chief of Mark Wright, February 23, 2006, p. 105.

the roadway and on the sandy parking lot. My experience and understanding of the Tactical Rescue Unit was that you didn't engage them as an arrest team.<sup>2559</sup>

Mark Wright said he first received information about the "school bus roaring around" during this telephone conversation.<sup>2560</sup> As a result his "concern was greater now than it had been moments before".<sup>2561</sup> John Carson testified:

Well, that was the vehicle that had been used in the...drill hall incident and some other incidents and it...appeared when there was going to be some aggressive behaviour, that the bus was part and parcel of that in most cases; the ones that were of significance, anyway...And certainly as it appears in the Provincial Park, it certainly was a...cause for questioning what it was going to be used for now that it was there.<sup>2562</sup>

John Carson also testified as to concern about adjacent cottages:

[T]he commentary on the cottages, I mean, that came up a number of times from a number of different sources and there was certainly a concern about the risk that may be present, but it was clear that, you know, the Ipperwash Park was next. It was something that we heard, you know, being yelled from the sand dunes at people who were utilizing the Provincial Park during the month of August and to others who utilized the -- walked on the beach, that the Park was going to be taken over soon and the difficulty -- well, and at the same time there was common -- similar commentary about the cottages, the property from Ipperwash to Kettle Point. And the difficulty was, is that all of those threats came to pass and I was certainly mindful of that and I certainly was concerned because I knew the -- as we've talked about earlier, that there certainly was a...sense in the community about community concern and there had been issues or concern with the Ministry of Natural Resources about the campers who used the Provincial Park.<sup>2563</sup>

John Carson said that to say he was surprised at Inspector Linton calling out TRU would be an understatement.<sup>2564</sup> He said, "...[A] tactical response is a significant step."<sup>2565</sup> He did not see how what Mark Wright had told him required that.<sup>2566</sup> "The criteria for calling out a tactical team normally involves a threat to life," he said, and "[P]eople on the roadway with a baseball bat falls far short of that criteria."<sup>2567</sup> Carson "didn't have any difficulty" with the OPP responding to "individuals being on the parking lot with the baseball bats", but he considered that to be a matter not for TRU but for ERT, who could arrest people in the sandy parking lot.<sup>2568</sup>

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<sup>2559</sup> Examination in chief of Mark Wright, February 23, 2006, pp. 111-12.

<sup>2560</sup> Examination in chief of Mark Wright, February 23, 2006, p. 76.

<sup>2561</sup> Examination in chief of Mark Wright, February 23, 2006, p. 76.

<sup>2562</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, pp. 191-92.

<sup>2563</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, pp. 192-93.

<sup>2564</sup> Examination in chief of John Carson, May 19, 2005, p. 124.

<sup>2565</sup> Examination in chief of John Carson, May 19, 2005, pp. 124-25.

<sup>2566</sup> Examination in chief of John Carson, May 19, 2005, pp. 124-25.

<sup>2567</sup> Examination in chief of John Carson, May 19, 2005, p. 125.

<sup>2568</sup> Examination in chief of John Carson, May 19, 2005, pp. 129-30; Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, p. 156; Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 171.

He said, “[I]t’s a matter of using the right tools for the right job.”<sup>2569</sup> Carson was also concerned that if the TRU team was used for that purpose, “and if they came under fire while they were effecting that arrest, we would have no ability to provide any support to them because he [Inspector Linton] had already used that tool”.<sup>2570</sup>

At 8:13 p.m. Inspector Carson called Inspector Linton at the Command Post in response to a page by Linton:<sup>2571</sup>

Peterman: Command Post, Peterman.

Carson: Hi it's John Carson here ah Dale Linton asked for me.

Peterman: Pardon me.

Carson: Dale Linton please.

Peterman: Yeah just a moment.

Linton: John.

Carson: Yeah.

Linton: Yeah we're heating up big time, I just thought I would let you know we ah, we've got about eight guys on the road right down at the end of Army Camp Road, same place where the fire was and the car come around there and they apparently damaged it, we're getting the statement now and they wouldn't let it through I guess and...

Carson: What a private vehicle?

Linton: Yeah.

Linton: Yeah and ah so we just got a statement now she says that they were hassling her. Mark Wright come through and ah they told him they didn't know he was a cop or else get the hell out of there and now they've got the school bus down in the corner, they're bringing a dump truck in...they're in the kiosk with the windows down so they're they're waiting for us to do something, so I just they called the T.R.U. Team in and ah what we're gonna...well I'll till I get the statement, we're probably going to go down and arrest that group of ah eight or so people blocking the roadway and there's no doubt that ah you know they're they're waiting for something so it's it's a little bit vulnerable so I'll suit the T.R.U. up heavy and ah...put them in, so they're on route here now, so...

Carson: [Inaudible]

Linton: Pardon...can't hear you.

Carson: [Inaudible] are you.

Linton: Can't...can't hear you.

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<sup>2569</sup> Examination in chief of John Carson, May 19, 2005, p. 130. See also Cross-examination of Kent Skinner by Mr. Falconer, April 19, 2006, p. 380: “Well, sir, there are certain times that we may be used as an arrest process but in this case it wouldn’t be...the best use of a resource because you have ERT teams available to do that.”

<sup>2570</sup> Cross-examination of John Carson by Mr. Rosenthal, June 9, 2005, pp. 156-59.

<sup>2571</sup> Examination in chief of John Carson, May 19, 2005, pp. 130-31.

Carson: Are you telling me you got the T.R.U. Team? Can you hear me Dale.  
Linton: Just...(what do you want)  
[Inaudible]  
Linton: John.  
Carson: Yeah.  
Linton: I can't hear you.  
Carson: I'll call you on a hard line.

Inspector Carson called Inspector Linton back on a hard line<sup>2572</sup> at 8:15 p.m.:

Linton: Hello.  
Carson: Yeah.  
Linton: Yeah Jesus or I don't know what they're doing but they're they're building up for something down there cause their stuff is set up.  
Carson: Okay ah you you were saying you were going to ah you were calling out T.R.U.?  
Linton: Yeah.  
Carson: What are you going to do with them?  
Linton: Well T.R.U. is probably going to end up ah going in and doing an arrest.  
Carson: Dale don't do that.  
Linton: No.  
Carson: Don't do that. If you do that we are in trouble, okay. And are are you asking my advice or are you just informing me here, we better get this straight.  
Linton: No we we need to discuss this.  
Carson: Okay do you want me to come in?  
Linton: Well what what's ah why shouldn't we use like what we've got...  
Carson: Well what what are you going to achieve by using T.R.U. that E.R.T. can't do?  
Linton: Well...  
Carson: If somebody goes down then then what are you going to do?  
Linton: Like I think you got a build up ah inside and that's my concern, it's not going to arrest these eight guys, we were going...  
Carson: Oh oh...  
Linton: With E.R.T. once we got a statement. My concern is that you have the school bus moving down there, you've got the dump truck moving down there and you've got people in the kiosk pulling the blinds all down and I think there's ah you know a threat here of maybe sniper fire or like they're doing something inside getting ready for us.

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<sup>2572</sup> Examination in chief of John Carson, May 19, 2005, p. 134.



Carson: Okay well okay well that's fine and let's evacuate those houses if you think...

Linton: Okay.

Carson: There's a threat of that nature,<sup>2573</sup> but don't go in there with T.R.U. If you go in with T.R.U. and somebody gets hurt we have nobody else to get them out.

Linton: No, what I'm doing is I'm getting T.R.U. to come here.

