

THE IPPERWASH INQUIRY

THE HONOURABLE SIDNEY B. LINDEN, COMMISSIONER

PART I

SUBMISSIONS OF THE ONTARIO PROVINCIAL POLICE ASSOCIATION AND ITS MEMBERS

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PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
250 University Avenue
Suite 501
Toronto, ON M5H 3E5

Ian Roland	Ian McGilp
Karen Jones	Debra Newell
Jennifer Gleitman	Robyn Trask

T. 416.646.4300
F. 416.646.4301

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1. Introduction

a) Mandate of the Commission

1. By Order in Council dated November 12, 2003, the Honourable Sydney B. Linden was appointed Commissioner pursuant to the *Public Inquiries Act*, R.S.O. 1990, c.P. 41. The preamble to the Order in Council assists in determining the substantive scope of the Commission:

In 1995, the Ipperwash Provincial Park was the site of a protest by First Nations representatives. Mr. Dudley George was shot in the course of the protest and later died.

2. The mandate of the Commission is described in the following terms:

2. The commission shall:

- (a) inquire into and report on the events surrounding the death of Dudley George; and
- (b) make recommendations directed to the avoidance of violence in similar circumstances.

3. The commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization. The commission, in the conduct of its inquiry, shall ensure that it does not interfere with any ongoing legal proceedings relating to these matters.

4. The commission shall deliver its final report containing its findings, conclusions and recommendations to the Attorney General. In delivering its report to the Attorney General, the commission shall be responsible for translation and printing, and shall ensure that it is available in both English and French, in electronic and printed versions, and in sufficient quantities for public release. The Attorney General shall make the report available to the public.

5. Part III of the *Public Inquiries Act*, applies to the inquiry and the commission conducting it.

3. The press release from the Ministry of the Attorney General announcing the inquiry on November 12, 2003 stated:

“Ontarians will receive a full airing of the facts by an independent commissioner into what happened eight years ago at Ipperwash,” said Michael Bryant. “We are fulfilling our long-standing commitment to have a full and independent inquiry.”

“I have asked Justice Linden to conduct a thorough review”, said Bryant. “I look forward to receiving recommendations that will help us learn from the past and help promote peaceful resolutions in the future”.

4. It is apparent from the Order in Council that the mandate of the Commission is to investigate and advise.

5. At the outset of the public hearings on April 20, 2004, the Commissioner announced how he intended to undertake his mandate.

The Inquiry will be undertaken in two (2) parts. Part I will inquire into and report on events surrounding the death of Mr. George. Part II will make recommendations directed to avoidance of violence in similar circumstances.

Part I of the Inquiry will be conducted in a typical way of public hearings at which witnesses will be called and examined by Commission Counsel and, if necessary, will then be cross-examined by parties who have standing.

Part II will be conducted differently. Although Part II will be informed by Part I, evidentiary hearings alone are unlikely to foster the participation and analysis required to address the second part of the Inquiry’s mandate.

As a result, Part II of the Inquiry will use additional approaches to collect information on key issues identified including research, expert panels, round tables, community dialogues, and advisory committees.

Our intention is to proceed with both Parts concurrently.

i) Part I – The investigative role

6. The Commission carried out its investigative mandate in what it described as “the typical way of public hearings”, to inquire into the facts necessary for it to “report on events surrounding the death of Dudley George”.

7. The breadth or scope of the Commission's mandate was at issue throughout the Part I investigative hearings. For the purposes of its investigation, the Commission took a very broad view of the scope of its mandate. The Commission described the scope as, “both the specific circumstances of the shooting and the context in which the shooting occurred. Both aspects are keys to the Inquiry's fact finding mandate”. As became apparent in the Part I evidentiary hearings, “context” is an elastic concept.

8. The Commission inquired into and permitted questioning of witnesses into areas of investigation that had only a tenuous connection in time and circumstances to the events surrounding the death of Dudley George, which the Commission explained as appropriate in order to be “as thorough as possible”¹ and to consider “all relevant evidence from a variety of perspectives”.²

9. Like many other fact finding courts and tribunals that struggle with issues of relevancy of evidence, the Commission tended to err on the side of admitting evidence that was possibly relevant to the “context” of the “events surrounding the death of Dudley George”. In addition, the public hearings were extended in length because the Commission was mindful that it was conducting a “public inquiry” in which,

“there's an element of public education as part of its mandate. And because, in my view, it's also important to establish the context of events that is, cultural, historic or otherwise, I believe, it's appropriate to allow some latitude regarding Counsel's questions”.³

¹ 04/20/2004 at 9.

² 04/20/2004 at 9.

³ Abraham George, 11/01/2004 at 241.

10. In certain circumstances, the Commission specifically excluded evidence it determined was not relevant to its mandate. For example, the Commission decided that the names and identifying information of police officers who were involved in the OPP discipline investigation and disposition in respect of certain mugs and t-shirts, and other items, created well after the events of September 6, 1995, were not relevant to the mandate of the Commission, since “none of these police officers had any involvement in the events from September 4 to 6, 1995”.⁴

11. The mandate of the Commission is specifically circumscribed by the limitation that it not express “any conclusion or recommendation regarding the civil or criminal liability of any person or organization . . . ”⁵, and that before any finding of misconduct is made concerning a person, notice of the possible finding must first be given to the person.⁶

12. It is well recognized in the jurisprudence concerning public inquiries that findings of misconduct, although not expressed in terms of criminal or civil liability, may nevertheless do considerable damage to a person’s public reputation and professional status.

¶55 The findings of fact in the conclusions of the commissioner may well have an adverse affect upon a witness or a party to the inquiry...procedural fairness is essential for findings of commissions may damage the reputation of a witness. For most, a good reputation is their most highly prized attribute. It follows that it is essential that procedural fairness be demonstrated in the hearing of the commission.⁷

13. In the *Report of the Kaufman Commission on Proceedings Involving Guy Paul Morin*, the Honourable Fred Kaufman recognized the important principles to be applied

⁴ Anthony Parkin, 02/06/2006 at 14-15.

⁵ Order in Council, para. 3.

⁶ *Public Inquiries Act*, R.S.O. 1990, c P41, s. 5(2)

⁷ *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System-Krever Commission)*, [1997] 3 S.C.R. 440, at para. 55; (1977), 151 B.L.R. (4th) 1 (S.C.C.) (Cory, J.).

in carrying out his mandate. These same principles should be applied equally as an integral aspect of the mandate of this Inquiry.

Pursuant to my mandate, I have made findings of fact in this Report, including, where appropriate, findings of misconduct. In doing so, I was governed, in part, by the following principles which find expression in the *Public Inquiries Act*, the terms of my Order in Council and the relevant jurisprudence, most particularly the *Red Cross* case, cited above:

1. The Order in Council provides that “[t]he Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization.” The jurisprudence supports this prohibition. Accordingly, I have no jurisdiction to make any findings of criminal or civil responsibility and I have refrained from doing so. Each of my findings must be read in the context of this prohibition.
2. As noted by Cory J. in *Red Cross*, findings of misconduct “should be made only in those circumstances where they are required to carry out the mandate of the inquiry.”⁸ Any findings of misconduct which I have made shed light on how this miscarriage of justice occurred and explain and support my recommendations as to how to avoid future miscarriages of justice.
3. Subsection 5(2) of the *Public Inquiries Act* provides that no finding of misconduct on the part of any person shall be made against the person unless that person had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel. Accordingly, I have made findings of misconduct against named persons where that person received written notice of the substance of the alleged misconduct (referred to herein as ‘section 5 notice’) and had a full opportunity during the Inquiry to be heard.
4. The rules of procedure which govern public inquiries generally, and this Inquiry in particular, permit the reception

⁸ *Red Cross* at 470.

of evidence which might not meet the strict test for admissibility in criminal or civil proceedings. My approach at this Inquiry was to receive such evidence primarily where it related to systemic issues, rather than issues of personal or institutional misconduct. In making findings of misconduct, I relied heavily, by analogy, upon the principles which govern the admissibility of evidence in criminal proceedings. Generally, a relaxation of those principles favoured a party against whom misconduct was alleged. Having said that, I respectfully adopt the following comments of Cory J. in the *Red Cross* case as reflecting the principles which govern my Report:

A public inquiry was never intended to be used as a means of finding criminal or civil liability. No matter how carefully the inquiry hearings are conducted they cannot provide the evidentiary or procedural safeguards which prevail at a trial. Indeed, the very relaxation of the evidentiary rules which is so common to inquiries makes it readily apparent that findings of criminal or civil liability not only should not be made, they cannot be made.

Perhaps commissions of inquiry should preface their reports with the choice that the findings of fact and conclusions they contain cannot be taken as findings of criminal or civil liability. A commissioner could emphasize that the rules of evidence and the procedure adopted at the inquiry are very different from those of the courts. Therefore, findings of fact reached in an inquiry may not necessarily be the same as those which would be reached in a court. This may help to ensure that the public understands what the findings of a commissioner are – and what they are not.⁹

5. In assessing credibility, I also relied, by analogy, on the considerations relevant to a trial judge presiding in a criminal case. These include the demeanour of witnesses, the plausibility of evidence measured both internally and in relation to other evidence, prior statements or testimony, and the motivations and possible unconscious biases of parties. I have also considered that these biases may change as events develop. For example, a witness whose trial evidence was coloured by Guy Paul Morin's status as an accused murderer may now give evidence coloured by knowledge of Mr. Morin's proven innocence. The criminal

⁹ *Red Cross* at 470-471.

records or discreditable conduct of some witnesses may affect their credibility. The good reputations of parties against whom misconduct is alleged have been considered by me both in relation to their credibility and to the unlikelihood that the alleged misconduct would be committed by them. A number of parties led character evidence during the Inquiry, either through witnesses otherwise testifying on relevant issues, or through character witnesses or letters filed during Phase VI of the Inquiry. I have considered the excellent prior reputations of various parties against whom allegations of misconduct have been made in assessing the evidence.

6. I am entitled to make findings of fact which are demonstrated to my satisfaction on the balance of probabilities. However, where findings involve misconduct of named parties, potentially affecting reputations and professional standing, a high degree of proof, closer to the criminal standard, is appropriate. This approach accords with the jurisprudence in this area which speaks clear and convincing proof, based on cogent evidence.¹⁰

Not surprisingly, the public is most often interested in the findings of misconduct made against individuals or organizations. However, as important as the Inquiry's investigative, advisory and educational roles are, as Cory J. noted, they "should not be fulfilled at the expense of the denial of the rights of those being investigated. ...[N]o matter how important the work of the inquiry may be, it cannot be achieved at the expense of the fundamental right of each citizen to be treated fairly."¹¹ The limitations upon findings of misconduct must be understood in the light of these expressed concerns.¹²

14. In summary, in order to properly discharge its mandate, this Commission, like all such commissions of inquiry should:

(a) *expressly* "preface (its) report with the notice that the findings of fact and conclusions (it) contains cannot be taken as findings of criminal or civil liability. A commissioner should emphasize that the rules of evidence and procedure

¹⁰ *Re Bernstein and College of Physicians and Surgeons* (1977), 76 D.L.R. 38 at 76 (Ont. Div. Ct.).

¹¹ *Red Cross* at 458-459.

¹² Kaufman Report at 5-8.

adopted at the inquiry are very different from those of the courts. Therefore, findings of fact reached in an inquiry may not necessarily be the same as those which would be reached in a court. This may help ensure that the public understands what the findings of commissioner are – and what they are not”;¹³

(b) only make findings of misconduct, “based on factual findings, provided that they are necessary to fulfill the purpose of the inquiry as it is described in a terms of reference”;¹⁴

(c) first provide a party or witness with detailed written notice of the substance of alleged misconduct before a finding of misconduct is made against the named person. subsection 5(2) of the *Public Inquiries Act* requires “reasonable” notice. As Cory J. stated in *Red Cross*, “in fairness to witnesses and parties who may be the subject of findings of misconduct, the notices should be as detailed as possible”;¹⁵

(d) abstain from making a finding of misconduct against a named individual in the absence of detailed notice of the alleged misconduct;

(e) give the named individual who first receives a detailed notice of alleged misconduct a full opportunity to be heard;

(f) rely “heavily by analogy, upon the principles which govern the admissibility of evidence in criminal proceedings” when making finds of misconduct;

(g) rely “by analogy on considerations relevant to a trial judge presiding at a criminal trial” when “assessing credibility”; and

(h) require a high degree of proof, close to the criminal standard, described as clear and convincing proof, based upon cogent evidence, before making a finding that involves misconduct of a named party or witness as a potential to

¹³ *Red Cross* at para. 54.

¹⁴ *Red Cross* at para. 57(c).

¹⁵ *Red Cross* at para. 56.

detrimentally affect the person's reputation and professional standing.

15. The Order in Council establishing the Commission also mandates, at paragraph 3, that,

The commission, in the conduct of the inquiry shall ensure that it does not interfere with any ongoing legal proceedings relating to these matters.

16. The Commission has inquired into the creation and distribution of a t-shirt that depicted or symbolized in some fashion the role of the OPP Tactics and Rescue Unit and the Emergency Response Team in relation to the events of September 6, 1995. At the time the matter of the t-shirt arose during the Inquiry proceeding, the OPP advised the Commission that the existence of the t-shirt had only recently come to its attention and that the Professional Standards Branch of the OPP was conducting a formal disciplinary investigation into the conduct of uniform officers involved in the creation, distribution, or possession of the t-shirt following the events of September 6, 1995.

17. The discipline investigation by the OPP is being conducted in accordance with the statutory discipline process set out in Part V of the *Police Services Act*. In such circumstances, the Commissioner should refrain from making any findings or drawing any conclusions in respect of the individual conduct of members of the OPP, as such findings or conclusions could interfere with the statutory discipline proceedings of Part V of the *Police Services Act*.

ii) Assessing credibility

18. For the Commission to undertake its fact-finding function, it may be necessary to assess the credibility of respective witnesses, and to make a decision regarding which witnesses' evidence should be preferred. The Ontario Provincial Police Association ("OPPA") has made submissions on the credibility of witnesses throughout its submissions. Nevertheless, it is also useful to review the factors that have been judicially recognized as relevant to the assessment of credibility.

19. In the case of *Re Pitts* the Divisional Court reviewed the factors relevant to credibility assessment by adapting a standard form of jury instruction. Justice Reid wrote that:

In weighing the testimony of witnesses you are not obliged to decide an issue simply in conformity with the majority of the witnesses. You can, if you see fit, believe one witness against many. The test is not the relative number of witnesses, but in the relative force of their testimony. With respect to the testimony of any witness, you can believe all that that witness has said, part of it, or you may reject it entirely.

Discrepancies in a witness' testimony, or between his testimony and that of others, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience and innocent misrecollection is not uncommon. It is a fact also that two persons witnessing an incident or transaction often will see or hear it differently. Discrepancies on trivial detail may be unimportant, but a falsehood is always serious.

In determining the credit to be given to the evidence of a witness, you should use your good common sense and your knowledge of human nature. You might, in assessing credibility, consider the following:

The appearance and demeanour of the witness, and the manner in which he testified. Did the witness appear and conduct himself as an honest and trustworthy person? It may be that he is nervous or confused in circumstances in which he finds himself in the witness box. Is he a man who has a poor or faulty memory, and may that have some effect on his demeanour on the witness stand, or on the other hand, does he impress you as a witness who is shifty, evasive and unreliable?

The extent of his opportunity to observe the matter about which he testified. What opportunities of observation did he in fact have? What are his powers of perception? You know that some people are very observant while others are not very observant.

Has the witness any interest in the outcome of the litigation? We all know that humanity is prone to help itself, and the fact that a witness is interested in the results of the litigation, either as a plaintiff or defendant, may, and often does, quite unconsciously tend to colour or tinge shade his evidence in order to lend support to his cause.

Does the witness exhibit any partisanship, any undue leanings towards the side which called him a witness? Is he a relative, friend, an associate of any of the

parties in this case, and if so, has this created a bias or prejudice in his mind and consequently affected the value of his testimony?

It is always well to bear in mind the probability or improbability of a witness' story and to weigh it accordingly. That is a sound common sense test. Did his evidence make sense? Was it reasonable? Was it probable? Does the witness show a tendency to exaggerate in his testimony?

Was the testimony of the witness contradicted by the evidence of another witness, or witnesses whom you considered more worthy?

Does the fact that the witness has previously given a statement that is inconsistent with part of his testimony at trial affect the reliability of his evidence?

After weighing these matters and any other matters that you believe are relevant, you will decide the credibility or truthfulness of the witness and the weight to be given to the evidence of that witness.¹⁶

20. Another classic explanation of the process of assessing credibility is described by the BC Court of Appeal in the case of *Faryna v. Chorny* where the court stated that:

If the trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes axiomatic that the appearance of telling the truth is but one of the elements that enter into the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to clearly describe what he has seen and heard, as well as other factors, combine to produce what is called credibility.... A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he actually telling the truth. I am not referring to the relatively infrequent cases in which a witness is caught in a clumsy lie.

The credibility of witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried the conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities in which a practical and

¹⁶ *Re Pitts and Director of Family Benefits Branch of MCSS* (1985), 51 O.R. (2d) 302 (Div. Ct.).

informed person would readily recognize as reasonable in that place and in those conditions.¹⁷

b) The Ontario Provincial Police Association and the Officers it Represents before the Inquiry

21. The OPPA came into existence on March 3, 1954. For over fifty years, it has represented the employment related interests of those police officers having non-commissioned rank within the Ontario Provincial Police ("OPP"). This includes all officers up to and including the rank of staff sergeant and sergeant major. The OPPA is their exclusive collective bargaining agent.

22. On January 3, 2002, the OPPA assumed the same role of representation of the civilian members employed by the OPP.

23. Today, the membership of the OPPA is made up of 5,488 police officers and 2,495 civilians employed by the OPP, as well as 2,896 retirees and 675 surviving family members.

24. On a daily basis, a plethora of issues arise from the more than 11,000 OPPA members concerning such things as grievances, salaries, benefits, pensions and legal issues. Although many changes have taken place over the years within the OPPA, its primary objective remains constant: to better the working conditions, along with salary and benefits of its members, and to provide effective representation and assistance to all of its members for matters that are related to their employment with the OPP, including representation before this Commission.

25. The OPPA, through legal counsel, represents the individual and the collective interests of its members, including retired and former members, at the Inquiry. Although Commission counsel initially considered calling over 100 OPPA members to testify as witnesses before the Inquiry, ultimately 33 members were called to testify. The OPPA

¹⁷ *Faryna v. Chorney*, [1952] 2 D.L.R. 354 (B.C.C.A.), cited with approval in *R. v. Norman* (1993), 16 O.R. (3d) 295 (C.A.).

provided legal representation for all of them, which served both the interests of the members and the interests of the Commission.