Carson: Well I wouldn't even do that.

Linton: No.

Carson: If you if you if you bring that Team up you got to be ready to deploy them. They're...

Linton: Is if I send my if I send the E.R.T. guys in to arrest these eight people...

Carson: Yeah.

Linton: And all hell breaks loose...

Carson: Yeah.

Linton: And I've got T.R.U. suited and close by.

Carson: Well that's fine but I would leave them in the Pinery Park, they're closer from the Pinery than they are from from Forest and then you're going to create a Media event with the T.R.U. Team truck sitting in town here.

Linton: Okay so...

Carson: So...

Linton: I'll suit them up and leave them in Pinery then.

Carson: I I wouldn't do any more than that for the time being.

Linton: Okay. And then we'll do the arrest with the E.R.T. guys?

Carson: I would I'd call out all sixty of them if you have to.

Linton: Yeah.

Carson: Whatever's necessary we'll do that but I would I I...

Linton: Alright.

Carson: I tell you keep them in reserve.

Linton: Okay.  
(Background...hello Pam)

Linton: Alright that's what we'll do.

Carson: Okay.

Linton: And then if something happens we'll bring them down.

Carson: Do you want me to come back in?

Linton: No.

Carson: You're in charge.

Linton: No we're fine.

Carson: Okay, well I'll be at my motel.

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<sup>2573</sup> Examination in chief of John Carson, May 19, 2005, pp. 142-43.

Linton: Okay.

Carson: Okay thanks.

Inspector Linton did not ask Inspector Carson to return, and Carson sensed “some anxiety around whether he wanted me to or not”. Carson was concerned about what appeared to be “an escalation of activities in the area”.<sup>2574</sup> He also “wasn’t sure exactly what was going to happen next”.<sup>2575</sup> The two Inspectors agreed in the conversation to use ERT officers rather than a TRU team to “do the arrest”, but Carson said there remained options to be chosen in the use of the ERT officers.<sup>2576</sup> Specifically, these options were to “send in a number of officers to make an arrest”, or to assemble two ERT teams as a Crowd Management Unit (“CMU”) with a staff sergeant as a unit leader.<sup>2577</sup>

Carson decided to return to the Command Post.<sup>2578</sup> He acknowledged in cross-examination that although Inspector Linton held the same rank he did, he was Linton’s superior at Ipperwash “for all intents and purposes”.<sup>2579</sup>

At about 8:21 p.m. Staff Sergeant Lacroix was called out to attend at the Command Post.<sup>2580</sup> Inspector Carson arrived there a few minutes later,<sup>2581</sup> and took over as Incident Commander.<sup>2582</sup> Carson and Linton discussed the situation.<sup>2583</sup> Carson testified that the task at that time was to “try to determine exactly what we are dealing with and what’s the best way to deal with it”.<sup>2584</sup>

At 8:25 p.m. the decision was made that the OPP would mobilize a CMU “to go in and clear the parking lot”, and use members of the TRU team to “provide the visuals and provide cover for the crowd management team”.<sup>2585</sup> It was decided that John Carson would lead the crowd management operation, and that Dale Linton would manage the outer perimeter from the

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<sup>2574</sup> Examination in chief of John Carson, May 19, 2005, pp. 143-44.

<sup>2575</sup> Examination in chief of John Carson, May 19, 2005, p. 170.

<sup>2576</sup> Examination in chief of John Carson, May 19, 2005, pp. 170-71.

<sup>2577</sup> Examination in chief of John Carson, May 19, 2005, pp. 170-71.

<sup>2578</sup> He did not inform Detective Sergeant Wright that he was going to do so: see Examination of John Carson by Mr. Sandler, June 30, 2005, p. 47.

<sup>2579</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 39.

<sup>2580</sup> Examination in chief of John Carson, May 19, 2005, p. 171. See also Examination in chief of John Carson, May 19, 2005, p. 149. A tape recording captures someone in the Command Post saying, “Lacroix is on his way up to do these guys.”

<sup>2581</sup> Examination in chief of John Carson, May 19, 2005, pp. 171-72.

<sup>2582</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 40.

<sup>2583</sup> Examination in chief of John Carson, May 19, 2005, p. 172. The OPP scribe did not make a record of the conversation and Inspector Carson was not sure why that was so. He said, “[T]here was certainly no reason why it couldn’t have got into the scribe notes.” See Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 48-49.

<sup>2584</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 43.

<sup>2585</sup> Examination in chief of John Carson, May 19, 2005, p. 148; see also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 49-50, 57; Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 167-68.

Command Post in Forest.<sup>2586</sup> John Carson said that the option of sending a relatively small number of ERT officers to the area was rejected. He said,

Well, that option, I...would suggest, we saw the results of that type of option on the evening of September 4th when the group came into the Park, that when there was a small group of officers they simply took advantage of that opportunity and resulted in violence and damage, and it was felt necessary to withdraw to avoid injury. So...I couldn't see any reason that I could expect the behaviour to be any different if I sent a small group in.<sup>2587</sup>

Carson said it was also not a viable option to blockade the area, since, "I don't think the public were prepared to accept that...and quite frankly I think the consequences of that would have been more difficult to deal with."<sup>2588</sup>

John Carson said the decision to deploy the CMU was made on the basis of a number of factors:<sup>2589</sup>

The presence of occupiers in the sandy parking lot with baseball bats;<sup>2590</sup>

The occupiers' behaviour toward Mark Wright when he stopped near the sandy parking lot earlier that evening;<sup>2591</sup>

A private citizen's vehicle had been damaged at the intersection of Army Camp Road and East Parkway Drive;<sup>2592</sup>

The aggressive behaviour of occupiers that had occurred to date;<sup>2593</sup>

Inspector Carson felt aggressive behaviour by the occupiers on the night of September 6 "was a real possibility". He continued,

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<sup>2586</sup> Examination in chief of John Carson, May 19, 2005, p. 162; see also Cross-examination of John Carson by Mr. Ross, June 28, 2005, pp. 40-41.

<sup>2587</sup> Examination of John Carson by Mr. Sandler, June 30, 2005, pp. 110-11.

<sup>2588</sup> Examination of John Carson by Mr. Sandler, June 30, 2005, pp. 113-14.

<sup>2589</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, pp. 49-52.

<sup>2590</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 144-45; Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 50. Inspector Carson testified that the precise number of individuals in the sandy parking lot, or of individuals who were carrying weapons, or the precise nature of such weapons, were not material to him: see Examination of John Carson by Mr. Sandler, June 30, 2005, pp. 25-26.

<sup>2591</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 145: "[T]hey made it clear it was in his best interest that he...moves on right shortly. And it appeared that if he didn't comply with that, that the baseball bats may be something to be considered." See also Cross-examination of John Carson by Mr. Ross, June 28, 2005, pp. 50-51; Examination of John Carson by Mr. Sandler, June 30, 2005, pp. 20-21.

<sup>2592</sup> Examination of John Carson by Mr. Sandler, June 30, 2005, pp. 76-77.

<sup>2593</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 147: "Well they used like objects against the officers on the evening of Monday, September the fourth, and used rocks on the cruisers when they responded through the night on the night of the fifth. You know, so there was clearly behaviour that was aggressive in nature."

I mean, we...had seen aggressive behaviour. The night that we went into the Park we had seen aggressive behaviour when the officers responded to the bonfire on the roadway the night before. They certainly had already done significant damage to police property with no hesitation whatsoever...<sup>2594</sup>;

A concern that local cottagers could attack or confront the occupiers.<sup>2595</sup> Carson said, "If the cottages were broken into or damaged in any way, our credibility would have been lost and the cottagers would have taken it into their own hands. I think their confidence level was on edge";<sup>2596</sup>

The possible invasion of adjacent cottages.<sup>2597</sup> Carson said there had been numerous instances in which the police had received information that the cottages were going to be "next";<sup>2598</sup>

The movement of vehicles in the Park,<sup>2599</sup> and in particular the school bus being driven around in the Park, which had been used as a weapon during the takeover of the BUA on July 29.<sup>2600</sup>

Carson was aware that information had been received by the OPP that evening that the occupiers had Molotov cocktails and automatic weapons. He said "[Y]ou had to consider the source",<sup>2601</sup> although "[I]t's something that you just can't dismiss it as erroneous."<sup>2602</sup> By the time the CMU was deployed later that evening, Inspector Carson had dismissed the kiosk as posing any risk to operations in the sandy parking lot, as he was satisfied there was no direct line of sight from the kiosk.<sup>2603</sup>

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<sup>2594</sup> Examination of John Carson by Mr. Sandler, June 30, 2005, p. 48.

<sup>2595</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 143-44.

<sup>2596</sup> Examination in chief of John Carson, May 30, 2005, pp. 66-67. Inspector Carson disagreed in cross-examination with a suggestion that he was putting concerns about the cottagers ahead of the personal safety of the occupiers of the Park: see Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 245.

<sup>2597</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 135-39. Inspector Carson said this was "a threat that had been there for some period of time": see p. 138.

<sup>2598</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 153; Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 51. See also Examination of John Carson by Mr. Sandler, June 30, 2005, p. 44: "Well, there was the concern about damage or, in fact, someone going into the residence next door. There had been commentary throughout the summer months that the...cottagers were also, for lack of a better word, up for grabs." See also Cross-examination of Kent Skinner by Mr. Falconer, April 19, 2005, p. 327: "There was a concern for the cottagers in the area, sir." See also Examination of Kent Skinner by Ms. Jones, April 20, 2005, pp. 360-61.

<sup>2599</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 141-42.

<sup>2600</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 129-34. Inspector Carson stated, however, that he did not "believe they would try and run down the officers with the bus...that did not cross my mind that there would be an attempt to do that": see p. 131. He did have a concern that the bus would be driven out into the sandy parking lot: p. 142.

<sup>2601</sup> Cross-examination of John Carson by Mr. Falconer, June 29, 2005, pp. 139-40.

<sup>2602</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 45.

<sup>2603</sup> Cross-examination of John Carson by Mr. Horton June 27, 2005, p. 141.

At 8:29 p.m. Inspector Carson spoke to Acting Sergeant Kenneth Deane of the TRU team, and instructed him to “hold the team down”.<sup>2604</sup> He also directed that Kent Skinner attend at the Command Post, and that Deane “prepare to get an OSCAR team ready”.<sup>2605</sup> An OSCAR team is used for observation.<sup>2606</sup>

Shortly after 8:46 p.m., Inspector Carson instructed the TRU team leader, Staff Sergeant Kent Skinner,<sup>2607</sup> that he wanted a “sniper team to check out the line of sight from the kiosk to the parking lot”.<sup>2608</sup> Carson told Skinner, “[W]e are not going tactical and let’s get that straight.”<sup>2609</sup> In saying this Carson was referring to the normal use of a TRU team to set up an inner perimeter at an incident and “[I]f necessary, literally become proactive and take aggressive action to deal with the threat.”<sup>2610</sup> Carson said this was not what TRU officers were to do at the Park. TRU officers were instead to be “in observation and support of the crowd management team”.<sup>2611</sup> The CMU composed of ERT officers was to “deal with the personnel on the parking lot”, while TRU officers would be “positioned on either side of the roadway so that they could observe what’s going on and provide information back, and provide the cover in the event that the crowd management team came under fire”.<sup>2612</sup>

Inspector Carson briefed officers at the Command Post “that we’re going to go in and get an eye and if they’re just having a campfire, let’s just leave them. Why would we go in in the dark?”<sup>2613</sup> Carson said his comment was, “[I]f what they’re doing is sitting there sitting around the campfire” in the sandy parking lot, “roasting marshmallows, then we’re not going to bother them.”<sup>2614</sup> He said that if this is what the TRU team observed, it would not have been necessary to deploy the CMU.<sup>2615</sup>

At about 9:00 p.m. Inspector Linton directed that roads should be closed.<sup>2616</sup> Inspector Carson testified that this was done because, “[W]ith the crowd management team moving up the

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<sup>2604</sup> Examination in chief of John Carson, May 19, 2005, pp. 153-54. Carson initially believed he was speaking to TRU team leader Kent Skinner.

<sup>2605</sup> Examination in chief of John Carson, May 19, 2005, p. 154.

<sup>2606</sup> Examination in chief of John Carson, May 19, 2005, p. 154.

<sup>2607</sup> Cross-examination of John Carson by Ms. Jones, June 1, 2005, p. 198.

<sup>2608</sup> Examination in chief of John Carson, May 19, 2005, p. 174. See also p. 175.

<sup>2609</sup> Examination in chief of John Carson, May 19, 2005, p. 174.

<sup>2610</sup> Examination in chief of John Carson, May 19, 2005, p. 175.

<sup>2611</sup> Examination in chief of John Carson, May 19, 2005, p. 174.

<sup>2612</sup> Examination in chief of John Carson, May 19, 2005, p. 175.

<sup>2613</sup> Examination in chief of John Carson, May 19, 2005, p. 176.

<sup>2614</sup> Examination in chief of John Carson, May 19, 2005, p. 179. See also the scribe note referred to at p. 186, attributing the following comment to Inspector Carson: “If they are just having a campfire, let’s leave them. Why go in the dark?”

<sup>2615</sup> Examination in chief of John Carson, May 19, 2005, pp. 187-88; see also Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 169.

<sup>2616</sup> Examination in chief of John Carson, May 19, 2005, p. 181.

road, you didn't want to have traffic coming down there when they're in the middle of moving up...the street.”<sup>2617</sup>

At 9:22 p.m. it was decided that Inspector Carson and Kent Skinner would go to the TOC at the MNR parking lot, to the west of the sandy parking lot on East Parkway Drive, where Carson would manage the deployment of the CMU, and monitor the TRU team.<sup>2618</sup> Skinner said this decision was made because of difficulties of communication between the Command Post and the TOC.<sup>2619</sup> Inspector Linton was to remain at the Command Post in Forest and manage the outer perimeter.<sup>2620</sup>

After Staff Sergeant Lacroix arrived at the Command Post, Inspector Carson met with him outside the Command Post trailer. Carson said he explained to Lacroix “about the damage to the car, the experience that Mark Wright had down there, and that he was to go down there with a Crowd Management Unit and preferably clear them back into the Park”.<sup>2621</sup> He testified that his instructions to Lacroix “were to take the crowd management team, move into the sandy parking lot and not into the Park, that his task was simply to remove the people with the baseball bats and subject of all the other issues we had, off the sandy parking lot back to the fence”.<sup>2622</sup> Carson told Lacroix that if the persons in the sandy parking lot “went back into the Park...he was to let them go back in the Park”.<sup>2623</sup> Carson testified that he was “very emphatic that our officers were not to go into the Park”.<sup>2624</sup> Asked in cross-examination whether it was correct that his instructions were to not go into the Park, Staff Sergeant Lacroix answered, “Absolutely.”<sup>2625</sup>

Inspector Carson testified, “[M]y hope was that as the crowd management team came up the road and came into that area that they would simply move back into the Park and hopefully

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<sup>2617</sup> Examination in chief of John Carson, May 19, 2005, p. 183.