26. Throughout the evidentiary proceedings of the Commission, the OPPA, through its legal counsel, has worked cooperatively with Commission counsel to facilitate the work of the Commission, while at the same time acting vigilantly to protect the interests of all OPPA members.

27. The OPPA members called as witnesses by Commission counsel are frontline police officers of the OPP, who daily carry out their assigned duties to police our communities. They carried out the same duties, under the direction of their superiors, in the area of Ipperwash Provincial Park, in September 1995.

28. As the evidence has demonstrated, these frontline police officers carried out their duties in good faith, conscientiously, and in a reasonable manner in all of the circumstances, within the context of both the situation with which they were faced, and the directions they received from their supervisors.

29. Police officers, like the rest of society, are not always perfect. Many of the officers who testified acknowledged that, on occasion, their actions or conduct could have been better, and that it merited improvement. What the Commission also heard is the expression of a desire by these rank and file officers, who interact daily with individuals in situations of conflict, to carry out their responsibilities in a manner that meets the reasonable expectations of all of the citizens of Ontario that they serve.

30. Equally important, the Commission heard quite appropriate expressions of empathy from rank and file police officers towards those citizens with whom, because of the officers' assigned duties, they are required to engage. Many of the police officers who testified expressed their displeasure with the role assigned to them as interveners in what was and continues to be a civil dispute over property rights between First Nations people and the federal and provincial governments.

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2. Genesis of the Confrontation on September 6, 1995

31. On May 6, 1993, a group of First Nations persons (“occupiers”)¹⁸ from Kettle and Stony Point Reserve (“KSP”) entered Camp Ipperwash (“Army Camp”) and occupied a section of the property along the range area and Highway 21 at the south east corner of the Army Camp. Despite pressure from the Department of National Defence (“DND”), the Ontario Provincial Police (“OPP”) took the position that it would not attempt to remove the occupiers unless DND obtained an injunction, which it did not do. A protocol was developed whereby military police would enforce the law within the Army Camp and the OPP would only address serious offences where it was called in to investigate or assist in investigations.¹⁹

32. From May 1993 to July 1995, the the military called on the OPP on an infrequent basis to investigate incidents at the Army Camp. The OPP took a common-sense and non-confrontational approach to incidents at the Army Camp. D/Cst. Speck was one of the local officers who dealt with allegations of criminal activity when the military called the OPP to the Army Camp. D/Cst. Speck knew many of the occupiers and had coached some of them on baseball teams when they were kids. In his view, there was an “uneasy peace” between the military and the occupiers. He investigated incidents with a certain amount of tolerance in an effort to maintain the peace between them.²⁰

33. Similarly, Cst. Vince George, a First Nations OPP officer from KSP, who was related to some of the occupiers, tried to resolve some complaints when called out by the military by speaking with the elders in occupation or the then chief of the group, Carl George (also known as Carl Tolsma). Cst. George encouraged them to keep members of the group restrained in conduct such as spray painting and erecting signs.²¹

¹⁸ Throughout these submissions, “occupier” is used to describe those First Nations persons who occupied the Army Base, and later Ipperwash Provincial Park (the Park).

¹⁹ John Carson 05/10/2005 at 193-208, 267-269.

²⁰ George Speck 03/22/2006 at 70, 83, 103.

²¹ Vince George 04/05/2006 at 40-48.

34. On July 17, 1993, the OPP were called out to Matheson Drive, which abutted the Army Camp. Three First Nations individuals, including Clifford George, one of the occupiers, were exacting \$5.00 tolls from persons who wished to access the beach from Matheson Drive. When the OPP asked the First Nations individuals to stop the activity, they refused, saying Matheson Drive was their land. The three individuals were arrested for mischief. The OPP wanted to release the individuals on the condition that they not repeat their actions, but the three refused to enter into such an agreement. As a result, the arrest continued until conditions of release were established, which were that the three individuals had to stay 100 meters away from Matheson Drive.²²

35. One of the occupiers, Kevin Simon, had moved into a military building on the range. The military told Kevin Simon that they wanted him out of its building, and, on August 16, 1993, confiscated his possessions in the building. The possessions, including a fridge, stove, couch and other property were loaded by the military on a truck. Then Kevin Simon, his brother Marlin and others drove to the building in a 4x4 truck. Marlin Simon drove the 4x4 and used it to ram the military vehicle. He then used it to follow the military vehicles into the built up area of the Army Camp ("BUA"). Once in the BUA, the occupiers confronted the military and a verbal exchange took place. D/Cst. Speck was called in to investigate. He was unable to identify the driver of the 4x4 and the military did not want the police to take any further action, so no charges were laid. After the incident, the military building that had been occupied by Kevin Simon was burnt. The person who started the fire could not be identified, but D/Cst. Speck concluded the fire had been set by occupiers because a number were present at the time, and because then Chief Carl George told D/Cst. Speck "they" would not listen to him when he told them not to do it. D/Cst. Speck encouraged and ultimately convinced the military to give Kevin Simon's belongings back to him, as a way to resolve the incident.²³

36. On August 23, 1993, Insp. Carson was advised that a military helicopter had been shot over the Army Camp range area which was under occupation. Two OPP

²² Mark Wright 02/21/2006 at 35-36.

²³ George Speck 03/22/2006 at 49; Marlin Simon 09/28/2004 at 158.

officers on Highway 21 had heard the shot. Insp. Carson went to the Army Camp and spoke with Chief Carl George, telling him the area would be searched. A search warrant was obtained the next day, and Sgt. Wright spoke again with Chief Carl George, telling him the area would be searched unless the individual responsible surrendered. Chief Carl George said he could not do that, and a search was conducted of the range area. High voltage spotlights, a pellet pistol, a flare gun and several rounds of various ammunition were found. According to Sgt. Wright, a copper jacketed projectile was taken from the helicopter when it was searched after landing.²⁴

37. Occupier Clayton George gave evidence that on the night of August 23, 1993, a military helicopter was about 250 feet above the trees. His brother, David, took Clayton George to the campsite of their grandfather, Abraham George. Clayton George shone a spotlight on the helicopter and while the light was shining on the helicopter, he heard a shot that came from the bushes behind him.²⁵

38. Carl George testified that he heard about the helicopter shooting incident and drove to the Army Camp with Robert “Knobby” George. They went to Abraham George’s camp, where Abraham George admitted to shooting at the helicopter. Robert George took the gun away from Abraham George.²⁶

39. D/Cst. Speck testified that it was common knowledge that Abraham George had shot the helicopter. Abraham’s brother, “Knobby” George, told D/Cst. Speck that he took the gun away from Abraham after the shooting.²⁷

40. D/Cst. Speck also investigated a number of incidents of arson and mischief that occurred in the Army Camp on October 19, 1993. Three outhouses and a storage shed had been burned, four large military signs had been cut with a chain saw, all grenade range buildings had windows and door knobs broken, shatter proof glass in cement walls was broken, and a gas heater and gas pipe in a building were damaged. The

²⁴ Mark Wright 02/21/2006 at 53-55; John Carson 05/11/2005 at 186.

²⁵ Clayton George 11/04/2004 at 166-167.

²⁶ Carl Tolsma 02/09/2005 at 147, 171.

²⁷ George Speck 03/22/2006 at 72; 03/23/2006 at 221.

approximate cost of the damage was \$20,000. A red Nissan pickup had been seen leaving the area with three unknown male First Nations occupants. No charges were laid by the OPP as a result of this incident.²⁸

41. On December 14, 1993, D/Cst. Speck investigated an incident in the Army Camp where shots had been fired at buildings on the grenade range. He was unable to determine who did the shooting and no charges were laid.²⁹

42. D/Cst. Speck was called back to the Army Camp on December 16, 1993. An outhouse had been loaded onto a truck owned by Abraham George and taken to Dudley George's trailer. D/Cst. Speck told the military simply to retrieve the outhouse, and that was done. The military was happy with the result.³⁰

43. During the Spring of 1994, a number of occupiers camped on the Army Camp beach ("military beach"). On May 21, 1994, Clayton George assaulted campers in Ipperwash Park. Other incidents of assault occurred during that weekend, including the assault of a hitchhiker on Highway 21 by four First Nations persons, the assault of a female by an intoxicated First Nations person, and the assault of 2 men on the military beach. As a result of these incidents, Chief Carl George stopped the occupiers from camping on the military beach and agreed to have the OPP patrol the military beach on ATVs.³¹

44. A number of stolen vehicles were driven into the Army Camp through gaps in the fence along Outer Drive at the west side of the property. Occupier Glenn George estimated that between 1993 and 1994, about two dozen stolen vehicles were brought into the Army Camp and burned. In an attempt to curb the activity, the Township attempted to dig a ditch along Outer Drive. On November 10, 1994, natives in a yellow "K-car" fired shots over the heads of the workers to stop the digging and then drove

²⁸ George Speck 03/22/2006 at 60.

²⁹ George Speck 03/22/2006 at 66.

³⁰ George Speck 03/22/2006 at 67.

³¹ Carl Tolsma 02/09/2005 at 199-204; Clayton George 11/08/2004 at 10-14.

southbound along Highway 21. No one in the vehicle could be identified, and no charges were laid.³²

45. Cst. Vince George went to the Army Camp on February 24, 1995, because a number of occupiers, including David George, Kevin Simon, Joe George, and Warren George Junior, were erecting a sign. He spoke with them about the sign and was told by Marlin Simon that they would burn buildings on the Army Camp if the Kettle and Stony Point Band ever took over the Army Camp. Cst. George's response was to speak with the occupiers, and later that day, speak to elder Clifford George and Chief Carl George about restraining the conduct of the young occupiers. On an earlier occasion, Cst. George had been called to the Army Camp because occupiers had been spray painting signs. At that time, he spoke to the councillors about keeping the group under control.³³

46. On May 30, 1995, D/Cst. Speck investigated an incident at the Army Camp where shots were fired from a red pick-up truck over the head of occupier Carl Bressette. Bressette did not want to proceed with any police action, and the OPP were unable to identify any occupants of the vehicle.³⁴

a) West Ipperwash Beach Land Claim

47. During the period 1993 to 1995, the OPP was also dealing with another land claim issue in the area. There was an outstanding land claim by KSP to West Ipperwash beach, which ran between Kettle Point and Ipperwash Provincial Park. Cottage owners in the area were irate about First Nations persons using what they considered to be their property to access the beach. In 1994, the OPP developed a two-day training program for all Lambton County OPP officers to educate them on the history of the disputed land and to assist them in responding to occurrences in the West Ipperwash beach area in a uniform, fair, and appropriate manner. The OPP ran the training program in 1994 and again in 1995. As well, the OPP on occasion had

³² George Speck 03/22/2006 at 64; Glenn George 02/01/2005 at 102.

³³ Vince George 04/05/2006 at 40-48.

³⁴ George Speck 03/22/2006 at 121.

undercover officers watch the West Ipperwash beach area to observe and prevent any altercations between the cottagers and First Nations persons.³⁵

b) Relationship Between the Occupiers and the Military

48. A number of First Nations witnesses described the relationship between the occupiers and the military on the Army Camp following the May 1993 occupation. According to David George, he and a number of the occupiers including Dudley George would patrol the Army Camp to watch other people, particularly military personnel. Clifford George described the relationship between Dudley George and the military as one in which Dudley George gave the military a rough time by swearing and cursing at them and giving them the finger. Stacey George testified that during the summer of 1993, the occupiers would always swear at military personnel when they walked by and tell them to get off their land. Usually, the military would not say anything in return. According to Glenn George, the occupiers chased military vehicles around the Army Camp and rammed military vehicles from 1993 until the military left in 1995. Elwood George testified about two occasions when vehicles in which he was a passenger either chased and/or rammed military vehicles. Harley George testified about an incident in June 1995 when he drove the bus towards a military vehicle in order to bully the Army.³⁶

49. The conduct of some of the occupiers towards the military concerned Gerald George, who stayed at the Army Camp in the summer of 1993. He testified that he left the Army Camp in August 1993 because the occupiers were getting “pushy” and he explained this included such actions as quickly driving cars toward military jeeps.³⁷

³⁵ Mark Wright 02/21/2006 at 77, 78.

³⁶ David George 11/01/2004 at 61; Clifford George 09/10/2004 at 145; Glenn George 02/02/2005 at 106-107; Stacey George 11/22/2004 at 41; Elwood George 11/03/2004 at 24-26; Harley George 01/20/1995 at 232.

³⁷ Gerald George 01/13/2005 at 207.

50. When Captain Allan Howse took over as Commanding Officer at the Army Camp in July 1994, he was aware that a small group of the occupiers were considered by the military to be responsible for arson, vandalism, and other offences.³⁸

51. In 1994, Captain Howse met with Chief Carl George regarding the stolen cars being brought into the Army Camp and the breaching of the perimeter fence. As a result of that meeting, Captain Howse took steps to have the perimeter fence fixed so it was closed. When the fence continued to be breached, he ordered a trench to be dug in the Army Camp on military property. While military personnel were digging the trench, two natives drove towards them and verbally confronted them. The natives then drove into the training area and there was a report of gunshots.³⁹

52. According to Captain Howse, there were a few other isolated incidents of concern regarding the occupiers during the fall and winter of 1994, including an incident where a vehicle was driven at high speed through the built up area, and an incident on December 24, 1994, when a vehicle entered the built up area and a single rifle shot was heard. It was believed the shot was directed at the BUA. The vehicle then withdrew to the training area. On April 28, 1995, a vehicle entered the BUA from the training area and made low speed contact with a military vehicle on two occasions before departing for the training area.⁴⁰

53. Stewart George testified that in 1994, he was drinking at Dudley George's trailer when a military range patrol went by. Stewart George testified that he threw a beer bottle at the vehicle and was subsequently charged with assault. According to military documents, Stewart George not only threw a bottle at a military vehicle but also kicked and punched it, and also tried to punch the driver and threatened him.⁴¹

³⁸ Allan Howse 06/27/2006 at 143-144; P-1864.

³⁹ Allan Howse 06/27/2006 at 25-26, 153-154.

⁴⁰ Allan Howse 06/27/2006 at 45, 154-159; P-1866; P-1846.

⁴¹ Stewart George 11/02/2004 at 36; P-1865.

c) Change in Leadership in the Spring of 1995

54. Changes occurred in the leadership of the occupiers in the Spring of 1995. Chief Carl George had again agreed with the OPP to have ATV patrols on the military beach. Other occupiers, such as Glenn George and Roderick “Judas” George did not want the patrols. Carl George’s presence at the Army Camp was resented. He received a threatening letter. He did not have the support of a number of the occupiers. Carl George testified he had other concerns about the Army Camp. He was concerned that there were Warriors in the Army Camp who were being led by Les Jewell, and that Glenn George was meeting with Les Jewell, Buck Doxtator and other Warriors. As well, he was concerned that the occupiers were drinking down at the beach. As a result of his concerns, and the lack of support, he moved his trailer back to Kettle Point. According to Cst. Speck, Carl George moved off the Army Camp because he could no longer control the occupiers.⁴²

55. Following Carl George’s departure from the Army Camp, Captain Howse was told that Glenn George was the person to speak to on behalf of the occupiers. Captain Howse described Glenn George as making demands and accusations, rather than having discussions. He was also of the view that Glenn George was a more hands-on and direct leader and would show initiative by presenting a more offensive oriented protest.⁴³

56. According to Captain Howse, there was an escalation in the number of incidents and aggression on the part of the occupiers after Glenn George took charge of the occupiers. For example, during the winter and spring of 1995, there had been incidents, especially near Site “B”, which was occupied by Marlin and Kevin Simon and Dudley George, where patrol vehicles would be hit with fruit and vegetables. However, later in 1995, wood and rocks were used as projectiles. According to Captain Howse, there

⁴² Carl Tolsma 02/09/2005 at 207-219, 212-215, 226; George Speck 03/22/2006 at 90.

⁴³ Allan Howse 06/27/2006 at 57-58, 161.

was a steady increase in the harassment of nighttime patrols, particularly by vehicles in the training area.⁴⁴

57. Captain Howse agreed that the increase in violence and aggression, as well as Glenn George's belligerence, could be the result of impatience, or non-confidence in the KSP Band leadership's ability to force DND into a quick and favourable solution about the Army Camp. As well, confrontation and harassment could have been viewed by Glenn George and the more militant occupiers as the only way to get action on their cause.⁴⁵

58. D/Cst. Speck testified that his approach of using common sense to try and keep the peace between the military and the occupiers did not work well when Glenn George took charge. He described Glenn George as erratic.⁴⁶

59. Another change that occurred during the summer of 1995 was the increased presence of First Nations and other persons at the Army Camp who either had criminal records and histories of violence, or had no apparent reason to be at the Army Camp.

60. D/Cst. Speck testified that during the summer of 1995, the OPP was aware that a number of "outsiders" were staying at the Army Camp. While some of the outsiders were visiting friends and showing support, others, like Les and Russ Jewell and Wayne Pine, had no apparent reason to be at the Army Camp. Little Current OPP had informed D/Cst. Speck that Les Jewell had been kicked off Sucker Reserve. D/Cst. Speck also knew that Isaac "Buck" Doxtator, and Ed and Robert Isaac were in the Army Camp.⁴⁷

61. Both the military and the police had information that Buck Doxtator was heavily involved in gun running and bought and sold AK-47s, Glockes and M16s. They also had

⁴⁴ Allan Howse 06/27/2006 at 61, 75-79, 112-114, 164-165; P-1792.

⁴⁵ Allan Howse 06/27/1996 at 167-170.

⁴⁶ George Speck 03/22/2006 at 103, 112.

⁴⁷ George Speck 03/22/2006 at 163-189, 192.

information as of June 5, 1995 that he was involved in a scheme to get fertilizer explosives to blow up the pumphouse at the Army Camp.⁴⁸

62. According to Buck Doxtator, he went to the Army Camp as a member of the Oneida Warrior Society to do security. That involved patrolling the perimeter of the Army Camp and military beach, often with other Warriors from Oneida such as Al George, Dutch French, and Chuck George. On occasion Dudley George would accompany them on patrol. Buck Doxtator testified he was in the Army Camp more frequently in August 1995 to provide support and advice as a Warrior.⁴⁹

63. Ed Isaac was described by Cst. Poole as someone who was well known for violence. It was the police practice on Walpole Island to always have a minimum of two officers on any police call where Ed Isaac was involved. D/Cst. Speck advised Insp. Carson that Ed Isaac was known for violence and weapons and that there was an outstanding warrant for him involving an AK-47 and tear gas.⁵⁰

64. The OPP also obtained information that Les Jewell was controlling Glenn George and running the Army Camp.⁵¹

65. Concerns about the outsiders were also expressed by residents of Kettle and Stony Point. Cecil Bernard George testified that Band members were concerned that outsiders would take over the land and deny access. There was also a concern about potential violence. As a result of the Band concerns, Cecil Bernard George went to Oneida Longhouse and asked the Chiefs there to recall Oneida members who were at the Army Camp.⁵²

66. Similarly, Gerald George testified that members of Kettle and Stony Point Band were concerned about the outsiders, their potential for violence, and their effect on the

⁴⁸ George Speck 03/22/2006 at 121; Vince George 04/05/2006 at 70.

⁴⁹ Isaac Doxtator 11/25/2004 at 87-91.

⁵⁰ Sam Poole 05/16/2006 at 318; John Carson 05/12/2005 at 45.

⁵¹ Vince George 04/04/2006 at 80.

⁵² Cecil Bernard George 12/06/2004 at 164, 177-185.

younger occupiers. He was particularly concerned about Les Jewell. He informed the London Free Press about the occupiers' guns because of that concern. He knew there were .22s and a shotgun in the Army Camp.⁵³

67. Chief Tom Bressette testified that Band members were concerned that the outsiders were controlling the gates at the Army Camp, denying access to band members, and that the presence of outsiders could lead to an "Oka-like" situation. As a result of those concerns, the Band issued a press release inviting the outsiders to leave, and Chief Bressette wrote a letter to the occupiers asking the outsiders to leave. That letter was never accepted by the occupiers. Chief Bressette himself informed others of his concern about the outsiders, particularly Les Jewell, and his concern that the outsiders were urging the occupiers to take certain actions.⁵⁴

68. Stacey George testified that there were a number of outsiders at the Army Camp "hanging around" at the time the BUA was taken over. He described them being there for "sport" and did not think they should have been involved.⁵⁵

69. Amongst the outsiders involved in the Army Camp was Bruce Elijah. He had several meetings with the occupiers after May 1993 about taking over the BUA of the Army Camp. Bruce Elijah advised them that it was just a matter of going into the BUA, and that they should use women and children to take the land back. He also provided advice to the occupiers about taking over Ipperwash Park.⁵⁶

d) Increase in Incidents and Aggression

70. Captain Howse testified about incidents that occurred following Carl George's departure from the Army Camp.

⁵³ Gerald George 01/13/2005 at 42-45.

⁵⁴ Tom Bressette 03/02/2005 at 72-76, 99; 03/03/2005 at 158; P-43.

⁵⁵ Stacey George 11/22/2004 at 59.

⁵⁶ Bruce Elijah 03/09/2005 at 57, 60.

71. On May 28, 1995, a range shack was burnt to the ground. According to Captain Howse, he went to the area when he received a report that Dudley George blocked the fire department from entering the area. Dudley George also refused to allow Captain Howse access the fire area. In Captain Howse's view, the building had already burnt and there was no threat of further damage, so he left the scene.⁵⁷

72. Captain Howse testified about a number of incidents occurred in June 1995, many of which involved incursions by occupiers into the built up area of the Army Camp. The incidents included:

- June 9: the throwing of a bag of decaying fish at a patrol vehicle;
- June 10: the firing of stones from slingshots at buildings in the built up area by four occupiers who had driven into the area. Later in the day, a patrol vehicle was followed by occupiers in a vehicle who threw wood blocks and fired slingshots at military personnel;
- June 12: Glenn George and two other occupiers threw stones at a patrol vehicle. When military personnel exited the vehicle, rocks were thrown at them. Glenn George told the military that he was in charge and the rock throwers were following directions. He also said "We will soon pick you up and put you over the front gate for good";
- June 17: A number of civilians complained they had been ordered off the Army Camp beach by two natives. Later in the day, a civilian reported to military police he had been ordered off the beach by a male native. A brown station wagon entered the BUA and drove around for 15 minutes. During a night patrol, an unplated vehicle tried to cut off the military vehicle, followed it onto the beach, and a hard object was thrown at the military vehicle;

⁵⁷ Allan Howse 06/27/2006 at 59-61; P-1486; P-1849.

- June 18: A number of civilians reported being ordered off the Army Camp beach by natives. A civilian reported that two natives stopped him on the beach and a male native said he could take his vehicle if he wanted to. A military vehicle on patrol had a beer bottle thrown at it. Three natives drove a vehicle through the front gate. During an exchange of words with the commissionaire, the natives in the car stated that it was their gate and one said he would “pound salt up you white ass” to the commissionaire. On four other occasions during that day, cars driven by natives entered the BUA. On one of the occasions, the vehicle was monitored by a military patrol and on two occasions, the vehicle with natives backed towards the military vehicle as though trying to bump it. Two beer bottles were also thrown at the military vehicle;
- June 21: The school bus with natives tracked a military vehicle and a passenger in the bus threw a camera at the military vehicle;
- June 22: The bus was driven into the BUA and the bus attempted to ram a military vehicle. It then rammed a parked military vehicle, knocking it forward approximately 10 meters. Later, the bus was found unoccupied near the training area. The military personnel who entered the bus found a quantity of empty beer bottles and marijuana ends. Three male natives, including Glenn George arrived at the bus and Glenn George yelled obscenities at the military, and threatened to “Get my rifle and kill you”;
- June 23: A military patrol on the beach had wood thrown at it by natives and then was pursued by the bus. The bus drove towards the military patrol at high speed but the patrol vehicle backed onto loose sand and a collision was avoided. The bus then turned and made a second attempt to collide with the military patrol. The natives occupants of the bus were preparing to throw objects at the patrol. In response to information from OPP intelligence regarding a threat of arson, the military took steps to prevent the native penetration into the BUA. Captain Howse ordered a defensive device be put

out to stop traffic on Strand Drive. Within a short time, natives had discovered and removed the device from the road, which was later retrieved by the military. According to Captain Howse, this was the first time he had directed a defensive device be put out on a road in the Army Camp;

- June 24: A brown Chrysler station wagon entered the BUA and attempted to ram two military vehicles. Two bottles were thrown at a military vehicle, damaging its windshield. The military then erected a barrier on Strand Drive;
- June 25: The north gate to the BUA was rammed and knocked off its hinges, and a small boat was taken;
- June 27: Glenn George and two other natives removed the pickets to a barrier and then moved to the barrier on the bridge. George verbally confronted the military personnel present stating they should not be on any part of the land and had to get off the land now. He also yelled "You tell the cop and the bitch to back off or I'll get my gun and shoot all of you." After further verbal aggression, George backed the tractor he was driving into a military vehicle;
- June 28: During a patrol, a military vehicle was almost hit on Matheson Drive by the brown station wagon. As the military vehicle headed south on Army Camp Road and onto Highway 21, it was pursued by the brown station wagon which rammed it, forcing the military vehicle off the road and causing considerable damage to the vehicle. The station wagon then re-entered the Army Camp and went into the training area where it was abandoned and two natives fled on foot. Later that day, another military patrol vehicle was pursued on Army Camp Road by a vehicle containing Glenn George and Stewart George. The pursuit ended at the main gate of the Army Camp, when the military vehicle entered the Camp. Glenn George exited the vehicle,

pushed and threatened the commissionaire, and punched a military staff person. The OPP was called regarding both incidents of June 28.⁵⁸

73. The OPP was contacted regarding the incidents of June 27 and 28. D/Cst. Speck investigated and charged Glenn George with mischief and uttering a death threat for the incident on June 27. On June 28, D/Cst. Speck was briefed regarding an assault and a military vehicle run off the road on Highway 21. D/Cst. Speck investigated the assault and threats made to military personnel and laid two more charges of assault against Glenn George.⁵⁹

74. D/Cst. Speck also met with a number of the occupiers on June 28. When D/Cst. Speck asked who had forced the military vehicle off the road, he was told by Glenn George that First Nations persons were not bound by the law, even on Highway 21, and that it was Native business, not police business. D/Cst. Speck was also told by Glenn George about an alleged tire slashing of both a car near Dudley George's trailer and an ATV on the Army Camp beach. Glenn George claimed the tires had been slashed by the military. D/Cst. Speck investigated the incidents, including interviewing the military, but was unable to identify the perpetrator.⁶⁰

75. The OPP were again called on June 30, to investigate the burning of a building in the Army Camp that had been used for tear gas training. Although military personnel had reported seeing three native persons in the area at the time, nothing came of the investigation.⁶¹

76. At the end of June 1995, Captain William Smith became Commanding Officer responsible for the operation and protection of the Army Camp. He was also responsible for coordinating and removing all recoverable assets from the Army Camp

⁵⁸ Allan Howse 06/06/2006 at 63-64, 76-78, 95-106; P-1812; P-1850; P-1853; P-1854; P-1855; P-1856; P-1857; P-1858; P-1859; P-1869.

⁵⁹ George Speck 03/22/2006 at 130-137.

⁶⁰ George Speck 03/22/2006 at 137.

⁶¹ George Speck 03/22/2006 at 146.

by July 17, 1995, in preparation for the military's plan to clean up the Army Camp and then hand over the Army Camp to the Kettle and Stony Point Band.⁶²

77. Captain Smith issued soft body armour to the military police because there was the potential of conflict with the occupiers. Also, in the interests of safety of personnel in the BUA, some of the buildings were sandbagged. Captain Smith initiated training for the military police covering such topics as high risk vehicle stops, high risk arrests, and use of force as contingency planning in the event the situation became more violent. Lastly, he had the military police take a cultural awareness course that included representatives from the KSP Band, and several elders. The occupiers were invited to attend the cultural awareness course but declined to participate.⁶³

78. During this period, the occupier activity was reduced to observation of the BUA and occupation of the Army Camp beach. However, there was increased native activity on the military beach particularly by Ipperwash Park, where the occupiers were noticeably more aggressive, disturbing the campers at Ipperwash Park and trying and incite the police.⁶⁴

79. For example, on July 3, the sexual assault of a thirteen year old girl was reported to have occurred on the military beach near Ipperwash Park. D/Cst. Speck investigated the complaint. He was told the assailant was a native male approximately 40 years old. He was unable to identify the assailant and no charges were laid. On July 11, an altercation occurred on the military beach between natives and non-natives. In the ensuing fight, a non-native was carried some distance by a native's vehicle, with the non-native suffering minor scrapes and contusions. Several pole barriers separating the Ipperwash Park from Matheson Drive were run down by the native's vehicle.⁶⁵

80. Captain Smith made efforts to develop links with different groups who were involved with the Army Camp, including the Kettle and Stony Point Band. Captain

⁶² William Smith 06/26/2006 at 19-21, 189-191.

⁶³ William Smith 06/26/2006 at 71-82, 172-184.

⁶⁴ William Smith 06/26/2006 at 83-84, 106-108; P-272.

⁶⁵ George Speck 03/22/2006 at 149; P-1812.

Smith was told by the Band Council that the occupiers had weapons. He was also told that the band had no control over the occupiers.⁶⁶

81. Captain Smith also made attempts to open discussions with the occupiers, first through the KSP Band Council, and then using Bob Antoine and Bruce Elijah as mediators.⁶⁷

82. Captain Smith testified he never knew Bruce Elijah had been involved in discussing plans to take over the built up area of the Army Camp with the occupiers, and Ipperwash Park. Had he known about Bruce Elijah's role and advice to the occupiers, he never would have considered him an appropriate person to use as a mediator or go-between with the occupiers.⁶⁸

83. Captain Smith had planned to bring together representatives from the KSP Band, occupiers, DND, OPP, and others on August 26, 1995, to plan the completion of the environmental assessment and the handover of the Army Band to the KSP Band/Stony Point Group.⁶⁹

84. By July 29, the removal of assets from the Army Camp was almost complete, and the military was well on the way to resolving the issues so that the Army Camp could be returned.⁷⁰

85. Suddenly, on July 29, with no warning, the occupiers took over the BUA of the Army Camp. They did so by using the school bus to crash through the north access gate of the area. Simultaneously, about 130 native men, women and children gained access to the area by foot and through the main gate, while Glenn George and several other removed the barriers on Strand Road. The bus then rammed the main cargo doors of the drill hall and went partially into the building. Military police positioned an

⁶⁶ William Smith 06/26/2006 at 68-69, 186-188.

⁶⁷ William Smith 06/26/2006 at 186-188.

⁶⁸ William Smith 06/26/2006 at 191-192.

⁶⁹ William Smith 06/26/2006 at 85; P-271.

⁷⁰ William Smith 06/26/2006 at 200.

Iltis (small light jeep) across the rear of the bus in an attempt to block the bus from reversing. The bus reversed out of the drill hall, ramming the Iltis and pushing it about 15 meters. A military police officer gained access to the bus and tried to arrest the teenage driver of the bus to prevent him from further ramming the Iltis and critically injuring its driver. The driver resisted the officer's attempts. The passengers in the bus were surging towards the driver. The officer sprayed the driver with capsicum spray and removed the driver from the bus. The youth resisted arrest and broke away. At the same time, one of the natives drove a stolen fork lift through the doors of the drill hall towards two military police, attempting to run them down. The driver of the fork lift was sprayed with capsicum spray and abandoned the fork lift. A crowd of approximately 50 natives then circled the only three military police officers in the area. Several of the crowd were attempting to incite the others by chanting "Stone them." Several of the natives had weapons such as broom stick handles, stones, and metal bars. The military police indicated they would use their pepper spray, at which time several native children were positioned in front of the crowd. Captain Smith diffused the situation by ordering the military police officers to the barracks and by trying to negotiate with the ringleaders. Although this had a temporary calming effect, the situation deteriorated with occupiers breaking and entering buildings and stealing removable assets. Captain Smith was sure that if the military stayed, they would have been required to use lethal force as protection. The remaining military personnel evacuated the Army Camp.⁷¹

e) Relationship with the Occupiers Following the Takeover

86. Following the takeover of the built up area of the Army Camp, the OPP made efforts to work collaboratively with the occupiers. D/Cst. Speck, Sgt. Mark Wright and S/Sgt. Bouwman went to the Army Camp on July 30 to meet with the occupiers, and were told there was no spokesperson yet. Later that day, S/Sgt. Bouwman was able to talk to Burt Manning. On August 1, the OPP met with Glenn George in an attempt to come to some agreement regarding the occupiers' locking of the gate at Matheson

⁷¹ William Smith 06/26/2006 at 185-186, 193-200; P-1825.

Drive, amongst other things. At that time, Glenn George indicated the occupiers were also claiming Matheson Drive and Ipperwash Park.⁷²

87. On August 15, D/Cst. Speck and S/Sgt. Bouwman went to the Army Camp to speak with Glenn George about the way the occupiers were driving on Matheson Drive and shining lights on campers in Ipperwash Park. Glenn George told them that Ipperwash and Pinery Parks were high on the agenda, that the land between Army Camp Road and Kettle Point belonged to them, and that there was daily talk about closing Highway 21. In his evidence, Glenn George agreed he told D/Cst. Speck that Ipperwash Park, Pinery Park and the lands between Army Camp Road and Kettle Point were “high on their agenda.”⁷³

88. Over the course of the summer, there were also a number of rumors that the occupiers would take over Ipperwash Provincial Park after Labour Day.⁷⁴

89. The OPP also had concerns about the occupiers taking over the cottages east of Ipperwash Park at the end of Outer Drive, and the area to the west of Ipperwash Park. There can be little doubt that these lands were possible targets for occupation. Marlin Simon testified that occupiers would tell people walking by that they could take over cottages too, referring to the cottages on the east side of the Army Camp off Outer Drive. According to Marlin Simon “people wondered” how those cottages came to be there. Stacey George confirmed in his evidence that there were discussion by the occupiers about occupying those cottages. Stacey George also testified there were discussions about occupying the cottages west of Ipperwash Park to Ravenswood Road. During his testimony, Gerald George confirmed that cottages in the Outer Drive area had been vandalized and broken into, and explained that the cottages were on Stoney Point land. Glenn George testified that the lands close to Port Franks was being

⁷² George Speck 03/22/2006 at 161.

⁷³ George Speck 03/22/2006 at 191; Glenn George 02/01/2005 at 193.

⁷⁴ George Speck 03/22/2006 at 155.

encroached upon and that the occupiers shared the view that land would be developed without them unless they did something.⁷⁵

f) Keeping the Peace in the Summer of 1995

90. Given the concern about public safety around the Army Camp and the occupiers' threats to take over further lands, the OPP assigned 4 officers to camp in Ipperwash Park on a rotating basis, both to observe the actions of the occupiers and to keep peace in the area. Emergency Response Team ("ERT") officers were assigned to patrol in the area and to keep the peace.⁷⁶

91. On the evening of July 31, two of the officers assigned to the "camping detail", D/Cst. Martin and D/Cst. Dew, observed an incident on the beach at the end of Matheson Drive. A blue Trans-Am carrying Dudley George and two other male natives parked along the fence that separated the Park from Matheson Drive. They were drinking alcohol. Dudley George taunted people on the Ipperwash Park beach and told them to get off native land. He said they would soon be taking over Ipperwash and Pinery Parks, and swore at an elderly couple, telling them to "get the fuck" off their land. Dudley George then urinated on the beach. Dudley George also challenged the police, telling them to get off his land. Later that evening, when boaters were removing a boat on the Ipperwash Park beach, Dudley George told them that they were on his land and became aggressive, challenging one man to fight. Eventually, Dudley George and the others in the Trans-Am left the area.⁷⁷

92. Sgt. Slack testified that on August 11, he was patrolling in Ipperwash Park and was informed by a camper that an individual had been wrestling with two police officers and had gotten away. Sgt. Slack saw the person running towards the lake being chased by an MNR staffer. Sgt. Slack yelled at the person to stop, but he didn't comply. Sgt. Slack caught the individual and returned him to two police officers. He was told by

⁷⁵ Marlin Simon 09/30/2004 at 191; Stacey George 11/22/2004 at 156-157; Gerald George 01/17/2005 at 128; Glenn George 02/02/2005 at 8.

⁷⁶ Mark Dew 04/04/2006 at 291; Stan Korosec 04/05/2006 at 322.