<sup>2618</sup> Examination in chief of John Carson, May 19, 2005, p. 184.

<sup>2619</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 169.

<sup>2620</sup> Examination in chief of John Carson, May 19, 2005, p. 184.

<sup>2621</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 154. Inspector Carson could not, however, recall “exactly what our conversation was”: see p. 155. See also Cross-examination of Wade Lacroix by Mr. Rosenthal, May 10, 2006, pp. 139-41.

<sup>2622</sup> Examination in chief of John Carson, May 30, 2005, pp. 74-75.

<sup>2623</sup> Examination in chief of John Carson, May 19, 2005, p. 185. A contemporaneous scribe note reads, “John Carson: If they go back into the Park, let them go.” Carson confirmed that this note recorded his direction to Lacroix: see Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 294-95.

<sup>2624</sup> Examination in chief of John Carson, May 19, 2005, p. 185. See also p.186: “I certainly briefed him that they weren't to go into the Park”. See also Examination in chief of John Carson, May 30, 2005, p. 75: “[T]he direction was absolutely clear, he was not to go into the Park.” See also Examination in chief of Kent Skinner, April 19, 2006, p. 198: “Before the team advanced into the Park, there was clear direction given to them by Inspector Carson that they were not to progress into the Park and I relayed that over the radio.” See also Cross-examination of Kent Skinner by Ms. Tuck-Jackson, April 19, 2006, p. 283, where Skinner testified that it was “repeated numerous times”, and “was very clear” that it was Carson's direction that the CMU was not to go into the Park, and that he understood that TRU team members were not to go into the Park either. See also Cross-examination of Kent Skinner by Mr. Falconer, April 20, 2006, p. 21. Skinner was not present for Carson's discussion with Lacroix: see Examination of Kent Skinner by Ms. Jones, April 20, 2005, p. 357.

<sup>2625</sup> Cross-examination of Wade Lacroix by Mr. Rosenthal, May 10, 2006, p. 143. See also Examination of Wade Lacroix by Mr. Roland, May 10, 2006, pp. 333-34.

we'd have to do not much of anything.”<sup>2626</sup> He said, “[T]hat’s certainly the psychological impact you are trying to impose by using a crowd management team.”<sup>2627</sup> He said, “What you normally expect to happen with a crowd management situation, is once the formation shows up, normally the group retreats and that resolves the issue. And that is the psychological approach to using them.”<sup>2628</sup> In examination by his counsel, Carson accepted that the idea behind the exercise was that through the show of force and through intimidation, one would prevent the actual use of force.<sup>2629</sup> That is what Carson expected would happen in this case.<sup>2630</sup>

Shortly after 9:22 p.m., John Carson left the Command Post at Forest Detachment and went to the TOC at the MNR parking lot.<sup>2631</sup> At about 9:26 p.m., observer teams reported,

The fire is outside the park (unclear) the road. A lot of traffic on the road and there’s a lot of people down there. There’s at least probably about 15 now, there seems to be more coming in.<sup>2632</sup>

A contemporaneous scribe note refers to a report of, “A fire outside the park at the bottom of the hill. Approximately twelve natives and more coming down. Lots of vehicle moving. Two ambulances to TOC.”<sup>2633</sup> Carson testified that he became aware of this information, including that there was a fire outside the Park and that more First Nations persons were arriving.<sup>2634</sup>

At 9:28 p.m., the following radio report was made to the TOC from an OPP checkpoint:

We just stopped a pick-up from entering. Three males from Stoney, baseball bats and clubs, golf clubs. Just for your information we have all their names and info. They were turned back but they wanted to get through.

Ten four. You didn't relieve them of their hardware?

Oh, yes, that's a ten four and they definitely donated it to the cause.<sup>2635</sup>

Carson testified that he became aware of the report that a pickup truck had been stopped from entering the Park area with “baseball bats and clubs, golf clubs”, and that it was of concern to him.<sup>2636</sup>

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<sup>2626</sup> Examination in chief of John Carson, May 19, 2005, p. 185.

<sup>2627</sup> Examination in chief of John Carson, May 19, 2005, p. 185.

<sup>2628</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 123-24; see also pp. 213-14; Examination in chief of John Carson, May 19, 2005, pp. 185-86.

<sup>2629</sup> Examination of John Carson by Mr. Sandler, June 30, 2005, p. 138.

<sup>2630</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 124: “Well, we expected that they would move back into the Park just upon the -- the sheer presence of the team is what we expected.”

<sup>2631</sup> Examination in chief of John Carson, May 19, 2005, p. 188.

<sup>2632</sup> Exhibit P-486; Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 305-06.

<sup>2633</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, p. 309.

<sup>2634</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 310-11.

<sup>2635</sup> Exhibit P-487; Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 306-07.

<sup>2636</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, p. 311.

At 9:32 p.m. an ERT observation team reported again by radio to the TOC:

Yeah, these vehicles, looks like they pulled the fence down. Cause it looks like vehicles have driven right through from the park. Their numbers have grown considerably. They're backing up vehicles - looks like they're removing objects from the truck. Can't see what it was, it's either a club or something along that line.<sup>2637</sup>

At 9:39 p.m. a checkpoint reported by radio to the TOC,

We're in a lot of traffic down here, and a lot of traffic, we're probably going to expecting some rocks coming in any minute.

[...]

Lima One, Delta - women and children have left earlier on. They've gone through the checkpoint earlier.

Right, ten four Checkpoint Delta. How many vehicles has he got down there?

Two. There's a big dump truck, there's the Bat-mobile. They've just started a large bonfire. I told the people here if we start getting fire bombed, we're out of here.

Yeah, ten four. They're inside the camp though?

Ten four. They're just inside on the road.<sup>2638</sup>

At 9:41 p.m. an ERT observation team reported by radio to the Command Post:

We've got a lot of traffic here, ATVs on the beach that are coming up to our position. We've moved back a little bit (unclear) looking for traffic on the road and cars stopped - I don't know, people all over the place here we're going back a little bit (unclear) It's getting [unclear]<sup>2639</sup>

Carson arrived at the TOC at 9:45 p.m.<sup>2640</sup> He said he was unsure whether he heard the above three radio transmissions or not, but the substance of the information contained in them was communicated to him.<sup>2641</sup>

When John Carson and Kent Skinner arrived at the TOC, the TRU team members were already at the TOC, dressed in their uniforms and getting prepared to be deployed.<sup>2642</sup> Skinner briefed the TRU members "about the information that had occurred that night about the vehicle

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<sup>2637</sup> Exhibit P-488; Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 311-13. The substance of this transmission is recorded in a contemporaneous scribe note.

<sup>2638</sup> Exhibit P-489; Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 322-23, 325-26. Checkpoint Delta was the checkpoint in front of CFB Ipperwash: see p. 326.

<sup>2639</sup> Exhibit P-490; Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 324-26, 336-37.

<sup>2640</sup> Examination in chief of John Carson, May 19, 2005, p. 191. Kent Skinner testified that he arrived at the TOC "in the area of 9:30 to 9:40". Examination in chief of Kent Skinner, April 19, 2006, p. 174.

<sup>2641</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, p. 337.