⁷⁷ Chris Martin 03/29/2006 at 297; Mark Dew 04/03/2006 at 297; P-1194; P-1195; P-1292.

the officers that the person, Kevin Simon, had a warrant for his arrest pursuant to a stolen vehicle investigation. Kevin Simon was handcuffed and put in a police car. He had no documents regarding his identification so Sgt. Slack advised the officers to get assistance from a Kettle Point First Nations officer to identify the person.⁷⁸

93. Sgt. Slack's version of events ought to be preferred over Kevin Simon's, who testified that he was assaulted by officers and eventually surrounded, "pilebagged" and captured by 10-15 or more police officers, most dressed as campers. As is evident from the Camping Details and ERT Operational Reports, there were never more than 2 "campers" and 2 ERT members assigned to camp and patrol the Park on a given shift.⁷⁹

94. On August 16, Sgt. Huntley and another officer saw a male native walking along the Ipperwash Park beach, yelling. He stopped the person, and almost immediately, a car came out of the Army Camp towards them. The persons in the car were drinking and very angry. A native got out of the car. He was intoxicated and had a beer bottle in one hand and a metal pipe in the other. The natives yelled at the officers. In an attempt to de-escalate the situation, Sgt. Huntley approached the most reasonable person and had a conversation with him. Sgt. Huntley was told that the person had a pipe because he was "on patrol" and that Ipperwash Park would soon belong to the occupiers. After further discussion, Sgt. Huntley was able to diffuse the situation to the extent that the person with the pipe put it down and shook hands.⁸⁰

95. There was further activity on the part of the occupiers that concerned the OPP, including driving vehicles quickly and erratically on Matheson Drive and the military beach, shining headlights and other lights on campers and police, yelling at and harassing campers in Ipperwash Park, and making noise at night to disturb Ipperwash Park campers. In addition, officers noted Dudley George exposing himself on the beach and mooning officers. Insp. Carson testified that the OPP was also concerned about reports of theft from people in Ipperwash Park, bottles and rocks being thrown from the

⁷⁸ John Slack 06/05/2006 at 189.

⁷⁹ Kevin Simon 12/01/2004 at 140.

⁸⁰ Rob Huntley 04/27/2006 at 30.

Army Camp at vehicles on Army Camp Road and elsewhere, members of the public being told to get off the beach, and a car driven by a native person which chased five teenagers into the Park and then came close to hitting a family walking on the beach.⁸¹

96. The occupiers also harassed persons on the Port Franks beach. For example, Cst. Parks interviewed a man who reported two incidents on the Port Franks beach where persons were chased off the beach by Dudley George in a car.⁸²

97. The OPP “campers” encouraged persons to stay off the Army Camp beach for their safety and to avoid incidents with the occupiers. They witnessed persons walking on the Army Camp beach being chased by persons in cars. The cars would do donuts around them to scare them.⁸³

98. On September 2, two officers noted a car stuck on the beach on the road allowance that separated the military beach from Ipperwash Park. Dudley George and another male native were drinking beer by the car. The officers asked them to put away the beer and offered assistance in getting the vehicle moving. In response, the officers were sworn at and told to leave or they would be forcibly removed. Dudley George threatened to throw the officers “off their land.” Other unknown natives started to arrive in vehicles and on foot. Rather than respond to the abuse and profanity, or to lay charges for disturbing the peace or for liquor violations, the officers simply left. They did not want to escalate the situation or start a confrontation. Following this incident, Sgt. Korosek gave orders to the ERT officers to stay off Matheson Drive in an attempt to limit the possibility of confrontations between occupiers and police.⁸⁴

99. Tina George was present during this incident and described Dudley George as being in the face of the police officers, spit flying and telling them to get out. She was with Russ Jewell at the time, who she says tried to make the police think he had guns in

⁸¹ Chris Martin 03/27/2006 at 316-318; Larry Parks 03/28/2006 at 218; Mark Dew 04/04/2006 at 20, 34; Rob Huntley 04/27/2006 at 38; Stan Korosec 04/05/2006 at 283-284; Steve Lorch 06/12/2006 at 42-47; John Carson 06/01/2005 at 166.

⁸² Larry Parks 03/29/2006 at 220.

⁸³ Mark Dew 04/04/2006 at 359.

⁸⁴ Mark Gransden 03/20/2006 at 42; Mike Dougan 03/03/2006 at 58; Stan Korosec 04/05/2006 at 323.

the trunk of his car.⁸⁵ The SIU took a statement and photographs from a schoolteacher camping at the Park who witnessed and photographed the incident. In his statement to the SIU he recounted that during the incident “Dudley George did indicate that he did have a gun and would start to shoot people if the officers did not keep the people off of their land”.⁸⁶

100. On September 3, 1995, D/Cst. Dew witnessed Dudley George, who was drunk, kicking children off the beach. The situation was diffused by D/Cst. Dew’s partner, D/Cst. Gast, who assured Dudley George that he would keep people off the beach at the end of Matheson Drive.⁸⁷

101. On September 3, the occupiers built a large fire at the end of Matheson Drive. Again, the OPP officers were in the area to intervene if there were safety concerns. They kept a close eye on the situation and did not interfere.⁸⁸

102. On September 3, D/Cst. Dew was informed that a camper from Ipperwash Park had been beaten up and his dog killed on the beach at the end of Matheson Drive. D/Cst. Dew took a statement from a person who said he witnessed four natives beat the dog to death and had spoken to the person who had been assaulted. D/Cst. Dew attempted to follow up by speaking directly to the person who had been assaulted but was unable to locate him.⁸⁹

103. Throughout the summer of 1995, OPP officers saw a number of incidents where occupiers were breaking the law. They could have intervened and laid charges or taken other enforcement action. However, as Sgt. Korosec and other officers noted, the officers attempted to diffuse those situations. Enforcement efforts had the potential to escalate tensions. As a result, the officers consistently exercised discretion and

⁸⁵ Tina George 01/19/2005 at 85-88.

⁸⁶ P-134; P-135 at 6.

⁸⁷ Mark Dew 04/04/2006 at 32; Stan Korosec 04/05/2005 at 326; P-1272.

⁸⁸ Stan Korosec 04/05/2006 at 328.

⁸⁹ Mark Dew 04/04/2006 at 38.

attempted to diffuse situations by talking to the occupiers or withdrawing from potentially volatile situations.⁹⁰

g) Guns in the Army Base

104. According to Marlin Simon, between May 1993 and July 1995, he generally had between 8-10 guns, including shotguns, 22s and high powered rifles. The guns were usually kept at his trailer in the Army Base. He would keep his guns at a friend's house at Kettle Point when he was going to be absent from the Army Camp for a while. Although Marlin Simon mostly hunted in the fall, he would also hunt at other times. Typically, he would hunt 4-5 times a week, both during the day and at night. Marlin Simon also went target shooting at the Army Base.⁹¹

105. Marlin Simon testified that he and Glenn George had guns with scopes on them, and that Glenn George also had a Cooney 64, a .22 semi-automatic and a .22 magnum.⁹²

106. Carl George agreed he would have reported information about occupiers with guns to the OPP, and did not disagree that he told S/Sgt. Bouwman about a high powered rifle in Dudley George's trailer and David George's sawed off shotgun. He also knew that Marlin Simon had a high powered rifle.⁹³

107. Following the occupation of the BUA, Marlin Simon and others hunted in the Army Camp on occasion, and Marlin Simon also shot at targets. His hunting patterns did not change after the take over of the BUA. Marlin Simon was not sure whether he brought his rifles with him into the BUA. According to Marlin Simon, once the occupiers took over the BUA, they were not supposed to have firearms in that area, to the extent

⁹⁰ Stan Korosec 04/18/2006 at 283.

⁹¹ Marlin Simon 09/28/2004 at 141-147, 168.

⁹² Marlin Simon 10/12/2004 at 78, 80.

⁹³ Carl Tolsma 02/08/2005 at 206.

that, “Well just not really dancing around with them or showing them off or stuff like that.”⁹⁴

108. Marlin Simon testified that he frequently went hunting with Dudley George and others. Dudley George would borrow a gun to hunt. According to Marlin Simon, Dudley George was a good shot.⁹⁵

109. David George testified that he had two Cooley .22 rifles, and a sawed off shot gun, named the “Bastard Blaster” which was a prohibited weapon he bought at the Army Camp. George stored his guns in Abraham George’s trailer on the Army Camp.⁹⁶

110. D/Cst. Speck testified that he and others heard automatic gunfire in the Army Camp. On one occasion, on April 20, 1995, D/Cst. Speck saw Dudley George in the doorway of his trailer holding a rifle. Dudley George and three other Natives were at the trailer dressed in camouflage and they got in an unplated vehicle and drove away. Soon after, D/Cst. Speck and other officers heard gunshots. The officers simply left the area. According to D/Cst. Speck, it was an “everyday occurrence” to hear gunshots in the Army Camp and because it was so common, he did not make notes of the gunshots or sighting of guns.⁹⁷

111. D/Cst. Speck testified that the military had reported rifles being pointed at them but did not, to his knowledge, make any complaints. He also received information from the military that many of the occupiers were walking around at night with rifles.⁹⁸

112. Insp. Carson testified that he received information on June 16, 1993, that occupiers had confronted military officers with hunting rifles. D/Cst. Bell indicated that the military informed the OPP that occupiers shot out the lights of a military vehicle.⁹⁹

⁹⁴ Marlin Simon 09/28/2004 at 194-200, 203; 10/12/2004 at 155.

⁹⁵ Marlin Simon 09/28/2004 at 148, 168.

⁹⁶ David George 10/19/2004 at 113-122.

⁹⁷ George Speck 03/22/2006 at 76.

⁹⁸ George Speck 03/22/2006 at 71, 90.

⁹⁹ John Carson 05/11/2005 at 55; Don Bell 06/06/2006 at 283.

113. As part of the Ipperwash investigation, D/Sgt. Richardson interviewed a number of Department of National Defence members who had been posted at the Army Camp between 1993 and 1995. Out of the 38 persons interviewed, a number recalled incidents involving weapons and occupiers:

- R.G. saw Dudley George shoot out a hydro transformer by his trailer;
- M.B. was chased by Dudley George in a vehicle and there was a gun in the vehicle. On another occasion, his patrol vehicle was rammed and guns were seen in the suspects' vehicle;
- D.S. had a gun pointed at his patrol car by Dudley George and also saw Dudley George carrying a long gun while driving a tractor;
- L.T. frequently saw occupiers drive vehicles past military police with long guns pointed out the window;
- C.P. observed occupiers with guns and observed Dudley George point a gun at his location;
- A.B. had rifles pointed at her several times while she was in the observation post;
- W.K. had weapons pointed at her by the occupiers on many occasions.
- S.D. had a scoped rifle pointed at him by Dudley George.¹⁰⁰

114. Captain Howse testified that on October 18, 1994, he learned and reported that military personnel in the Observation Post heard 10-12 rounds of tracer fire and saw tracer shots. He recalled receiving reports on other occasions of automatic and semi-automatic gun fire coming from the area where the occupiers were located, and

¹⁰⁰ P-1677 at 164(c)–164(k); P-1499 at 120, 114, 119, 126, 131, 141; 2003310.

receiving two reports of military personnel having guns pointed at them. He recalled one incident where a range patrol accompanied by Military Police had a weapon fired between two vehicles, and the person who fired the shot could not be identified. That incident was reported to the OPP.¹⁰¹

115. Insp. Carson testified that he was informed of an incident on the Army Camp April 29, 1995, when a military vehicle was followed by a van and shot at. According to a Significant Incident Report prepared by Captain Howse, during a vehicle patrol in the training range, another vehicle without lights started following it closely and then turned on its high beams. A rifle shot was heard from behind the vehicle patrol and a striking sound heard in the vehicle cab. The patrol then took evasive action. The car in pursuit was joined by a second car which pursued the patrol vehicle possibly in an attempt to cut it off. No injuries were sustained by military personnel, and no damage was located on the patrol vehicle. As a result of this incident, nighttime patrols were cancelled.¹⁰²

116. During the takeover of the BUA on July 29, 1995, Captain Smith was told by Bob Antone and Bruce Elijah that the occupiers were armed. He documented that information contemporaneously.¹⁰³ Both Bob Antone and Bruce Elijah denied making that statement.

117. During the summer of 1995, there were further reports of hearing and seeing guns in the hands of the occupiers on the Army Camp. On August 9, D/Cst. Speck was informed that a native had pointed a gun at a boater on the military beach. On August 13, D/Cst. Speck was informed by S/Sgt. Bouwman that he saw a native with an Uzi automatic inside the Army Camp near Outer Drive. During August, Sgt. Hebblethwaite heard automatic, semi-automatic and single shot weapons fired from within the Army Camp while he was walking or driving on patrol in the area. Cst. Ternovan reported hearing five or six gunshots in the Army Camp on August 19. MNR staff reported speaking with an individual who reported there were AK-47s, 9 mm handguns, and

¹⁰¹ Allan Howse 06/27/2006 at 147-149, 233.

¹⁰² John Carson 06/01/1995 at 117; Allan Howse 06/27/2006 at 27-28, 164-165; P-1868.

¹⁰³ William Smith 06/26/2006 at 186; P-275.

rocket or grenade launchers on the Army Camp, and this was reported to D/Cst. Speck on September 2. MNR staff also reported to Cst. Leblanc hearing gunshots during the night of August 26, including gunshots around the area of the maintenance building. The OPP received reports from residents in the area of hearing automatic gunfire coming from the Army Camp. On August 3, Cst. Vince George received information from an individual inside the Army Camp that Marlin Simon had a rifle, possibly more powerful than a .30-.30 and David George had a sawed-off shotgun.¹⁰⁴

118. On July 29, D/Cst. Martin and D/Cst. Dew were assigned by the OPP to interview a man whose son had recently been on the beach at Ipperwash Park. The son was told by a native person that the occupiers of the Army Camp were heavily armed with 9 mm weapons, automatic weapons, hand grenades and rocket launchers.¹⁰⁵

119. On August 7, D/Cst. Martin reported hearing 12 gunshots from the Army Base between 1913 and 2035 hours.¹⁰⁶

120. D/Cst. Bell testified that on one occasion, he saw an occupier with a hunting rifle in the Army Camp. OPP intelligence received regular reports from the military about gunfire on the Army Camp, weapons pointed at cadets, automatic gunfire and guns pointed at military personnel in the observation post at the Army Camp. D/Cst. Bell had also seen reports from civilians who had seen occupiers with weapons on the Army Camp, or who had information that weapons were being brought into the Army Camp. D/Cst. Bell considered the military police to be reliable sources of information regarding weapons. He also noted that, given the number and different sources of information, it was believed the occupiers had a number of illegal firearms.¹⁰⁷

121. On October 10, 1995, OPP D/Cst. Pierzchalski interviewed a civilian who resided on Army Camp Road across from the Base who had observed a pickup truck traveling

¹⁰⁴ George Speck 03/22/2006 at 186-189, 195; Mike Dougan 04/03/2006 at 40; Vince George 04/04/2006 at 80; Rob Graham 04/20/06 at 394; George Hebblethwaite 05/11/2006 at 65; Dennis LeBlanc 05/23/2006 at 29.

¹⁰⁵ Chris Martin 03/27/2006 at 268.

¹⁰⁶ Chris Martin 03/27/2006 at 310.

¹⁰⁷ Don Bell 06/07/2006 at 286.

“down the gravel road inside the Army Camp” at 20:35 on September 6, 1995, towards the Park “with a person riding in the back” with a long barreled “gun in their hand”. The previous day (September 5, 1995) this same civilian witnessed the same pickup truck traveling back and forth on the gravel road inside the Army Base with two or three persons riding in the back of the truck carrying long barreled guns. “They hollered out profanity to myself and the other lady, that was there”.¹⁰⁸

122. On March 18, 1997 D/Sgt. Richardson interviewed a civilian who had attended at the Army Camp a weekend or two prior to Labour Day weekend of 1995. He was familiar with the Army Camp, as he was a former soldier who had spent time at CFB Ipperwash in 1969 and 1970. On the August 1995 weekend he wanted to show his family, who were with him, where he had worked. The former soldier stopped at the main gate of the Army Camp to request permission to enter. In the course of seeking permission to visit the Camp, he walked to a “white building back toward 21 Highway” and looked inside. “What I saw were long guns. There was six or more rifles there, I remember them as sporting rifles or hunting rifles. Some were on the table, I can’t be sure now if some were laying against the wall, but for sure some were laying on the tables”.¹⁰⁹

123. Based on all the evidence, it is clear that the occupiers did have guns in the Army Camp.

¹⁰⁸ P-1499 at 153-158.

¹⁰⁹ P-1677 at 151; P-1499 at 122-125.

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3. Project Maple – “Negotiating a Peaceful Resolution”

a) Project Maple

124. As a result of the information obtained over the summer about the possibility of a takeover of Ipperwash Provincial Park, the OPP determined that it needed to plan for such a takeover. Insp. Carson convened a meeting on September 1, 1995, of a group of senior officers to develop a contingency plan for an extended stand-off at the Park.¹¹⁰ The plan was called Project Maple.

125. The objective of Project Maple was “To contain and negotiate a peaceful resolution.” It included an organizational chart setting out a reporting structure between the Incident Commander, senior officers, and the various units that could be involved in such an event, including Emergency Response Team (ERT) and the Tactical Rescue Unit (TRU), a Negotiating Team, and Investigations. Representatives from each unit or area of specialty were asked to develop a logistical plan should their involvement be required, and the plans were incorporated into Project Maple.¹¹¹

b) Background – Crisis Negotiation is not Land Claims Negotiation

126. The term “crisis negotiation”, as contained in the Project Maple plan, has a very specific meaning. Police crisis negotiation is not synonymous to land claims negotiation. Rather, police crisis negotiations applies only in very specific, limited situations. Crisis negotiators may only respond when directed to do so by an Incident Commander. The criteria for an Incident Commander to involve a crisis negotiating team are as follows:

- there must be a threat to life (i.e. a barricaded person or a hostage situation);
and
- the individual or subject refuses to attorn to the local police.

¹¹⁰ John Carson 05/12/2005 at 175-177.

¹¹¹ John Carson 05/16/2004 at 24; P-424

127. Police crisis negotiation is one part of an integrated response to a high-risk situation. Short of a threat to life, crisis negotiators are not deployed. The decision whether or not to involve crisis negotiators rests solely with the Incident Commander.¹¹²

128. The criteria to use crisis negotiators, namely a threat to life and an individual who refused to turn him or herself in to the police, were never met throughout the events at Ipperwash.

c) Purpose of Police Crisis Negotiation

129. The object of all crisis negotiation is to develop trust with the subject. Crisis negotiations take place in a very controlled environment. It is for these reasons, as well as safety considerations, that techniques such as face-to-face communication, reliance on loud hailers, and the introduction of third parties are not recommended. Such tactics are counter-productive to negotiations, and may result in an escalation and agitation of the situation and a loss of control.

130. Successful crisis negotiation is not necessarily contingent upon crisis negotiators possessing an intimate knowledge of the circumstances leading up to an event. To the contrary, an effective crisis negotiator receives all information directly from the subject of the negotiation process as part of the process of building trust and rapport.¹¹³

d) Structure of Crisis Negotiation Teams

131. Crisis negotiators work in teams of three, comprised of a team leader, a primary negotiator and a secondary negotiator. The team leader is the liaison between the negotiating team and the Incident Commander. The negotiating team leader reports directly to the Incident Commander, advising the Incident Commander about issues relating to communications and negotiations. The negotiating team leader also conveys

¹¹² John Carson 06/07/2005 at 207, 210; Brad Seltzer 06/13/2006 at 51, 61, 63, 67, 84.

¹¹³ Brad Seltzer 06/13/2006 at 51, 61, 63, 67, 84.

the Incident Commander’s directions to the negotiation team. Acting as a team, the response to these situations is highly choreographed.

132. The primary negotiator is the person who conducts the negotiations, whereas the secondary negotiator listens in on the conversation and maintains a record of the contents of the conversation and any information gleaned.

133. All conversations with the subject are tape recorded, and key facts and concepts are recorded on post-it notes which are made accessible to the negotiator during the course of the discussions. Key to the success of any negotiations is the existence of a private area for the exclusive use of the negotiation team. With the assistance of the Technical Services Branch, the subject’s telephone is “locked out”, meaning that they are not able to make telephone calls, aside from calls directly to and from the negotiation team.¹¹⁴

e) Provisions for Crisis Negotiation in Project Maple Plan

134. S/Sgt. Seltzer was briefed by Insp. Carson on August 30, 1995. At that time, he was asked to prepare a schedule for negotiator teams in the event the Park was taken over. At that time, there was some expectation that the Park would be taken over on the Monday evening of the Labour Day weekend. S/Sgt. Seltzer authored the “Negotiations Response Plan” included in the Project Maple Plan.¹¹⁵

135. S/Sgt. Seltzer advised negotiators of the possibility that they could be called in in relation to the events at Ipperwash. S/Sgt. Seltzer also spoke with Lorne Smith, a retired member of the Forest Detachment of the OPP who had acted as the Liaison Officer with Kettle Point. S/Sgt. Seltzer felt that it was important to consult with Lorne Smith who was aware of the dynamics of the area and the Kettle Point community.

¹¹⁴ Brad Seltzer 06/13/2006 at 56; John Carson 05/16/2005 at 129.

¹¹⁵ John Carson 05/16/2005 at 128.

Lorne Smith subsequently agreed to work with S/Sgt. Seltzer and his team in an advisory capacity.¹¹⁶

136. At no time during the Ipperwash incident were the crisis negotiators deployed as the criteria for their use was never met.

¹¹⁶ Brad Seltzer 06/13/2006 at 67, 73, 76; P-424 at 12.

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4. Events of September 4, 1995

137. Throughout his testimony, Insp. Carson stated repeatedly it was the plan and desire of the OPP to “contain and negotiate a peaceful resolution” to the occupation of Ipperwash Provincial Park.¹¹⁷ Unfortunately, despite the OPP’s intended course of action and its best efforts to open a dialogue, it was apparent from the outset that the occupiers had no intention of negotiating with the OPP, or carrying out a peaceful occupation of the Park. As early as September 4, the occupiers rebuffed negotiation overtures, were antagonistic towards police, and resorted to violence against police in order to achieve their ends. This behaviour should not have been unexpected.

138. Throughout the two-year occupation of the Army Camp, the occupiers had directed their hostility against those whom they believed were the impediment to their goals, including military police and soldiers on range patrol who attempted to maintain surveillance and control over the occupiers. Once it was clear the military no longer posed a threat to the occupiers, and the occupiers’ goals had expanded to areas beyond the military base, it was obvious the OPP, particularly front-line personnel, would be perceived as a primary obstacle to the occupiers’ goals. Just as it had been with the military during the Army Camp occupation, the policing activities of the OPP were met with hostility and violence by the occupiers.

a) Matheson Drive Incident

139. There are very few areas of factual controversy in the evidence as to the events of September 4, although perceptions of those events vary widely. The following paragraphs outline the undisputed facts with respect to the incident on Matheson Drive.

¹¹⁷ John Carson 05/18/2005 at 37; 06/07/2005 at 197.

140. On the afternoon of September 4, a number of the occupiers, including Roderick George and Stewart George, were gathered on the Army Camp beach having a pig-roast. Both Roderick George and Stewart George were drinking heavily that day.¹¹⁸

141. Cst. Wayde Jacklin and his partner were on patrol in the area. At approximately 16:00 hours, they drove to the end of Matheson Drive, turned their cruiser around and parked, with the rear of the cruiser towards the lake. They got out of their vehicle, and began clearing debris from the road, the remnants of a bonfire the previous night.¹¹⁹

142. While at that location, the officers were seen by an individual from the occupiers' group on the beach, who alerted others of the officers' presence on Matheson Drive. Upon hearing this information, Roderick George got into his vehicle, a blue TransAm, accompanied by Stewart George, and they drove to the Matheson Drive location to confront the officers.¹²⁰

143. Upon arrival at Matheson Drive, Roderick George parked his car in front of the police cruiser, such that the passenger-side of the vehicle was closest to the cruiser. Both Roderick George and Stewart George got out of the vehicle, and a verbal confrontation ensued. A number of other occupiers began to arrive, and a 10-78 call (officers need assistance) was placed by Cst. Jacklin's partner. Additional police officers arrived, including Sgt. Stan Korosec.¹²¹

144. Although there were other concerns in play at the time, the primary catalyst for the confrontation was an emerging dispute over the ownership of Matheson Drive. Roderick George and Stewart George claimed at that time that Matheson Drive

¹¹⁸ Roderick George 11/23/2004 at 105-106; 11/24/2004 at 139; George, Stewart 11/02/2004 at 50, 185, 213.

¹¹⁹ Wayde Jacklin 04/25/2006 at 85-86.

¹²⁰ Roderick George 11/23/2004 at 106-108; Stewart George 11/02/2004 at 50.

¹²¹ Wayde Jacklin 02/25/2006 at 86-86; Stan Korosec 04/06/2006 at 16; Roderick George 11/23/2004 at 108-111; Stewart George 11/02/2004 at 50-51.

belonged to the occupiers. It was First Nations territory, and the OPP should not be patrolling there.¹²² The officers at the scene understood otherwise.

145. In order to avoid a further escalation of the situation, which had become heated and was attracting a crowd of Park users, some of whom were yelling back and forth with the occupiers assembled there, the sergeant-in-charge, Sgt. Korosec, made the decision to disengage, and withdraw from the area.¹²³

146. What is clear from the evidence outlined in paragraphs 4 through 10 is that, prior to being confronted by the occupiers, Cst. Jacklin and his partner made no attempts whatsoever to interfere or engage with the occupiers in any manner; they were simply going about their patrol. Indeed, it was the occupiers, particularly Roderick George and Stewart George, who instigated this confrontation.

147. Furthermore, there was broad consensus in the evidence that the occupiers were hostile towards police, and the exchange became quite heated. The situation could have easily escalated to violence if attempts had been made by the police at that time to arrest anyone for the offences committed. Instead, by exercising his discretion and good judgment, Sgt. Korosec made the prudent decision to de-escalate the situation, and withdraw from the area in the interest of public and officer safety.

148. There are three areas with respect to the Matheson Drive incident where there are significant conflicts in the evidence, and very little in the way of compromise to reconcile those conflicts. Therefore, in order to make factual findings with respect these areas, it will be necessary for the Commissioner to accept one version of the events, and reject the other. In weighing the evidence to make that determination, the following factors should be considered:

¹²² Stan Korosec 04/06/2006 at 17; Roderick George 11/23/2004 at 110.

¹²³ Wayne Jacklin 04/25/2006 at 90; Trevor Richardson 06/08/2006 at 107; Stan Korosec 04/06/2006 at 20 and 04/18/2006 at 285-286.

- the events in question took place many years ago, and memories fade over time;
- both Roderick George and Stewart George had been drinking heavily prior to the incident, and were intoxicated during the incident;¹²⁴
- the police officers who testified about this incidents did so with the aid their police notes, which were made contemporaneously to the events, and were used to refresh their memories; and
- the officers involved in the Matheson Drive occurrence wrote their police notes, and provided statements with respect to the occurrence many years before anyone was concerned with or cared to examine the incident itself.

i) Damage to cruiser

149. Four officers, three of whom testified at the Commision (D/Sgt. Richardson, Cst. Dew, and Cst. Jacklin), all observed Roderick George's TransAm drive up to Cst. Jacklin's crusier on Matheson Drive.¹²⁵ It was Cst. Jacklin's observation that the vehicle was racing towards them.¹²⁶

150. Upon arrival, Roderick George parked the TransAm with the passenger-side of the vehicle to the front of the cruiser, blocking the cruiser in.¹²⁷ The three officers then observed the passenger door open forcefully, striking the cruiser, and causing damage to the front bumper.¹²⁸ A fourth officer, Cst. Jacklin's partner, Cst. Myers, did not testify at the Commission, but his notes also indicate he observed the passenger door strike

¹²⁴ Roderick George 11/24/2004 at 136; George, Stewart 11/02/2004 at 121.

¹²⁵ Trevor Richardson 06/08/2006 at 106; Mark Dew 04/04/2006 at 43; Wayde Jacklin 04/25/2006 at 86.

¹²⁶ Wayde Jacklin 04/25/2006 at 87.

¹²⁷ P-1671: 1000585 at 11-12; 200111 at 60-61.

¹²⁸ Trevor Richardson 06/08/2006 at 106; Mark Dew 04/04/2006 at 43; Wayde Jacklin 04/25/2006 at 87.

the front of the cruiser.¹²⁹ The cruiser was later taken to a body shop in Forest where a damage estimate was prepared.¹³⁰

151. Cst. Jacklin testified that he advised Roderick George and Stewart George that they could be arrested for dangerous driving, impaired driving, and mischief to the cruiser.¹³¹ It was Cst. Jacklin's perception that the damage to the cruiser caused by Stewart George was intentional, as outlined in his police notes and his statement about the incident.¹³²

152. Roderick George, the driver of the vehicle, testified that the passenger door did hit the cruiser, but it was accidental, as follows:

Q: And you and your brother, Stewart George, got into the car and drove towards the police officers at the end of Matheson Drive?

A: We didn't drive towards them, we drove down there.

Q: Okay. What happened then?

A: We stopped in -- in course of Stewart getting out of the -- my car on the passenger side, the door flew open and it hit the cruiser, I think on the front bumper, if I'm not mistaken, and almost hit another, like, an officer. I don't know which one, but I think Stewart was eventually charged for using a vehicle for a weapon or something, which was dropped.

Q: And what was -- was there a particular -- was there a -- can you tell us about the door? Anything about the door?

A: Yeah, they were -- both latches were worn out because the door pins needed to be changed and I did change the one on the driver's side because my wife drove it more than I did and I had to get around to changing the one on the

¹²⁹ 200113 at 60-61.

¹³⁰ P-1391: 2001173 at 31.

¹³¹ Wayde Jacklin 04/25/2006 at 92-93.

¹³² P-1387 at 23-24; P-1393.

passenger side yet and that's why the door flew open, because of the latch was defective.¹³³

153. Stewart George, commonly referred to by his nickname Worm, testified as follows with respect to the alleged damage to the cruiser:

Q: Okay. And in some fashion, the passenger door came into contact with the police vehicle, is that what I understand?

A: They said it did, but I don't – I don't think it did.¹³⁴

154. Given the officers' observations, Roderick George's evidence that "the door flew open and hit the cruiser," and the actual damage to the police vehicle, Stewart George's denial is not credible. Furthermore, it is of note that Stewart George recalls being told by an officer, upon exiting the vehicle, that he would be arrested for mischief.¹³⁵ This is consistent with the evidence that the door hit the cruiser.

155. As for Roderick George's evidence about the defective latch, this testimony would have been far more compelling and believable had he attempted to explain this defect to the officers at the time to excuse the accident. He did not do this, nor did he take the defective latch into account when he parked his vehicle so close the police cruiser.

156. In and of itself the damage to the cruiser was of little consequence. However, the actions of Stewart George and Roderick George speak volumes about the contempt they had for the police, and the open antagonism they demonstrated when they drove their vehicle to the location of the police, blocked in the police cruiser, and then intentionally caused damage to the vehicle.

¹³³ Roderick George 11/23/2004 at 108-109.

¹³⁴ Stewart George 11/02/2004 at 50.

¹³⁵ Stewart George 11/02/2004 at 51.

ii) Threats to officers

157. Cst. Jacklin testified that during his exchange with Stewart George on Matheson Drive, George said to him, words to the effect, “how many rifle sights do you think you’re in.”¹³⁶ Cst. Jacklin thought the comment was serious, but he attempted to make light of it in order to defuse an already volatile situation.¹³⁷ Furthermore, he stated:

You asked me if I took the threats serious, or as a police officer do you take that as being serious, and I do.

The question was then, I believe, did I believe that he was being sincere or it was -- there was meaning to his threat. I stand by my answer that I took it serious, that threat.

Did I put a great deal of weight on it, based on the circumstances at the time, in his condition? It was probably minimized somewhat, yes.¹³⁸

158. With respect to his notebook entries about the incident, Cst. Jacklin admitted it was an oversight on his part that the comment from Stewart George was not written in his notes.¹³⁹ Nonetheless, he was firm that Stewart George made the statement.

159. While none the other police officers who testified about this incident had knowledge of this comment from Stewart George, Cst. DelleMonache, who was present for the incident but not called to testify, apparently heard the comment, or a similar comment from Stewart George, and recorded it in his police notes. The notes state:

16:07 Patrolled Matheson Dr. – Jacklin & Mayers called 10-78 – numerous natives surrounding our cruiser – Judas and Worm – verbal confrontation – asked if we know how many cross hairs are trained on us.¹⁴⁰

¹³⁶ Wayde Jacklin 04/25/2006 at 89.

¹³⁷ Wayde Jacklin 04/25/2006 at 89.

¹³⁸ Wayde Jacklin 04/26/2006 at 249-250.

¹³⁹ Wayde Jacklin 04/25/2006 at 98.

¹⁴⁰ 1002125 at 3.

160. The “crosshairs” comment was also included in the handwritten statement provided by Cst. DelleMonache for the occurrence; however, the comment was inaccurately transcribed by the typist as “cross bow” in the typed version of the statement.¹⁴¹

161. During his testimony, Stewart George denied making the “crosshairs” comment to the officers. He said he knew that if he made such a statement to police it would have “got me a charge of uttering threats.”¹⁴² In essence, he would not say or do something that could have resulted in a charge. However, Mr. George’s extensive criminal record prior to September 1995, including three assault charges between 1992 and 1995, two of which were against police and two of which were committed while impaired, would suggest that the law in and of itself would not deter Mr. George from committing an offence.¹⁴³

162. Furthermore, Stewart George acknowledged during his testimony that he may have forgotten some of the things he said to police during the occurrence¹⁴⁴, which, given the passage of time and his inebriated state during the incident, would not be unexpected. Stewart George denied identifying himself to police as a “peacekeeper”, but recalled telling an officer he was under arrest for trespassing.¹⁴⁵

iii) Sighting of the rifle

163. Cst. Whelan, along with his partner, Cst. Japp, responded to the 10-78 call from Cst. Jacklin on Matheson Drive. Upon arrival, they were ordered to provide security for the officers already at the scene, who were engaged in the confrontation with the occupiers.¹⁴⁶

¹⁴¹ 1000294 at 1.

¹⁴² Stewart George 11/02/2004 at 52.

¹⁴³ Stewart George 11/02/2004 at 19-25.

¹⁴⁴ Stewart George 11/02/2004 at 131-132.

¹⁴⁵ 1000370 at 1; Stewart George 11/02/2004 at 51.

¹⁴⁶ Neil Whelan 03/29/2006 at 114.

164. While keeping observation on the area, Cst. Whelan observed a vehicle backing up from the Army Camp beach. He then observed two First Nations males in the vicinity of the trunk, which had been opened. One of the males reached into the trunk, and began to remove an object, which Cst. Whelan observed to be the butt of a rifle. As the individual turned around, he and Cst. Whelan met eyes, and Cst. Whelan gestured to the individual by placing his hand on the grip to his sidearm, and removing the latch to his holster. The male individual dropped the rifle back into the trunk, and the second male motioned to him to leave it there.¹⁴⁷

165. Cst. Whelan then informed his partner about the firearm, and the two of them watched the vehicle for the duration of the occurrence.¹⁴⁸ Shortly after the incident, Cst. Whelan informed Sgt. Korosec about the rifle.¹⁴⁹ He also informed D/Sgt. Richardson.¹⁵⁰

166. Both Sgt. Korosec and D/Sgt. Richardson testified they were informed about the firearm before they left the area after the occurrence.¹⁵¹ Further, Sgt. Korosec passed the information along to Insp. Carson¹⁵², while D/Sgt. Richardson later informed A/S/Sgt. Wright about the occurrence. That discussion was captured in the scribed notes at 21:33 as “green Ford/Mercury, grey on trunk had butt of rifle in trunk, advised to put it back – without incident.”¹⁵³

167. At the Commission, Cst. Whelan testified the vehicle he observed was a “blue car with rebel plates,” as described in his police notes, which were written before the end of his shift.¹⁵⁴

168. Cst. Whelan acknowledged that his typed statement, the date of which is unknown, refers to the vehicle with the open trunk as being a “black Camaro” with rebel

¹⁴⁷ Neil Whelan 03/29/2006 at 114-115.

¹⁴⁸ Neil Whelan 03/29/2006 at 261; 2003620 at 11-12.

¹⁴⁹ Stan Korosec 04/06/2006 at 19; Neil Whelan 03/29/2006 at 116.

¹⁵⁰ Trevor Richardson 06/08/2006 at 110.

¹⁵¹ Trevor Richardson 06/08/2006 at 110; Stan Korosec 04/06/2006 at 19.

¹⁵² John Carson 05/17/2005 at 144.

¹⁵³ Trevor Richardson 06/08/2006 at 112; P-426 at 2.

¹⁵⁴ Neil Whelan 03/29/2006 at 116.

plates. Cst. Whelan could not explain this discrepancy, but felt his police notes would be a more accurate account of what occurred.¹⁵⁵ However, aside from the colour and model of the car, Cst. Whelan's statement about the vehicle and his observations of the rifle are consistent with his police notes.