<sup>2642</sup> Examination in chief of Kent Skinner, April 19, 2006, pp. 174-75.



being trashed, as we thought, by baseball bats, about the weapon - the information regarding the weapons".<sup>2643</sup> At or around this time the members of the CMU also arrived.<sup>2644</sup>

Skinner also briefed the TRU team members on the functions they were to perform after they were deployed.<sup>2645</sup> The first role of the TRU team was deploy surveillance teams ("Sierra teams") and "provide some intelligence as to what was happening...at the intersection or at the sandy parking lot".<sup>2646</sup> Second, the TRU team was to provide cover for CMU members as they went down East Parkway Drive toward the Park.<sup>2647</sup>

Inspector Carson testified that after the TRU personnel were in position he was satisfied that there continued to be "a significant amount of activity occurring in the sandy parking lot".<sup>2648</sup> He understood that people were "out on the parking lot and on the roadway", carrying "bats or bat like objects".<sup>2649</sup> At about 10:19 p.m. Staff Sergeant Lacroix got the CMU into formation at the MNR parking lot.<sup>2650</sup> As they started to move out of the MNR parking lot Carson went into the TRU team's truck with Skinner and watched the CMU leave.<sup>2651</sup> Carson testified that the CMU was composed of approximately 40 officers, including a canine unit and arrest team personnel.<sup>2652</sup>

Inspector Carson said, "[W]e knew there was potential for firearms", but the OPP "didn't expect it from the people that we knew".<sup>2653</sup> He accepted in cross-examination that this danger was considered to be small, and that if it had not been the CMU would not have been deployed.<sup>2654</sup> He accepted that he did not believe police officers in the CMU would be fired upon.<sup>2655</sup> He testified,

And as I've indicated before, even back in 1993 when we had the issue with the helicopter...I never felt that the aggression was -- well, there was any aggression towards to the OPP. We...certainly met with various -- I guess you could term profanities and

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<sup>2643</sup> Examination in chief of Kent Skinner, April 19, 2006, pp. 177, 186-87.

<sup>2644</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 175.

<sup>2645</sup> Examination in chief of Kent Skinner, April 19, 2006, p. 177.

<sup>2646</sup> Examination in chief of Kent Skinner, April 19, 2006, pp. 176-77, 188; Cross-examination of Kent Skinner by Ms. Tuck-Jackson, April 19, 2006, p. 288.

<sup>2647</sup> Examination in chief of Kent Skinner, April 19, 2006, pp. 176, 194-94, Cross-examination of Kent Skinner by Ms. Tuck-Jackson, April 19, 2006, pp. 288-89.

<sup>2648</sup> Examination in chief of John Carson, May 30, 2005, p. 77; see also pp. 55-56. There was a failure of the recording system which would ordinarily have recorded radio communications back to Inspector Carson at the TOC from the TRU officers engaged in observation. At the time Inspector Carson assumed the communications were being recorded: see Examination in chief of John Carson, May 30, 2005, pp. 77-78,

<sup>2649</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 67-70, 101.

<sup>2650</sup> Examination in chief of John Carson, May 30, 2005, p. 79.

<sup>2651</sup> Examination in chief of John Carson, May 30, 2005, p. 80.

<sup>2652</sup> Examination in chief of John Carson, May 30, 2005, pp. 105-06; see also Cross-examination of John Carson by Mr. Falconer, June 29, 2005, pp. 33-35.

<sup>2653</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 78.

<sup>2654</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 78-80.

<sup>2655</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 139-40.

epithets when we went on to the military base the night of the helicopter shooting, but I certainly never felt a...personal threat, and...in this particular point in time, there was information that guns were in there. The use of TRU team as a cover team is used as a precaution because of the availability, or potential availability of weapons. It's not because we felt that any individual was going to do something overt towards us.<sup>2656</sup>

Shortly after 10:27 p.m., Staff Sergeant Lacroix stated by radio communication,

...[G]ood news they've got rocks and sticks piled up and we all know we can beat that...rocks and sticks that's in our bailiwick. All we have to worry about is little brown stocks and black barrels. Okay we're going to advancing in a moment. Advance.<sup>2657</sup>

It was reported to Inspector Carson that two "forward observers" from among the occupying group had spotted the CMU and ran back into the Park.<sup>2658</sup> Shortly after 10:35 p.m. Staff Sergeant Skinner relayed to Sergeant Hebblethwaite, second in command of the CMU,<sup>2659</sup> information received from the TRU officers that "spotlights are from the occupants and they are roaming wildly".<sup>2660</sup>

Skinner:	CMU be advised ah party on the road may have a weapon in his hand.
Deane:	Tex to CMU person down the road does have a weapon does have a weapon.
Lacroix:	Okay everybody move split right left split right left split right left split right left everybody split right left take a knee take a knee. <sup>2661</sup>

The CMU team members moved to the left and right of the road and crouched down into defensive positions.<sup>2662</sup> Shortly afterward one of the TRU teams confirmed that the person on the road was carrying a stick, not a firearm.<sup>2663</sup>

At about 10:54 p.m. Staff Sergeant Lacroix reported that "they're on the...provincial...property".<sup>2664</sup> Inspector Carson understood that the occupiers were in the Park.<sup>2665</sup> Staff Sergeant Skinner relayed to Lacroix an order from Carson to, "[T]ake up a

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<sup>2656</sup> Cross-examination of John Carson by Mr. Ross, June 28, 2005, p. 58. See also pp. 59-60: "I didn't believe anyone would turn a firearm on us."

<sup>2657</sup> Examination in chief of John Carson, May 30, 2005, p. 85.

<sup>2658</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 126.

<sup>2659</sup> Examination in chief of John Carson, May 30, 2005, p. 85.

<sup>2660</sup> Examination in chief of John Carson, May 30, 2005, p. 94.

<sup>2661</sup> Examination in chief of John Carson, May 30, 2005, p. 96.

<sup>2662</sup> Examination in chief of John Carson, May 30, 2005, p. 97.

<sup>2663</sup> Examination in chief of John Carson, May 30, 2005, p. 99. See also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 86; Cross-examination of John Carson by Mr. Horton, June 27, 2005, pp. 119-22; Examination in chief of Kent Skinner, April 19, 2006, pp. 195-96.

<sup>2664</sup> Examination in chief of John Carson, May 30, 2005, pp. 100-01.

<sup>2665</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 89, 90.

defensive position.”<sup>2666</sup> Carson expected the CMU to “just take a position back in the sandy parking lot and to wait and see what...the reaction to that was”.<sup>2667</sup> Lacroix directed Shield chatter.<sup>2668</sup> Carson testified that this was done to “demonstrate their presence”.<sup>2669</sup>

At 10:55 p.m. Sergeant Hebblethwaite reported by radio, “[W]e’re at the perimeter the...badgers are within the bounds of the park the badgers are in the park.”<sup>2670</sup> “Badgers” was a term referring to the occupiers.<sup>2671</sup> The CMU was directed from the MNR parking lot to “take cover and maintain your position”.<sup>2672</sup> Staff Sergeant Lacroix ordered the CMU to “[B]ack up back up back up to the pavement back to the pavement.”<sup>2673</sup>

At 10:58 p.m. Staff Sergeant Lacroix said over the radio, “[G]et ready for it get ready. Ready ready go go. Back back back...” The word “go” was spoken loudly.<sup>2674</sup>

At a few seconds before 11:00 p.m., Inspector Carson called Inspector Linton at the command post in Forest and reported, “[W]e’ve got one 1092 so far here, things are going good.”<sup>2675</sup> The code ‘1092’ signified a prisoner.<sup>2676</sup> Carson had been informed of this over the radio.<sup>2677</sup> He testified that by “going good” he meant, “[I]t appeared that one person had been arrested – and that...was going to be the end of it, that we’d be bringing the crowd management team back to the...TOC and we’d be keeping people on point duty for the duration of the evening.”<sup>2678</sup> Carson told Linton, “I think what you better do is you’re going to have to keep an

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<sup>2666</sup> Examination in chief of John Carson, May 30, 2005, pp. 100-01.