169. In terms of reconciling the discrepancies in the evidence, it is important to remember Cst. Whelan's testimony that the confrontation was ongoing when he arrived on Matheson Drive. Furthermore, when he first observed the vehicle in question, it was backing up from the Army Camp beach,¹⁵⁶ and the vehicle was approximately 50 feet away from him when he made these observations.¹⁵⁷ This testimony about the location of the vehicle is consistent with Cst. Japp's notes that "there were two natives at open trunk of veh[icle] on base beach facing north [emphasis]."¹⁵⁸

170. It is also consistent with Cst. Gransden's statement, which notes the vehicle as "a green Pontiac, with a U.S. rebel flag rear licence plate was backed up to the cement blocks [emphasis]. The car trunk was opened and two Natives were standing by the rear of the trunk."¹⁵⁹ The Commission heard a number of witnesses testify about the location of the cement blocks being lined along the border of the Army Camp beach.

171. Given the evidence about the location of the vehicle observed by Cst. Whelan, Cst. Japp, and Cst. Gransden, it is fair to say that Roderick George's TransAm was not the vehicle containing the rifle that Cst. Whelan observed. Indeed, a few of the officers at the scene recorded an actual plate number for the TransAm, discounting any suggestion that the TransAm had a "rebel plate".¹⁶⁰

172. This does not negate Cst. Whelan's observations about the vehicle or the rifle. Cst. Whelan's evidence was steadfast that he observed the butt of a rifle being removed from the trunk of a vehicle, and he recorded it in his notes.

¹⁵⁵ Neil Whelan 03/29/2006 at 120-121.

¹⁵⁶ Neil Whelan 03/29/2006 at 114.

¹⁵⁷ Neil Whelan 03/29/2006 at 117.

¹⁵⁸ 2003620 at 11-12.

¹⁵⁹ 1000317 at 1.

¹⁶⁰ P-1671 at 12; 1000370 at 1.

173. Also, two other officers, Cst. Japp and Cst. Gransden, made similar observations to those of Cst. Whelan with respect to a car with an open trunk, and they also observed two First Nations males in the trunk area. Cst. Gransden's statement also refers to the vehicle having a rebel plate.

174. Furthermore, as noted in the scribe notes, D/Sgt. Richardson's description of the car to A/S/Sgt. Wright was a "green Ford/Mercury, grey on trunk." While Cst. Japp's notes provide no details about the vehicle, D/Sgt. Richardson's description is markedly similar to one described in Cst. Gransden's statement. It is noteworthy that it was Cst. Whelan who provided D/Sgt. Richardson with the details about the vehicle. It is also noteworthy that a vehicle with a rebel plate, which appears to be an American-made car green in colour was photographed in the Park on September 5.¹⁶¹

175. At the time of this occurrence, Cst. Whelan was a senior constable with the OPP, having been a police officer for almost twenty-five years. He had had many years of experience and firearms training, both as a patrol officer and as an ERT member.¹⁶²

176. Given the significance of the Matheson Drive occurrence at the time, it is not reasonable to suggest, and there is no evidence to support any such suggestion, that Cst. Whelan made-up or embellished the incident with the vehicle or his observation of the rifle when he wrote his notes or provided his report to either Sgt. Korosec or D/Sgt. Richardson.

177. Having seen the butt of the rifle in the back of the trunk, Cst. Whelan might have yelled "gun" to alert other officers of the threat. However, in these circumstances, where the handling of the rifle had not reached the point to suggest any imminent threat, the rifle had not yet been pointed at anyone, and there was a large number of people in the area, both police and civilians, Cst. Whelan very appropriately sought to de-escalate the situation instead. If he had yelled "gun", such action would have likely escalated the

¹⁶¹ OPP Photo Brief – Photo 972.

¹⁶² Neil Whelan 03/29/2006 at 78-83.

situation, and the corresponding danger. On this issue, Sgt. Korosec testified as follows:

We were very fortunate, very lucky that Constable Whelan took the actions that he did. I – I think it was proper in what he did. He had an -- he had an eye on what was going on there and had he -- like I said two (2) situations had that gun come out of the trunk and at that point it probably would have been proper for him to let the rest of us know down there given the situation that a gun was out, there's no doubt in my mind from our training that our guns would have come out too in -- in defence of our lives and that the situation could have -- could have turned very, very tragic.¹⁶³

b) Park Takeover

178. Throughout the Commission, the occupation of the Park was often described and portrayed by certain witnesses as a “peaceful” takeover by a small group of occupiers. Whether the events that unfolded on September 4 are capable of that interpretation depends wholly upon one’s definition of peaceful. One could reasonably argue that behaviour capable of being characterized as violent and illegal would be inconsistent with this definition. Certainly, the observations and perceptions of police officers, towards whom these behaviours were directed, ought to be taken into account when considering whether peacefully is the appropriate descriptor.

i) Decision to occupy the Park

179. Despite almost unanimous testimony from the occupiers that at the time of the Park occupation they were led by and made decisions based on consensus, there was wide inconsistency in the evidence as to when and by whom the decision was made to occupy the Park.

180. Some occupiers testified that a meeting was held a day or days before the occupation where it was decided, as a group, the Park would be occupied after Labour

¹⁶³ Stan Korosec, 04/18/2006 at 18-19.

Day.¹⁶⁴ Among those in attendance at the meeting were Les Jewell, Russ Jewell, Dudley George, Glenn George, Roderick George, Stewart George, Dave George, Robert Isaac, Isaac Doxtator, Gabriel Doxtator, Larry French, and Al George.¹⁶⁵

181. Others testified that it was a spontaneous decision made the day the occupation started.¹⁶⁶

182. Roderick George testified there were a number of discussions about entering the Park, possibly after the campers left. However, he could not recall when the decision was made to occupy the Park on September 4¹⁶⁷, and it was clear from his evidence that he learned of the occupation after it started¹⁶⁸, as did Kevin Simon,¹⁶⁹ Elwood George,¹⁷⁰ Stewart George,¹⁷¹ Michael Cloud¹⁷², and Gina George.¹⁷³

183. Glenn George's evidence on this point was very unclear and contradictory. He testified he was aware of a meeting to discuss taking over the Park, but could provide no particulars as to who participated in that discussion or when it occurred, other than it was during a feast.¹⁷⁴ He also contradicted earlier evidence from other occupiers that he was present for a discussion on September 3 with Les Jewell and others where the decision made to occupy the Park.¹⁷⁵ Indeed, he even denied participating in the Park takeover itself, although others testified he did.¹⁷⁶

¹⁶⁴ David George 10/18/2004 at 151; Clayton George 11/08/2004 at 106-107.

¹⁶⁵ Clayton George 11/03/2004 at 207 and 11/08/2004 at 106.

¹⁶⁶ Marlin Simon 09/28/2004 at 207 and 10/12/2004 at 181; Tina George 01/19/2005 at 99.

¹⁶⁷ Roderick George 11/23/2004 at 104.

¹⁶⁸ Roderick George 11/23/2004 at 104.

¹⁶⁹ Kevin Simon 12/01/2004 at 154.

¹⁷⁰ Elwood George 11/03/2004 at 30.

¹⁷¹ Stewart George 11/02/2004 at 128.

¹⁷² Michael Cloud 11/08/2004 at 193.

¹⁷³ Gina George 01/31/2005 at 51.

¹⁷⁴ Glenn George 02/01/2005 at 200.

¹⁷⁵ Glenn George 02/02/2005 at 172.

¹⁷⁶ Glenn George 02/01/2005 at 219; Glenn Bressette 11/09/2004 at 172; George Speck 03/22/2006 at 205.

184. Marcia Simon testified that she was against the idea of occupying the Park in September 1995¹⁷⁷, as was Rose Manning.¹⁷⁸ Ms. Simon stated: “[I]t was done before I had anything to say in it. I met the people on our way down. My mother and I were on our way down to tell them not --not to -- we couldn't handle it. But it was done.”¹⁷⁹ It was Ms. Simon’s view that the occupiers were still in “chaos” after taking over the barracks, and they “couldn’t handle it.” There were also “squabbles” amongst the group about things going on in the Army Camp.

185. What is obvious from this evidence, and quite worthy of note, is that neither of the “principal men”¹⁸⁰, meaning Roderick George or Glenn George, were evidently involved, or willing to admit any involvement in the final decision to occupy the Park. Further, if one accepts Glenn George’s evidence on this point, neither participated in the initial Park entry itself.

186. Also, neither of the past spokespersons for the group, and principal women at the Army Camp, Marcia Simon or Rose Manning, supported the idea of the occupying the Park.

187. If none of the principal men or women, and several of the adult Army Camp occupiers were not informed of the Park occupation until after it started, who was behind the initiative to takeover the Park on September 4?

188. The Commission heard evidence from a number of different witnesses, including Insp. John Carson, Vince George, Tom Bressette, Captain Doug Smith and others about the growing influence of outsiders at the Army Camp, particularly Les Jewell.¹⁸¹ Certainly, after the barracks takeover, Les Jewell’s involvement in discussions with the OPP and the military suggest that he had become a key player at the Army Camp.¹⁸²

¹⁷⁷ Marcia Simon 09/23/2004 at 157-158.

¹⁷⁸ Rose Manning 04/07/2005 at 85.

¹⁷⁹ Marcia Simon 09/23/2004 at 158.

¹⁸⁰ Roderick George 11/23/2004 at 55.

¹⁸¹ John Carson 05/19/2005 at 22; Vince George 04/05/2006; P-444A (Tab 3) Doug Smith 06/26/2006 at 148 and 151.

¹⁸² Mark Wright 02/21/2006 at 144 and 02/22/2006 at 68 and 03/07/2006 at 38.

Tina George and Rose Manning's evidence about Les Jewell's involvement the Park occupation indicate, at the very least, he was agitating or attempting to influence a move into the Park.¹⁸³

189. From all of the evidence, it is apparent that no one was willing to identify the individuals who were responsible for organizing, and orchestrating the Park takeover on September 4.

ii) Preparations to occupy the Park

190. The Park was occupied at approximately 19:30 on September 4.¹⁸⁴ However, it is clear that organized measures and activities were undertaken by the occupiers, inside and outside the Park, that were intended to facilitate the occupation.

191. Following the incident on Matheson Drive, a number of trees were cut down along Matheson Drive that impeded vehicle access.¹⁸⁵ This was done at the behest of Roderick George¹⁸⁶, although David George, the person assigned to the task, denied any such involvement.¹⁸⁷ Indeed none of the occupiers who testified, other than Roderick George, admitted any involvement in cutting the trees down.

192. The occupiers also prepared themselves by bringing with them into the Park baseball bats, metal pipes, spotlights, firecrackers, and flares.¹⁸⁸

193. After entry, two gates along Matheson Drive were closed, and observation posts were set up on Matheson Drive and Army Camp Road, and at various locations throughout the Park. Even though these kinds of security measures were new activities for the occupiers, it was Marlin Simon's evidence that there was no planning or

¹⁸³ Tina George 01/19/2005 at 98-99; Rose Manning 04/07/2005 at 85-86.

¹⁸⁴ Stan Korosec 04/06/2006 at 23-25.

¹⁸⁵ Mark Gransden 03/30/2006 73-74.

¹⁸⁶ Roderick George 11/24/2004 at 142-143.

¹⁸⁷ David George 10/20/2004 at 55.

¹⁸⁸ Marlin Simon 09/30/2004 at 181-182; 10/12/2004 at 191-192.

discussions involved in these activities, and “pretty much everybody knew what to do”¹⁸⁹ by happenstance.

194. Marlin Simon also testified that the occupiers originally planned to enter the Park from the beach area, but, since the concrete blocks near Matheson Drive had been removed, they entered at that location instead by cutting the lock.

iii) “Rules” of the occupation

195. As part of the discussions that purportedly took place about occupying the Park, it was apparently discussed and agreed by the occupiers that they would adhere to two rules of conduct during the occupation: no firearms, and no drugs or alcohol.¹⁹⁰ David George also testified it was agreed that “no one would go near [the] cottages.”

196. Despite the rule against alcohol and drugs, several occupiers testified that they consumed or saw other occupiers consuming alcohol and/or drugs over the period of September 4 to 6.¹⁹¹

197. Further, a number of police witnesses testified that the occupiers they encountered on September 4 were intoxicated. Cst. Martin testified that he observed occupiers consuming alcohol in the maintenance shed on the night of September 5 via video surveillance.¹⁹²

198. The Commission also heard evidence that some of the nearby cottages were broken into during the period after September 4, although the evidence did not reveal the persons who broke into them.

¹⁸⁹ Marlin Simon, 10/12/2004 at 188-191.

¹⁹⁰ Elwood George 11/03/2004 at 45, 75 & 11/05/2004 at 25; Clayton George 11/08/2004 at 83; David George 11/01/2004 at 118.

¹⁹¹ Glen Bressette 11/09/2004 at 200 & 219-221; Stewart George 11/02/2004 at 129, 185, 213-214; P-380.

¹⁹² Wayne Jacklin 04/25/2006 at 87; Vince George 04/05/2006 at 105; Trevor Richardson 06/08/2006 at 108; Chris Martin 03/28/2006 at 22-23.

iv) Entry into the Park

199. A group of occupiers, between 10 to 20 people, gathered in vehicles and on-foot outside the gate to the Park on Matheson Drive at approximately 19:30.¹⁹³ At the front of the group was Bert Manning, David George, who was carrying a tire iron,¹⁹⁴ Nick Cottrelle, who had bolt cutters,¹⁹⁵ and Marlin Simon.

200. On the other side of gate were two OPP officers, Cst. Whelan and Cst. Myers. A number of other officers attended in response to a call for backup, including Sgt. Korosec.¹⁹⁶

201. Upon arrival, Sgt. Korosec spoke with Bert Manning over the gate. Bert Manning was calm, and told Sgt. Korosec they were there to occupy the Park. Sgt. Korosec advised Bert Manning that he understood the Park would be closed at 22:00, after which time the occupiers would be regarded as trespassers. After some further discussions, Bert Manning agreed the group would hold off on entering the Park, and a meeting was arranged for the following day at 10:00 a.m.¹⁹⁷ It appeared as though the occupation had been averted, or at least delayed.

202. Although Glenn George denies this,¹⁹⁸ Sgt. Korosec testified Glenn George arrived at the gate at this time. He was agitated, confrontational, and told Sgt. Korosec and Bert Manning there would be no meeting to discuss the occupation. He said they were reclaiming the Park, and would take the land west of the Park to Ravenswood next.¹⁹⁹ Bert Manning intimated a power struggle was afoot, and he walked away.²⁰⁰

203. At this point, Nick Cottrelle cut the lock on the gate,²⁰¹ and numerous vehicles entered the Park and scattered. As was done in the takeover of the built-up area, it

¹⁹³ Stan Korosec 04/06/2006 at 23-25.

¹⁹⁴ David George 10/19/2004 at 154.

¹⁹⁵ Nicholas Cottrelle 01/18/2005 at 56.

¹⁹⁶ Stan Korosec 04/06/2006 at 23-24.

¹⁹⁷ Stan Korosec 04/06/2006 at 24-27.

¹⁹⁸ Glenn George 02/01/2005 at 216.

¹⁹⁹ Stan Korosec 04/06/2006 at 28-29.

²⁰⁰ Stan Korosec 04/06/2006 at 29.

²⁰¹ Nicholas Cottrelle 01/18/2005 at 56.

appears the entry into the Park was carried in a somewhat coordinated fashion, with people entering simultaneously from various different entrances around the Park.²⁰² Also, much like the barracks takeover, and consistent with the advice they had received from Bruce Elijah,²⁰³ the movement into the Park was initiated predominately by young men, including David George, Warren George, Nick Cottrelle, Marlin Simon, Glen Bressette, JT Cousins, Leland George, and Wesley George. Tina George and Carolyn George also testified that they were part of the initial group that entered the Park.

204. No attempt was made by the OPP members to stop the occupiers from entering the Park, or to arrest them; to do so would have been impractical given that the officers were outnumbered and it would have potentially escalated the situation. At this time, Sgt. Korosec instructed the ERT officers to evacuate the remaining Park visitors.²⁰⁴

205. There were some day-campers remaining in the Park who were escorted out by OPP officers.²⁰⁵ A RV was also escorted out of the Park by the officers.²⁰⁶

206. Sgt. Korosec then notified Insp. Carson, A/S/Sgt. Wright, and Cst. Speck that the occupation of the Park had taken place. He was instructed by Insp. Carson to secure the maintenance building for police use, if possible. Sgt. Korosec assigned two four-man units to secure the building.²⁰⁷

207. Sgt. Korosec and the other eight or so officers present were assembled by their cruisers in a lighted area near the kiosk. It was getting dark at the time, and difficult to ascertain how many occupiers were in the park, since people were milling around, and moving in and out of the shadows.²⁰⁸ It was obvious, however, that the police were

²⁰² Glen Bressette 11/09/2004 at 175.

²⁰³ Bruce Elijah 03/09/2005 at 59.

²⁰⁴ Stan Korosec 04/06/2006 at 30-32.

²⁰⁵ Marcia Simon 08/29/2004 at 16; Kevin Simon 12/01/2004 at 156; George Speck 03/22/2006 at 209; Mark Dew 04/03/2006 at 76; Mark Gransden 03/30/2006 at 80.

²⁰⁶ Carolyn George 02/03/2005 at 96,97,99.

²⁰⁷ Stan Korosec 04/06/2006 at 31-32.

²⁰⁸ Stan Korosec 04/06/2006 at 32; Mark Gransden 03/30/2006 at 83-84.

outnumbered,²⁰⁹ and several occupiers were armed with sticks and clubs.²¹⁰ The situation was tense.

208. Cst. Parks then saw a flare thrown at him, narrowly missing him. He did not see who threw the flare, although a park staff member advised him later it was David George.²¹¹ Additional flares were thrown.²¹² Wesley George testified he threw approximately six flares at the officers, although he was unsure whether any made contact.²¹³ Although officers attempted to stomp the flares out, they continued to burn until they extinguished on their own.²¹⁴

209. Roderick George then arrived at the Park with his father, Abraham George. Roderick George was very hostile, and intoxicated. He called Cst. Speck a “fucking nazi”, and yelled at the police, “I told you fuckers to get the fuck off our land.”²¹⁵ He was also extremely confrontational with Sgt. Korosec. Roderick George was “nose-to-nose” with Sgt. Korosec, screaming into his face to leave.²¹⁶ Sgt. Korosec was calm and non-confrontational, however. He tried to calm Roderick George down and keep the situation under control. None of the officers were confrontational with the occupiers.²¹⁷

210. Roderick George then gave the police twenty seconds to leave. The countdown was irregular; it fluctuated up and down, indicative of his inebriated state. Suddenly, without warning, Roderick George smashed the back window of the cruiser, shattering it

²⁰⁹ Stan Korosec 04/06/2006 at 36; Elwood George 11/04/2004 at 25; Les Kobayashi 10/25/2005 at 181; Larry Parks 03/28/2006 at 312-313; Marlin Simon 09/29/2006 at 10-12; Mark Gransden 03/30/2006 at 218.