<sup>2667</sup> Examination in chief of John Carson, May 30, 2005, p. 101. See also pp. 123-24:

Well, at that point we wanted to determine if they’re going to stay in the Park, the crowd management team had just arrived. The reaction was they basically went back into the Park. The crowd management team is now defensively in the area of the asphalt from the roadway of Parkway Road itself and waiting to see if there’s going to be any altercation or they’re going to stay in the Park or exactly what they’re going...to do.

See also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, pp. 90-92. See also pp. 100, 103

<sup>2668</sup> The shield chatter was not on Inspector Carson’s instructions: see Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 92-97.

<sup>2669</sup> Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 97-98.

<sup>2670</sup> Examination in chief of John Carson, May 30, 2005, p. 102.

<sup>2671</sup> Examination in chief of John Carson, May 30, 2005, p. 103. Inspector Carson testified that “The term ‘badgers’ is just a term so they can be understood over the air as to who they’re dealing with, so we...know which individuals we’re talking about on the air.” See also Examination in chief of Kent Skinner, April 19, 2006, p. 220: “[T]he term badger is used in hostage rescue. It is a code term for the actual suspects. And it has drifted to become suspect in general. Not necessarily in a hostage situation.”

<sup>2672</sup> Examination in chief of John Carson, May 30, 2005, p. 105.

<sup>2673</sup> Examination in chief of John Carson, May 30, 2005, p. 105.

<sup>2674</sup> Examination in chief of John Carson, May 30, 2005, p. 107.

<sup>2675</sup> Examination in chief of John Carson, May 30, 2005, p. 109.

<sup>2676</sup> Examination in chief of John Carson, May 30, 2005, p. 111.

<sup>2677</sup> Examination in chief of John Carson, May 30, 2005, p. 111.

<sup>2678</sup> Examination in chief of John Carson, May 30, 2005, p. 120.

eye on this thing all night, you're going to have...I think we better start moving another TRU Team in just simply for backup if these guys tire or something else happens.”<sup>2679</sup>

## **16.05 THE RAGE IN THE SANDY PARKING LOT**

The prisoner was Cecil Bernard George, a KSP councillor who had gone to the Park that evening. There are some significant discrepancies in the evidence as to what happened in the sandy parking lot. It appears to be uncontroverted, however, that the CMU approached the Park fence line. Consistent with their instructions, the CMU never entered the Park. The First Nations persons who had been outside the Park fence went back inside the fence. The CMU began to withdraw.

Contrary to the expectations of the police, First Nations people came back out of the Park. Cecil Bernard George came out into the sandy parking lot. He engaged in a physical confrontation with the police and was arrested. In the course of that arrest he was seriously injured. There was a violent melee in which the persons who came out of the Park and the CMU engaged in hand to hand combat. The First Nations people used rocks, clubs, sticks and similar objects. The police officers had batons and shields. Some of the First Nations people drove the school bus at the CMU on the road. The bus was followed by a car. Police were threatened and some were struck. There was gunfire.

Dudley George was killed. It has been judicially determined that Dudley George had no firearm in his possession. The OPP officer who fired the bullet that killed him was convicted of criminal negligence causing death.

We expect that other parties will present detailed analyses of the evidence heard by this Inquiry as to what occurred in the sandy parking lot. We place emphasis on the depth of rage that surfaced that night. A recurrent theme in the testimony of OPP officers involved in the tragedy was an expression of surprise at the intensity of the violence that erupted in the sandy parking lot outside the Park. John Carson testified, “I mean in a, quite frankly, a worst case scenario, we didn’t really anticipate the events as they unfolded.”<sup>2680</sup> Kent Skinner, the TRU team leader, testified, “I did not anticipate that they would react by coming out to meet the CMU, sir. I anticipated they would go back.”<sup>2681</sup> The leader of the CMU, Wade Lacroix, said:

The whole situation was a bad situation, sir. It was very tragic, the fact that any man died. I did not expect it to end this way going down the road. I thought it was going to be a disturbance, there might be some sticks and stones. I certainly did not expect it to break into gunfire. I certainly didn't expect to see my men get run over by cars, and we especially did not expect to be taking human life.<sup>2682</sup>

Lacroix’s second in command of the CMU, Sergeant George Hebblethwaite, testified:

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<sup>2679</sup> Examination in chief of John Carson, May 30, 2005, p. 110.

<sup>2680</sup> Examination in chief of John Carson, May 31, 2005, p. 172.

<sup>2681</sup> Cross-examination of Kent Skinner by Mr. Scullion, April 20, 2006, p. 327.

<sup>2682</sup> Cross-examination of Wade Lacroix by Mr. Rosenthal, May 10, 2006, p. 175.

As a police officer, it was the most violent and dangerous experience of my career, before or since. To my knowledge, there's never been an encounter like this in the history of the OPP. When we arrived at the sandy parking lot and the occupiers went back into the Park, I believed that we had completed our task. I thought it was done. Having reached our objective, we were in the process of leaving. Within moments, a finished event turned into a hailstorm. We were withdrawing to the pavement. All of a sudden people were coming over the fence at us. There was dust everywhere, almost like a smoke or a haze. Figures were advancing. I could see their silhouettes...more than I could see who they were, due to the bonfires behind them, backlighting them, along with the two vehicles that were in the Park. It was like they were not real. I could see the outlines of weapons in their hands. It was like being in a horror movie. To this day I find it difficult to believe that this happened. It did not make any sense. We were done. We were in the process of leaving. The degree of violence during the confrontation in the sandy parking lot was something I had never seen before, nor since.<sup>2683</sup>

Cecil Bernard George tried to explain what happened:

Before I continue on, I'd like to mention one other important part of what took place down there, is that, I travel to different parts of the country, can't understand why this took place and why it happened, especially when he was a friend, to what -- what they did to us. We lost a brother, we lost a friend, and I was part -- I was involved in it. I was front and centre.

Mankind then filled me with so much anger at that point, to this day I'm still trying to understand what took over me. Everything that I understood from life, what I learned about, what I've seen, about our land, about our people. Then I got filled with a feeling that I wish nobody has, that will ever come to them.

The subconscious mind, whatever that is, it took over me. At that point, I have nothing left inside of me but anger for what they did and what they were continuing to do because no one would stop, no one would come out and try to talk to us. I tried talking, but it seemed like they were there to do a job that they were trained to do. No one knew why whether they were there except for they were there, to show force.

I knew why. I knew something bad was going to happen when that feeling took over me -- took over me. I had a radio that I was carrying. I put it down on a stone. The stick that I was carrying outside, I believe I threw it down. Maybe a scanner I was carrying, if I had it I -- I can't remember.

(brief pause)

I picked up what I believe was a stick. It took me years, to think about what I had in my hand. I know I mentioned in previous testimonies, that it was a stick. I talked to our Creator to try to help me understand. I changed my decision. It was a pipe.

I live with this feeling day after day. Hour after hour. Month after month. Year after year. Searching inside, looking for an answer. Sam's family was looking for an answer. Sam's family wanted the truth. I went to the hills, I went to the mountains, talking to our Creator about what happened.

I stood on a hill, our sacred hill. In the United States -- I stood with our spirits on that hill. We know Little Big Horn. I prayed there, I prayed for mankind to understand our nation, not to treat us like that anymore. I thought about Dudley there. Everywhere I

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<sup>2683</sup> Examination in chief of George Hebblethwaite, May 11, 2006, pp. 291-92.

found part of my answer, about why I didn't run and hide. I found part of the answer who I am. I wanted just to know that.

(brief pause)

Don't treat us like you don't understand us. It's a terrible feeling to have, the feeling that I had when I picked up that pipe.<sup>2684</sup>

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<sup>2684</sup> Examination in chief of Cecil Bernard George, December 7, 2004, pp. 59-62. See also p. 101: "I knew I did wrong by picking up that pipe and hitting -- striking at those officers. But yet I did it to protect what I felt needed to be protected."

## CHAPTER 17

# CONCLUSION

We begin by speaking to what we say has been the false issue in this matter. John Carson testified that he received no direction from Mike Harris, or anyone in his government, as to how he was to carry out as Incident Commander the OPP's operations at Ipperwash, directly or indirectly.<sup>2685</sup> He told this Inquiry, "[A]ny of the actions we took, any direction I gave, was in response to the situation we faced specifically."<sup>2686</sup>

John Carson testified that neither Premier Harris, nor any member of his government, nor anyone acting on their behalf, instructed him as to what should be contained in the Project Maple operational plan, or the number of officers that should be deployed at the Park.<sup>2687</sup> He said Project Maple was developed as a result of discussion and direction from Chief Superintendent Coles and Superintendent Parkin,<sup>2688</sup> and that no one outside the OPP was involved in it.<sup>2689</sup> He never had any understanding that he was in any respect directed to take an approach to the potential occupation of the Park that was different from that taken by the OPP in previously dealing with First Nations incidents.<sup>2690</sup> He testified that the Project Maple plan never changed prior to the violence of the night of September 6.<sup>2691</sup>

Asked whether he received any instructions from anyone on behalf of the government of Ontario to take steps during the period from September 4 through 6, and in particular, on the evening of September 6, Inspector Carson's full answer was as follows:

Absolutely not, sir. In fact, I think if you look at -- the only political people, and when I say, "political," I'm referring to the partisan politics individuals, the only elected official at the provincial level would have been Mr. Beaubien. The...facts around his appearance at the command post are well documented. There are a couple of references or a few references in the command post minutes that refer to commentary as relayed to me by...then Inspector Fox. I think you'll see in each and every case that those comments

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<sup>2685</sup> Examination in chief of John Carson, May 31, 2005, pp. 173-74. Inspector Carson also specifically said that he received no such direction from Chief Superintendent Coles or Superintendent Parkin: see pp. 177-78. See also Cross-examination of John Carson by Mr. Smith, June 2, 2005, pp. 74-75, 76; Cross-examination of John Carson by Mr. Fredericks, June 2, 2005, p. 113.

<sup>2686</sup> Examination in chief of John Carson, May 31, 2005, p. 175.

<sup>2687</sup> Cross-examination of John Carson by Mr. Downard, June 2, 2005, pp. 61-62, 64-65.

<sup>2688</sup> Cross-examination of John Carson by Mr. Downard, June 2, 2005, pp. 64-65.

<sup>2689</sup> Cross-examination of John Carson by Mr. Smith, June 2, 2005, p. 77.

<sup>2690</sup> Cross-examination of John Carson by Mr. Downard, June 2, 2005, p. 65.

<sup>2691</sup> Cross-examination of John Carson by Mr. Downard, June 2, 2005, p. 65.

were made, it will be made in the context that we are proceeding with...an injunction. And...I think you will see that in...our actions, any of the actions we took, any direction I gave, was in response to the situation we faced specifically. And I must point out that I left for dinner on the evening of September 6th and had left for the evening with the intent a meeting with Sergeant Wright to discuss the injunction for the next morning. That meeting didn't take place as planned. As...the record shows, I was called back into duty or...I was contacted by Dale Linton and, as a result of that, I returned and put myself back on duty. And it was the events that we were faced with that resulted in the decision which I certainly have no hesitation in taking responsibility, for ordering the Crowd Management Unit to be formed. In fact you will see in the command post minutes the records show that I went forward with the crowd management team, personally. And it was then, after I had left the command post, and only then, that Inspector Linton had updated Superintendent Parkin of the activities that had taken place and the actions related to it that we were about to put into -- into use. So quite frankly, Mr. Millar, I have great difficulty with the insinuation that I took any political direction from anyone.<sup>2692</sup>

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<sup>2692</sup> Examination in chief of John Carson, May 31, 2005, pp. 174-76. See also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 51: "It's an important decision, and I'm telling you I made that decision." See also Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 111:

Q. ...[Y]ou take personal responsibility for the decision to send the Crowd Management Unit and the Tactical and Rescue Unit to the Park on the night of September the 6<sup>th</sup>, is that correct?

A. Correct.

Q. And when I say "personal responsibility", I mean just for clarification, that it was you, and you alone who made that decision?

A. Yes.

See also pp. 112, 113. See also Cross-examination of John Carson by Ms. Twohig, June 2, 2005, p. 11: "Quite frankly, I had no discussion with anybody in Government in regards to any means of removal." Inspector Carson went on to accept (at p. 11) that no one suggested to him that anything other than his plan should be implemented. See also pp. 14-15:

So, Deputy Commissioner, you testified that you were not influenced in any way by anyone in the Government to make the decisions you made in relation to the events surrounding the death of Dudley George?

A: That's correct.

Q: So, the altercation in the area outside the Park on the night of September 6th had nothing to do with pressure from the Provincial Government and nothing to do with removing the occupiers from the Park; is that right?

A: Well that's correct. In fact when the crowd management team was deployed and the occupiers went -- retreated back into the Park. Quite frankly the crowd management team would have been withdrawn from there. In fact the...fact of the matter is they were withdrawing from the area back in -- onto the asphalt roadway and leaving the area when in fact the altercation occurred as they were literally moving away from the Park. And had the occupiers stayed within the confines of the Park in fact it would have been *status quo* pending the optimistic impression that we would achieve some direction by way of injunction the following morning.

See also Cross-examination of John Carson by Mr. Rosenthal, June 20, 2005, p. 192:

Q: So there were other options -- other possibilities, right?

A: If...those cottages had of been damaged or if anyone had of stumbled into that area, I would have had a situation that would have been simply untenable for --

Q: Yes.

A: -- anyone to deal with.



Carson also testified that no one within the OPP ever instructed him to go into the Park and eject the occupiers.<sup>2693</sup>

Superintendent Parkin accepted in cross-examination that from September 4 to 6 none of the OPP officers on the ground suggested to him that they had received any direction or instruction from Queen's Park or the provincial government with respect to operational decisions.<sup>2694</sup>

Inspector Carson denied in cross-examination that Ron Fox was "basically in charge of transmitting what the government of the day was thinking to the Ontario Provincial Police".<sup>2695</sup> The exchange continued:

Q: Oh, but you'd forgive me for thinking that based on the review of the tapes, yes?

A: Well, you can take whatever perception you want from the tapes, but...his role was a First Nations advisor to the Deputy Minister.

Q: But his job appeared to include telling you, John Carson, what the Premier and the Solicitor General and the Minister of Natural Resources were thinking?