²¹⁰ Glen Bressette 11/09/2004 at 180.

²¹¹ Larry Parks 03/28/2006 at 225-226.

²¹² Mark Gransden 03/30/2006 at 84-85; Mike Dougan 03/03/2006 at 78; Kevin Simon 12/01/2004 at 162-164.

²¹³ Wesley George 11/30/2004 at 190-191.

²¹⁴ Larry Parks 03/28/2006 at 226.

²¹⁵ Roderick George 11/24/2004 at 146.

²¹⁶ Stan Korosec 04/06/2006 at 20; Les Kobayashi 10/25/2005 at 178.

²¹⁷ Les Kobayashi 10/25/2005 at 241-242.

with a large stick. There were a number of officers in close proximity to the vehicle at the time Roderick George broke the window.²¹⁸

211. Sgt. Korosec testified that this was the most difficult situation he had ever faced as an OPP officer. Although he had witnessed a number of criminal offenses committed by the occupiers, he felt that carrying out arrests at that time would be very unwise and unsafe. He was charged with the responsibility to protect the officers present, and mindful and very concerned about the presence of women and children in the Park. Sgt. Korosec did not want the situation to escalate any further, or for anyone to get hurt, which he thought would occur if the police attempted to arrest Roderick George or any of the occupiers present.²¹⁹ The situation made many of the officers present believe that their personal safety was at risk.²²⁰

212. Sgt. Korosec called Insp. Carson. He advised Insp. Carson what had occurred. Sgt. Korosec suggested strongly that the police withdraw from the Park in the interest of safety of all concerned. Insp. Carson agreed. He instructed Sgt. Korosec to return to Forest with the other members.²²¹

213. The police left the Park at approximately 21:30.²²²

c) Activating Project Maple

214. As outlined in the OPP contingency plan, Project Maple, a number of policing resources were called into action once the Park was occupied. Among those resources activated were four Emergency Response Teams ("ERT"), who were responsible for manning the checkpoints and the Tactical Operations Centre ("TOC") site,²²³ doing concentrated patrols in the area, and carrying out any assigned duties, as ordered by

²¹⁸ Mark Gransden 03/30/2006 at 87-89; Stan Korosec 04/06/2006 at 35; Larry Parks 03/28/2006 at 226-227.

²¹⁹ Stan Korosec 04/06/2006 at 35-36.

²²⁰ Stan Korosec 04/06/2006 at 35-36; Mark Gransden 03/30/2006 at 91-92; Mike Dougan 04/03/2006 at 79; Robert Graham 04/21/2006 at 12.

²²¹ Stan Korosec 04/06/2006 at 36-37; John Carson 05/16/2005 at 172.

²²² Stan Korosec 04/06/2006 at 37.

²²³ The TOC was located at the Ministry of Natural Resources ("MNR") parking lot on East Parkway Drive, 800 meters west of the intersection of East Parkway Drive and Army Camp Road.

the Incident Commander, Insp. Carson, or his second-in-command, A/S/Sgt. Wright²²⁴. ERT leaders were responsible for reporting directly to Insp. Carson and A/S/Sgt Wright. Directions from command staff flowed to the ERT members via their ERT leaders.²²⁵ Sgt. Korosec's role, as defined in Project Maple, was overall ERT coordinator. The duties assigned to him were administrative, non-operational in nature.²²⁶

i) Service of the Notice of Trespass

215. One of the first duties assigned to certain ERT members was to accompany Les Kobayashi, the Park Superintendent, and Cst. George to the Park, to provide security for them while they served a notice of trespass.

216. Although Cst. George was not concerned for his own safety at the time, given that many in the Park were his relatives, he understood that weapons were a concern, in light of the information the OPP was receiving. For this reason, he did not think it was unusual that ERT members escorted him and Les Kobayashi to the Park by the ERT members.²²⁷ For this particular operation, ERT members were armed with side-arms only, not long guns.²²⁸

217. The scribe notes indicate that Cst. George and Les Kobayashi left for the Park sometime around 23:02.²²⁹

218. Upon their arrival at the Park, ERT members maintained a position of cover, scanning the area with night vision equipment.²³⁰ They were located in the area of the driveway to the Park. They arrived there in advance of Les Kobayashi and Cst. George, who arrived at approximately 23:56.²³¹

²²⁴ P-424

²²⁵ Mark Wright 02/21/2006 at 196.

²²⁶ John Carson 05/16/2005 at 44-45; Stan Korosec 04/05/2006 at 305; P-424.

²²⁷ Vince George 04/05/2006 at 94 & 214.

²²⁸ Larry Parks 03/29/2006 at 51.

²²⁹ P-426.

²³⁰ Sam Poole 05/16/2006 at 255; Mark Gransden 03/30/2006 at 96; Mike Dougan 03/31/2006 at 81.

²³¹ P-1303.

219. At no time did any of the ERT members either engage or interact with the occupiers or venture into the Park beyond the kiosk area. It is fair to say that no one, other than Cst. George and Les Kobayashi, knew that the ERT members were in the area. Consequently, their presence could not have interfered or hindered the attempt to communicate with the occupiers. In fact, none of the occupiers who testified were aware the ERT members were even there.

220. The first person Les Kobayashi and Cst. George spoke with was Bert Manning. He was intoxicated.²³² He arrived at their location just inside the Park gate in a pickup truck with two other men. Cst. George did not recognize the two men. Cst. George asked him Bert Manning who the spokesperson was for the occupiers, and told him that the OPP wanted to talk to them. Cst. George also told him that they were there to serve the notice of trespass. Bert Manning said he would consult with others at the Army Camp, and report back. Bert Manning ordered Cst. George and Les Kobayashi to move out of the Park to the Park gate, which they did.²³³

221. A short time later, a truck and other vehicles returned. Bert Manning was not among the group at first, but arrived later. David George was driving one of the vehicles. As Cst. George and Les Kobayashi attempted to approach them, they backed away and would not speak with them.²³⁴ Les Kobayashi testified that the occupiers, whom he did not know, were “hollering” at them, telling them to get off their land.²³⁵ He did not believe that they said or did anything to provoke that kind of hostility towards them.²³⁶

222. Marlin Simon, David George, and Clayton George all testified they were among the group of occupiers who were present when Cst. George and Les Kobayashi attempted to speak with the occupiers, and service the trespass notice. Both Clayton George and Marlin Simon acknowledged that they were aware Cst. George and Les

²³² Vince George 04/05/2006 at 105; P-424 at 13.

²³³ Vince George 04/05/2006 at 94.

²³⁴ Vince George 04/05/2006 at 94.

²³⁵ Les Kobayashi 10/24/2005 at 232-233.

²³⁶ Les Kobayashi 10/25/2006 at 244.

Kobayashi were likely there to serve some kind of trespass notice or papers dealing with an injunction, which they refused to accept. David George also testified that he saw Cst. George with a paper in his hand.²³⁷

223. It was clear from the evidence of Marline Simon, David George, and Clayton George that they all knew Cst. George, and yet they refused to speak with him.

224. Upon his return, Bert Manning would not accept the trespass notice, but he agreed to meet with the police the following day.²³⁸

225. At 00:35, on September 5, Sgt. Korosec reported to Insp. Carson that the occupiers would not accept service of the trespass notice. He told Insp. Carson that Bert Manning had agreed to meet with the OPP the following day, and that they should come back for noon. Sgt. Korosec also reported the occupiers had barricaded the main entrance to the Park with a car.²³⁹

226. At this time, Cst. George and others returned to Forest Detachment.²⁴⁰ The scribe notes indicate that Cst. George briefed Insp. Carson about the incident at 01:10.²⁴¹

ii) Checkpoint duties

227. As indicated in the scribe notes, the checkpoints were established on September 5 at approximately 01:13, on orders from Insp. Carson.

228. As Insp. Carson testified, the purpose of the checkpoints was to control access around the Park, and to make sure people traveling in the area had business to be there.²⁴² ERT members manning the checkpoints were instructed to attempt to stop

²³⁷ Marlin Simon 09/29/2004 at 81; David George 10/19/2004 at 176; Clayton George 11/03/2004 at 215.

²³⁸ Vince George 04/05/2006 at 193.

²³⁹ Stan Korosec 04/06/2006 at 54-55; P-1303.

²⁴⁰ P-1305.

²⁴¹ P-426 at 13.

²⁴² John Carson 05/16/2005 at 115, 225.

every vehicle, ask the driver for a licence, ask passengers for identification on consent, and to conduct consent searches of the vehicles.²⁴³ Insp. Carson testified that he was not aware in September 1995 that the ERT members were conducting vehicle searches but, when asked, he had no difficulty with the vehicles being searched with the consent of the driver.²⁴⁴

229. As indicated in the scribe notes and testified to by A/S/Sgt. Wright, the issue of authority under the *Highway Traffic Act* to conduct vehicle stops at the checkpoints was canvassed and endorsed by the local crown attorney on September 5.²⁴⁵

²⁴³ Mark Wright 03/07/2006 at 58.

²⁴⁴ John Carson 05/17/2005 at 305.

²⁴⁵ Mark Wright 03/07/2006 at 61.

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5. Events of September 5, 1995

a) *Efforts to Engage in Dialogue*

i) Wright, Seltzer and Kobayashi at the Park

230. On September 5 at 12:12, A/S/Sgt. Wright, S/Sgt. Seltzer and Les Kobayashi left the Command Post in Forest to attend at the Park in an effort to engage in dialogue with the occupiers.²⁴⁶ A/S/Sgt. Wright, S/Sgt. Seltzer and Les Kobayashi approached the fence line at the sandy parking lot at about 12:30.²⁴⁷ A/S/Sgt. Wright had been involved in previous conversations with Glenn George and he hoped to facilitate an introduction between Glenn George and S/Sgt. Seltzer.²⁴⁸ In this regard he asked an occupier in the area if he would locate Glenn George and tell him that he was available.²⁴⁹

231. A/S/Sgt. Wright testified that there were a number of occupiers in the area but no one would engage in conversation.²⁵⁰ There was “no real dialogue with respect to getting Glenn George there opening up any kind of conversation”.²⁵¹ A/S/Sgt. Wright testified that when a car driven by an occupier came back into the area “one (1) of the people in that vehicle swore in my general direction”.²⁵² There were also some people over by the Park store making some comments towards the officers.²⁵³

232. At 12:49 A/S/Sgt. Wright made a radio call to the Command Post to update them on his progress in attempting to engage the occupiers in dialogue. A/S/Sgt. Wright reported that “I’ve passed the message on that I want to speak to Glenn 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 awhile”.²⁵⁴

²⁴⁶ P-1086, 79 and Mark Wright 02/22/2006 at 137.

²⁴⁷ Mark Wright 02/22/2006 at 137. (check page reference)

²⁴⁸ Mark Wright 02/22/2006 at 138.

²⁴⁹ P-1086 at 79.

²⁵⁰ Mark Wright 02/22/2006 at 141.

²⁵¹ Mark Wright 02/22/2006 at 141.

²⁵² Mark Wright 02/22/2006 at 141.

²⁵³ Mark Wright 02/22/2006 at 141.

²⁵⁴ P-1100.

233. At 13:20, after waiting at the fence for approximately 50 minutes, A/S/Sgt. Wright made an additional radio call to the Command Post and reported that “This isn’t working. I’m gonna give it a try at CFB Ipperwash – the main gate there. See if someone will talk to me there. Talk to someone there. This isn’t working at all down here”.²⁵⁵

234. Sgt. Seltzer testified that when he attended at the Park fence with A/S/Sgt. Wright and Les Kobayashi, he stood back about 20 feet while A/S/Sgt. Wright and Les Kobayashi were at the fence attempting to make contact with the occupiers.²⁵⁶ Sgt. Seltzer recorded in his notes that they waited in the area for approximately 45 minutes.²⁵⁷ Sgt. Seltzer also testified that they were not successful in making contact.²⁵⁸

235. Les Kobayashi testified that he did not recall attending at the Park fence with A/S/Sgt. Wright and Sgt. Seltzer although he did recall that attempts were made by A/S/Sgt. Wright on September 5 to open dialogue with the occupiers.²⁵⁹

236. Marlin Simon testified that on September 5, 1995 it seemed like the police were trying to establish contact with the occupiers.²⁶⁰ Marlin Simon observed A/S/Sgt. Wright, Sgt. Seltzer and Les Kobayashi near the Park fence but he didn’t believe that any of the occupiers spoke to them.²⁶¹

237. Nicholas Cottrelle testified that he spoke with A/S/Sgt. Wright at the Park fence.

He’d asked me who the leader was in the camp, in the Park,
and I had told him that there was no leader.

²⁵⁵ P-1101.

²⁵⁶ Brad Seltzer 06/13/2006 at 104.

²⁵⁷ P-1704 at 6.

²⁵⁸ Brad Seltzer 06/13/2006 at 104.

²⁵⁹ Les Kobayashi 10/25/2005 at 32.

²⁶⁰ Marlin Simon 09/29/2004 at 38.

²⁶¹ Marlin Simon 09/29/2004 at 38.

He said -- he kept asking if there's anybody that he could talk to? And I said, probably not, they're -- probably nobody he could really talk to.

And then he asked if I could just pass that message on to everybody, and I said, yeah.²⁶²

238. Nicholas Cottrelle agreed that the occupiers were not interested in talking to police and this was what he was trying to convey to A/S/Sgt. Wright.²⁶³

239. Nicholas Cottrelle testified that A/S/Sgt. Wright did not mention any names of any individuals that he wanted to speak to.²⁶⁴ Glenn George testified that no one told him that A/S/Sgt. Wright wanted to speak to him.²⁶⁵

240. The Commission has had the benefit of listening to A/S/Sgt. Wright's radio communications which give a contemporaneous account of the incident. A/S/Sgt. Wright reports by radio that he has "passed the message on that I want to speak to Glenn George".²⁶⁶ These radio communications are the most reliable source of information concerning the efforts made by the officers to engage in dialogue with the occupiers at the Park fence.

241. Glenn George may not have received the message that A/S/Sgt. Wright wanted to speak with him but it is clear that A/S/Sgt. Wright did make this request of at least one of the occupiers.

ii) Wright, Seltzer and Kobayashi at main camp gate

242. After failing to engage any of the occupiers in dialogue at the Park fence A/S/Sgt. Wright, Sgt. Seltzer and Les Kobayashi proceeded to the main camp gate to try to speak to someone there. At the main camp gate they waited for Bert Manning. Once Bert Manning arrived A/S/Sgt. Wright engaged in conversation with him. A/S/Sgt.

²⁶² Nicholas Cottrelle 01/18/2005 at 72.

²⁶³ Nicholas Cottrelle 01/18/2005 at 210.

²⁶⁴ Nicholas Cottrelle 01/18/2005 at 207.

²⁶⁵ Glenn George 02/02/2005 at 34.

²⁶⁶ P-1100.

Wright testified that “I told him that we would like to open a dialogue and discuss the situation”.²⁶⁷ A/S/Sgt. Wright informed Bert Manning that the occupiers were in the Park unlawfully, that there was going to be an injunction, and that the occupiers would be able to come to the injunction hearing to give their side of the story.²⁶⁸ Bert Manning told A/S/Sgt. Wright that the occupiers were not interested because it was a white man’s court.²⁶⁹

243. Bert Manning told A/S/Sgt. Wright that he should come back the following day at 15:00.²⁷⁰

244. The scribe notes indicate that A/S/Sgt. Wright reported when they met with Bert Manning “D/Sgt. A/S/Sgt. Wright made it very clear that they're trespassing... D/Sgt. Wright stated that he told Bert Manning that we aren’t going away. Manning stated he wanted the blockades removed. Wright told him definitely not”.²⁷¹

245. Sgt. Seltzer’s notes also indicate that at 13:30 he attended the main gate to CFB Ipperwash with A/S/Sgt. Wright and Les Kobayashi.²⁷² Sgt. Seltzer made detailed notes of A/S/Sgt. Wright’s conversation with Bert. Sgt. Seltzer’s notes indicate that:

1. Elders are not present for us to talk.
2. Does not know who will talk.
3. Is satisfied to have their Stoney Point back.
4. Was advised by Mark Wright that Natives are trespassing pursuant to the TPA [Trespass to Property Act], land is rightfully owned by MNR. MNR are seeking a court injunction and they have right to be represented.

²⁶⁷ Mark Wright 02/22/2006 at 151.

²⁶⁸ Mark Wright 02/22/2006 at 152-153.

²⁶⁹ Mark Wright 02/22/2006 at 153.

²⁷⁰ Mark Wright 02/22/2006 at 156.

²⁷¹ P-426 at 35.

²⁷² P-1704 at 7.

5. Natives are upset by roadblocks – not necessary, and if we choose to play that way – somebody will get hurt.²⁷³

246. Les Kobayashi did not have additional recollection of attending at the main gate beyond what is described above. However, he did agree that on September 4 and 5 the occupiers gave him the impression that they did not want to talk.²⁷⁴

247. A/S/Sgt. Wright, Sgt. Seltzer and Les Kobayashi attended at the Park and the camp in an effort to open communication with the occupiers. They all indicated that the occupiers were not interested in speaking with police.

b) Arrival of Additional Outsiders

248. Isaac Doxtator testified that he arrived at the army camp on September 5, 1995 with Al George, Gabriel Doxtator, Charles George and Larry French.²⁷⁵ Isaac Doxtator agreed that when he arrived at the army camp he did so to show his support as a warrior.²⁷⁶

249. Gabriel Doxtator testified about arriving with the same individuals Isaac Doxtator recalled, but Gabriel Doxtator believed they arrived on September 4, 1995.²⁷⁷ Charles George also testified that they arrived on either September 4 or 5, 1995.²⁷⁸ Larry French testified that they arrived on September 5, 1995.²⁷⁹

250. Charles George, Al George, Isaac Doxtator and Gabriel Doxtator were from Oneida First Nation.²⁸⁰ Larry French was from Chippewa of the Thames First Nation.²⁸¹

²⁷³ P-1704 at 7.

²⁷⁴ Les Kobayashi 10/25/2005 at 231.

²⁷⁵ Isaac Doxtator 11/25/2004 at 111.

²⁷⁶ Isaac Doxtator 11/25/2004 at 113.

²⁷⁷ Gabriel Doxtator 11/29/2004 at 159.

²⁷⁸ Charles George 02/08/2005 at 105-106.

²⁷⁹ Larry French 02/10/2005 at 20.