A: No, that wasn't his job. He certainly shared his thoughts with me, but that certainly wasn't his job to do that.<sup>2696</sup>

Inspector Carson was also specifically referred to the information provided to him by Ron Fox regarding the views of cabinet ministers, including the Premier:

Q: So the views of these two powerful political figures become known to you, right?

A: Yes, it does.

Q: And they had absolutely no effect on you?

A: Absolutely right.

Q: Policing is a tough job, yes.

A: Of course it is.

Q: Your job was to not allow any outside influence including the Premier and the solicitor general to affect the performance of your job.

A: Correct.

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Q: Yes, there would have been such incredible pressure from the Premier's office and from the MPPs that you would not, perhaps, have survived on the force if something like that had happened; isn't that fair, sir?

A: I didn't believe that whatsoever.

<sup>2693</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 190-91.

<sup>2694</sup> Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, p. 60; see also p. 61 regarding Superintendent Parkin's telephone conversation with Inspector Linton on the evening of September 6.

<sup>2695</sup> Cross-examination of John Carson by Mr. Falconer, June 28, 2005, p.213.

<sup>2696</sup> Cross-examination of John Carson by Mr. Falconer, June 28, 2005, p.213.

Q: You were expected and you tell us you did, to wear blinders, completely ignorant of the most powerful people in the province, yes?

A: Yes.

Q: Not an easy job.

A: Not suggesting it was.

Q: Would you agree with me that it wasn't an easy job?

A: Of course.

Q: Accepting hypothetically and I - I want to emphasize hypothetically, accepting hypothetically that it had absolutely no influence on you. It must have been a tad distracting. Yes?

A: Quite frankly, not. If the Premier or anybody else of that level has any concerns then their concern needed to be taken up with the commissioner of the Ontario Provincial Police. As an inspector, I clearly have a chain of command that I have to satisfy and it may not always be in keeping with other people's opinion including political folks.<sup>2697</sup>

John Carson testified that he never considered that the IMC was providing directions, instructions or orders of any kind to him.<sup>2698</sup> In his examination in chief Carson was asked whether he felt "under pressure to do something on the evening of September 6" as a result of the statements made to him on the telephone by Ron Fox, or the concerns and issues raised with him by Marcel Beaubien, local cottagers and Mayor Fred Thomas. He responded:

Absolutely not. Inspector Fox called me with information that I required in regards to the injunction. In fact, I was certainly questioned at some length in another process in regards to the discussion with Ron Fox. At that time I was not privileged to the recordings that are available today. I had not -- I wasn't aware they even existed. And at that time I was obliged to clearly deny any understanding or knowledge of the part of the conversation around the political comments, because, in fact, I had no memory of that. I would suggest that the...critical issues of the moment was the issues of the injunction and, quite frankly, Inspector Fox was venting some frustrations apparently that he may have felt under but, in all fairness, that was issues for him. My issues were with trying to work through this situation we were facing that was facing not only the police but the occupiers, the greater community in the Lambton County and Bosanquet Township in particular, and trying to maintain some balance to this. And that's everything that...I did was motivated in balance.<sup>2699</sup>

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<sup>2697</sup> Cross-examination of John Carson by Mr. Falconer, June 28, 2005, pp. 233-35.

<sup>2698</sup> Cross-examination of John Carson by Mr. Smith, June 2, 2005, p. 80.

<sup>2699</sup> Examination in chief of John Carson, May 31, 2005, pp. 176-77. See also Cross-examination of John Carson by Mr. Smith, June 2, 2005, pp. 79-80. See also Cross-examination of John Carson by Mr. Falconer, June 29, 2005, pp. 180-81. See also Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 194-95:

In your view, did you ever deviate from the OPP policy of requiring an injunction before moving to eject occupiers from within the Park?

A: No, sir.

Q: Did you ever contemplate, even once, deviating from that policy as a result of any expressed political views?

A: No, sir.

Inspector Carson testified that he did not believe any officer under his command was affected in the performance of their duties by political pressures.<sup>2700</sup> He said Mark Wright never spoke to him about any such pressures.<sup>2701</sup> He accepted “absolutely” that officers are trained to take direction from him as their incident commander, or their superior, and not politicians.<sup>2702</sup>

It was suggested in cross-examination to Acting Staff Sergeant Kent Skinner, the TRU team leader, that, “[T]here was nothing from the words or actions of then Inspector John Carson that suggested to you that his decisions as a police officer were in any way being influenced by the views of politicians.” He answered, “That’s fair. Absolutely there was none.”<sup>2703</sup> Staff Sergeant Wade Lacroix testified that on September 5 and 6 Carson “absolutely” did not say anything to him that suggested that political views were influencing his operational decisions.<sup>2704</sup>

John Carson strongly disagreed with a suggestion in cross-examination that he deployed the CMU because of “concerns about criticism of your activities to that point”.<sup>2705</sup> He described as “absolutely false” a suggestion that he did not speak to Superintendent Parkin when the CMU was deployed “because, based on what had already taken place, you knew that...Superintendent Parkin and Chief Superintendent Coles were on side with taking advantage of an opportunity that would make the OPP look like they were in control of the situation”.<sup>2706</sup>

Inspector Carson’s evidence on these points is corroborated by numerous recorded conversations among OPP officers in the hours after the violence at the Park. Those conversations include extensive discussion of why the police had acted and what had happened. There is not the slightest suggestion in those conversations that what had occurred had been the result of an order, direction, pressure or suggestion from Mr. Harris or his government, directly or indirectly.

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Q: Did any of your superiors, even once, ever discuss with you deviating from that policy or give you such directions?

A: No, sir.

Q: Have you seen any documentary evidence whatsoever that you or any of your superiors even contemplated deviating from that policy as a result of political views expressed?

A: No, sir.

Q: Did anyone under your command ever urge you to deviate from the OPP policy as a result of the expression of any political views?

A: No, sir.

See also Examination of John Carson by Mr. Sandler, June 29, 2005, p. 239.

<sup>2700</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, pp. 198-200.

<sup>2701</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, p. 200.

<sup>2702</sup> Examination of John Carson by Mr. Sandler, June 29, 2005, p. 225.

<sup>2703</sup> Cross-examination of Kent Skinner by Ms. Tuck-Jackson, April 19, 2006, pp. 282-83.

<sup>2704</sup> Cross-examination of Wade Lacroix by Ms. Tuck-Jackson, May 9, 2006, p. 140.

<sup>2705</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 238.

<sup>2706</sup> Cross-examination of John Carson by Mr. Horton, June 27, 2005, p. 239. See also Examination of John Carson by Mr. Sandler, June 30, 2005, p. 46.

The fact of the matter is that John Carson's decision to deploy the CMU on the night of September 6 was a judgement made in good faith on the basis of information that was plainly relevant to Carson's duty to the public. It is crystal clear that the CMU was instructed not to go into the Park. As a matter of simple logic the deployment of the CMU could not possibly have achieved the government's desire that the takeover of the Park be ended. It is also clear that John Carson went off duty in the evening of September 6. It beggars the imagination to think he would have done so if an operation against the occupiers of the Park had been planned for that evening. There is certainly no evidence heard by this Inquiry that would support that view.

As stated at the outset of these submissions, the real question arising from Ipperwash is how government may restore and maintain the rule of law and civil order where it is disregarded by persons who have experienced historical injustice. We say that the real lesson of Ipperwash is that we must find a way to ensure that the rule of law and civil order is recognized as just by all people of all ancestries and opinions. There is no house without a foundation.