²⁸⁰ See Charles George 02/08/2005 at 88; Gabriel Doxtator 11/29/2004 at 134, 160-161; Isaac Doxtator 11/25/2004 at 76-77, 112.

²⁸¹ Larry French 02/10/2005 at 7.

251. Kettle Stony Point Band Council had previously asked the Oneida longhouse to withdraw their people.²⁸²

252. Gabriel Doxtator testified that they did not get approval or speak to anyone from Oneida about going to Ipperwash.²⁸³

c) Escalation of Aggressive Behaviour

253. Cst. LeBlanc was assigned to Checkpoint “D” on the evening of September 5.²⁸⁴ Cst. LeBlanc’s notes, from that evening, detail an increase of aggressive behaviour by the occupiers inside the Army Camp across from Checkpoint “D”. Cst. LeBlanc’s notes reflect, and he testified to, an increase of occupiers in the area, occupiers shining a “blinding white light” at police, and someone shouting at police.²⁸⁵

254. Cst. LeBlanc testified that the activity across from the checkpoint throughout the evening, combined with the reports they was hearing over the radio, meant that “there was obviously a concern as far as our safety as to what was happening or going to happen”.²⁸⁶

255. Marlin Simon testified that on September 5 occupiers in the Park were carrying around various objects that could be used as weapons including sticks, bats, clubs and steel and copper pipes.²⁸⁷ The occupiers were also piling up rocks and bricks from the Park store patio.²⁸⁸

256. On September 5 dumpsters were moved into position as barricades at the entrances to the Park.²⁸⁹ The occupiers were watching down the road for anyone who

²⁸² Carl Tolsma 02/22/2005 at 118; Thomas Bressette 03/02/2005 at 74-75.

²⁸³ Gabriel Doxtator 11/30/2004 at 117-118.

²⁸⁴ P-1554 at 3; Denis LeBlanc 05/23/2006 at 43.

²⁸⁵ P-1554 at 3; Denis LeBlanc 05/23/2006 at 44-45.

²⁸⁶ Denis LeBlanc 05/23/2006 at 45.

²⁸⁷ Marlin Simon 09/29/2004 at 42-43.

²⁸⁸ Marlin Simon 09/29/2004 at 43-44.

²⁸⁹ Abraham David George 10/20/2004 at 21; Roderick George 11/23/2004 at 125.

might approach them and they were conducting patrols in the Park.²⁹⁰ They had set up cans and fishing lines as alarms to let them know if anyone came into the Park.²⁹¹

257. The occupiers had also set up observation posts prior to September 6 for the purpose of watching for OPP or others who might try to challenge the occupiers' right to be in the Park.²⁹² Kevin Simon testified that when the police left the Park on September 4, the occupiers set up checkpoints.²⁹³ These observations posts and checkpoints would have been maintained by the occupiers on September 5.

d) Picnic Table Incident

i) Officers arrive at the sandy parking lot

258. On the evening of September 5, 1995 at 22:04 Lima 2²⁹⁴ asked unit 2413 to make a patrol of the corner of East Parkway and Army Camp Rd.²⁹⁵ At 22:06, unit 2412, Constables Whelan and Japp, offered to make the patrol and Lima 2 gave them permission to go ahead.²⁹⁶

259. Cst. Whelan testified that he and his partner, Cst. Japp, were the first officers to arrive on the scene at the sandy parking lot.²⁹⁷ At 22:29 unit 2412 made a request for assistance at the sandy parking lot.²⁹⁸

260. Unit 2412 reported that there were First Nations people out in the sandy parking lot and "they're throwing stuff at us".²⁹⁹ Another unit reported that "they're blocking the

²⁹⁰ Stewart George 11/02/2004 at 175; Gabriel Doxtator 11/29/2004 at 179.

²⁹¹ Clayton George 11/04/2004 at 224.

²⁹² Stacey George 11/22/2004 at 179.

²⁹³ Kevin Simon 12/01/2004 at 166; 12/02/2004 at 182-183.

²⁹⁴ LIMA 2 was the name assigned to the ERT sergeant in charge of the communications at the ERT TOC centre in the MNR parking lot. See John Carson 05/19/2005 at 87.

²⁹⁵ P-1241 at 1.

²⁹⁶ P-1241 at 2.

²⁹⁷ Neil Whelan 03/29/2006 at 147.

²⁹⁸ P-1241 at 4.

²⁹⁹ P-1241 at 4.

parking lot with some benches as well”.³⁰⁰ Unit 2412 explained that “they’re blocking the route down to the water”.³⁰¹

261. Lima 2 directed additional units to the area.³⁰² At 22:37, unit 2413 reported that “they’re throwing some significant rocks at us now at this location. Hitting cruisers, none of us have been hit yet to my knowledge”.³⁰³ Unit 2413 also reported at this time that the officers on the scene were backing up out of range of the rocks.³⁰⁴

ii) Who was present in the parking lot?

262. The police officers who were at the scene of the picnic table incident and who testified at the Inquiry are: Constables Whelan, Gransden, Dougan, Bittner, and Parks. Cst. Whelan was accompanied by Cst. Japp. Cst. Bittner was accompanied by Cst. Aitchison. Cst. Parks was accompanied by Cst. Dellemonache. Constables Hall, Horzempa, Myers and Ternovan also arrived at some stage in the events.

263. Stewart George testified that there were two or three police cruisers present during the picnic table incident.³⁰⁵

264. The occupiers who testified to being in the sandy parking during the picnic table incident are: Marlin Simon, Abraham David George, Stewart George, Elwood George, Clayton George, Isaac Doxtator, Gabriel Doxtator, Wesley George, Kevin Simon, Leland White, J.T. Cousins, Nicholas Cottrelle, Charles George, and Larry French.

265. Stewart George testified that in addition to the individuals listed above Roderick George, Dudley George and Robert Isaac were also present in the sandy parking lot during the picnic table incident.³⁰⁶

³⁰⁰ P-1241 at 4.

³⁰¹ P-1241 at 4.

³⁰² P-1241 at 4.

³⁰³ P-1241 at 5.

³⁰⁴ P-1241 at 5.

³⁰⁵ Stewart George 11/02/2004 at 109.

³⁰⁶ Stewart George 11/02/2004 at 63-64.

266. Some occupiers testified that women and children were present in the sandy parking lot, but did not name any of these women or children. There were no women or children who testified that they were in the parking lot. Some of those present were youths.

iii) Purpose, location, and number of picnic tables

267. It is clear that the purpose of the picnic tables in the sandy parking lot was to create a barricade. Many picnic tables were brought out to the sandy parking lot for this purpose.

268. The occupiers' accounts surrounding the purpose, location and number of picnic tables are largely consistent with the police officers' notes and testimony regarding the incident.

269. Cst. Whelan, who was in the first police cruiser on the scene, recorded in his notes that the occupiers were using picnic tables to "build barricades across the roadway".³⁰⁷

270. Cst. Gransden testified that the tables were "right across the entranceway to the sandy parking lot" and that the tables were stacked "at least two high and there was a section of guardrail that was amongst the picnic tables as well".³⁰⁸ The tables were in "a bit of a haphazard pile"³⁰⁹ and were "blocking the entranceway to the parking lot".³¹⁰

271. Cst. Dougan testified that the tables were across the beach access and were "blocking anyone from accessing the beach".³¹¹

³⁰⁷ P-1237 at 8.

³⁰⁸ Mark Gransden 03/30/2006 at 105.

³⁰⁹ Mark Gransden 03/30/2006 at 259.

³¹⁰ Mark Gransden 03/30/2006 at 260.

³¹¹ Mike Dougan 04/03/2006 at 96.

272. Cst. Bittner observed picnic tables barricading the entrance to the sandy parking lot. Cst. Bittner could not recall how many picnic tables were in the area but recalled that there were some tables that standing on two legs stacked against each other.³¹²

273. Several occupiers testified to the purpose of the picnic tables in the sandy parking lot.

274. Kevin Simon's understanding was that the occupiers had been "planning on blocking that off, to keep people from going on to the beach".³¹³ Leland White recalled making a "blockade" with picnic tables.³¹⁴ Abraham David George, also known as David George, testified that the picnic tables were moved out into the sandy parking lot to stop people from coming close and to shut the area down.³¹⁵

275. Clayton George agreed that there were more than a dozen picnic tables in the sandy parking lot during the picnic table incident.³¹⁶ Gabriel Doxtator testified that picnic tables were "piled on top of one another, like in a row... they were just stacked on one another".³¹⁷

276. During his testimony J.T. Cousins marked a map to indicate that the picnic tables were in a line across the parking lot area from the Park fence to the north-west of the first driveway.³¹⁸ Marlin Simon also testified that the picnic tables were across the access to the parking lot.³¹⁹

277. The purpose of the picnic table barricade extended beyond limiting access to the beach, the Park, or the sandy parking lot itself. A picnic table barricade in the sandy parking lot could also impede access to the cottage closest to the Park as the driveway

³¹² Bill Bittner 05/17/2006 at 175.

³¹³ Kevin Simon 12/01/2004 at 182.

³¹⁴ Leland White 01/10/2005 at 32-33.

³¹⁵ Abraham David George 10/20/2004 at 13.

³¹⁶ Clayton George 11/08/2004 at 70.

³¹⁷ Gabriel Doxtator 11/29/2004 at 194.

³¹⁸ P-118.

³¹⁹ Marlin Simon 10/18/2004 at 34.

to this cottage comes off of the sandy parking lot entrance.³²⁰ Clayton George agreed that the occupiers felt that cottage property rightfully belonged to the Stoney Point people.³²¹

278. Clayton George agreed that the purpose of putting the picnic tables in the sandy parking lot was: i) because the sandy parking lot belonged to the Stoney Point people; ii) it would prevent non-occupiers from using that area to gain access to the Park; and iii) it allowed the occupiers to control access along Army Camp Road and East Parkway Drive.³²²

279. Marlin Simon testified that “we moved into the Park and there was nothing – the police never did nothing about that and just carrying on all day I guess and they never did nothing about anything, so... we didn’t figure they would have responded to that either”.³²³

iv) Rocks thrown

280. Occupiers threw rocks at police officers during the picnic table incident. The occupiers and police accounts are largely consistent in this regard. The only discrepancy in the evidence surrounding this issue regards when the rocks began to be thrown.

281. Radio communications indicate that when officers first arrived on the scene there were rocks being thrown at them by the occupiers. Cst. Whelan, who was in the first cruiser to arrive on the scene, testified that “when we first got down there to investigate what was going on the rocks started to come in at that point”.³²⁴

³²⁰ Exhibit number for Stan Thompson map???

³²¹ Clayton George 11/08/2004 at 77.

³²² Clayton George 11/08/2004 at 76-77.

³²³ Marlin Simon 10/18/2004 at 49.

³²⁴ Neil Whelan 03/29/2006 at 147.

282. Cst. Bittner testified that he and his partner, Cst. Aitchison, were the last officers to arrive at the picnic table incident.³²⁵ Cst. Bittner testified that when he arrived Cst. Gransden was already in the sandy parking lot speaking with the occupiers. While Cst. Gransden was at the fence line, Cst. Bittner observed rocks being thrown. As a result of the rocks being thrown Cst. Bittner returned to his police cruiser. On the way back to his cruiser he was hit in the back of the leg with a rock.³²⁶

283. Cst. Whelan and Japp's cruiser, vehicle 1-563, sustained damage to the hood from a picnic table thrown on it and sustained damage to the windshield and the rest of the unit from rocks.³²⁷

284. Cst. Bittner and Aitchison's cruiser, vehicle 2-513, sustained damage from the rocks.³²⁸ Cst. Bittner testified that once he returned to his cruiser he was seated in the passenger side of the vehicle when a rock struck the windshield causing the window to shatter and shards of glass came onto his lap.³²⁹

285. Cst. Hall and Horzempa's cruiser, vehicle 2-390, sustained damage to the windshield from the rocks.³³⁰ Cst. Myers and Ternovan's cruiser, vehicle 1-363, also sustained damage to the hood from the rocks thrown by the occupiers.³³¹

286. Several occupiers testified that they either engaged in or observed rocks thrown at police. Marlin Simon, Clayton George, Welsey George and Stewart George gave detailed testimony in this regard.

287. Stewart George testified that there were about a dozen people throwing rocks at the police.³³²

³²⁵ Bill Bittner 05/17/2006 at 173.

³²⁶ Bill Bittner 05/17/2006 at 177-178.

³²⁷ P-1242 at 4.

³²⁸ 2004344.

³²⁹ Bill Bittner 05/17/2006 at 178.

³³⁰ 2004366.

³³¹ 2004345.

288. David George testified that he threw a few rocks at the police cruisers.³³³ Clayton George testified that he threw rocks “Not at the cruisers. At the police themselves”.³³⁴ Wesley George testified that a rock he threw hit a cruiser.³³⁵

289. Marlin Simon testified that rocks were thrown at police by the occupiers and that he observed these rocks hit the police cruisers.³³⁶ Marlin Simon testified that “[w]e were throwing rocks and hitting them with rocks and pelting them. We were stoning them, I guess”.³³⁷ Marlin Simon testified that “we were trying to throw rocks to get the police to take off and leave us alone”.³³⁸ Marlin Simon agreed in testimony that the occupiers were throwing larger rocks and throwing them hard and that by throwing these rocks they could hurt people.³³⁹

290. Several occupiers testified that rocks were thrown at the police only after a cruiser was used to push the picnic tables or once the police were retreating.

291. Stewart George testified that he started to throw rocks at police after a cruiser hit a table he was carrying.³⁴⁰ David George testified that he started throwing rocks after he threw a picnic table onto a police cruiser.³⁴¹

292. Elwood George testified that “I don’t know if – really recall if there was a – a great deal of stone throwing before that, but I know there was a great deal of stone throwing after the ramming of the picnic tables, yes”.³⁴²

293. Given that the occupiers concede that they threw rocks at police, the evidence of the damage to the cruisers, and the accounts of officers on the scene, it is reasonable

³³² Stewart George 11/02/2004 at 180.

³³³ Abraham David George 10/20/2004 at 16.

³³⁴ Clayton George 11/08/2004 at 74.

³³⁵ Wesley George 11/30/2004 at 201.

³³⁶ Marlin Simon 09/29/2004 at 51-52; 10/18/2004 at 40.

³³⁷ Marlin Simon 10/18/2004 at 40.

³³⁸ Marlin Simon 10/18/2004 at 44.

³³⁹ Marlin Simon 10/18/2004 at 44.

³⁴⁰ Stewart George 11/02/2004 at 62.

³⁴¹ Abraham David George 10/20/2004 at 16.

³⁴² Elwood George 11/03/2004 at 174.

to conclude that the contemporaneous account presented by the radio transcripts provide a reliable account of when the occupiers started throwing rocks: when officers first arrived on the scene.

v) Allegation of rocks thrown by police officers

294. Charles George and Isaac Doxtator alleged that during the picnic table incident police officers threw rocks.³⁴³ This allegation is not credible. The majority of occupiers did not allege that police officers threw rocks and Marlin Simon agreed in testimony that the police did not throw anything at the occupiers “outside from pepper spray”.³⁴⁴

295. It would be completely against police training for officers to engage in rock throwing in these circumstances. Furthermore, it is implausible that when officers had tools such as pepper spray available to them that they would begin throwing rocks at the occupiers. Pepper spray was used during this incident when a police officer was assaulted.

vi) Tables pushed by cruiser

296. Csts. Whelan and Japp were directed to patrol the intersection of East Parkway and Army Camp Rd. They arrived at a chaotic scene of picnic tables stacked as a barricade, with at least 14 occupiers in the area, and some of whom were throwing rocks at police.

297. Cst. Whelan’s cruiser was equipped with push bars and he was experienced in using these push bars.³⁴⁵ Cst. Whelan testified that he “edged up to these – this pile of table (sic) very, very slowly until the push bars were right up against the solid part of the barricade. And at that point I pushed very slowly until we moved the tables around so we could get in behind the tables... I just sort of pushed them to one side, so there was

³⁴³ Charles George 02/08/2005 at 130, 237-238; Isaac Doxtator 11/25/2004 at 138-139.

³⁴⁴ Marlin Simon 10/18/2004 at 43.

³⁴⁵ Neil Whelan 03/29/2006 at 146.

an opening so we could get through”.³⁴⁶ Cst. Whelan testified that there was no one sitting on the tables when he pushed them with his cruiser.³⁴⁷

298. Cst. Gransden testified that he and his partner, Cst. Dougan, responded to the radio call for assistance at the sandy parking lot. As they arrived at the sandy parking lot and approached the picnic table barricade “the front push bumper area of Cst. Whelan’s car was resting against one (1) of the picnic tables that was stacked in the pile... as we got into that position other officers arrived as well and the cruiser pushed the picnic tables out of the way”.³⁴⁸ Cst. Gransden explained that the cruiser advanced and “pushed the picnic tables back, not even a car’s length, to the point where there was an opening in the – the barricade”.³⁴⁹

299. Cst. Gransden testified that once the cruiser was used to push the tables and open a gap the cruiser was backed out and Cst. Gransden and other officers entered the sandy parking lot on foot.³⁵⁰ Cst. Gransden testified that he did not see anyone sitting on the picnic tables or standing between the tables and the cruiser,³⁵¹ nor did he see anyone standing around the tables.³⁵²

300. The occupiers accounts regarding the cruiser pushing a table varied considerably. Some occupiers testified that there were people sitting on the table, some occupiers testifying that the table was being carried at the time and that no one sitting on it.

301. The accounts of some occupiers that there were people sitting on the table are inconsistent with the accounts of other occupiers that the table was being carried, and vice versa. Furthermore within each of these two versions the accounts are not consistent and contain implausible descriptions of the events.

³⁴⁶ Neil Whelan 03/29/2006 at 146.

³⁴⁷ Neil Whelan 03/29/2006 at 156.

³⁴⁸ Mark Gransden 03/30/2006 at 103-104.

³⁴⁹ Mark Gransden 03/30/2006 at 104.

³⁵⁰ Mark Gransden 03/30/2006 at 105.

³⁵¹ Mark Gransden 03/30/2006 at 117.

³⁵² Mark Gransden 03/30/2006 at 359.

302. It is also difficult to reconcile the occupiers accounts of people being involved with a picnic table, either sitting on it or carrying it, when it was pushed by a cruiser with the fact that none of the occupiers testified to receiving any injuries during the picnic table incident. Marlin Simon testified that he thought somebody got a twisted knee or twisted ankle or something but he didn't know who this person was.³⁵³ Stewart George testified that Nicholas Cottrelle got hit in the knee.³⁵⁴ Nicholas Cottrelle did not testify that he was hit during this incident.³⁵⁵ If individuals had been involved with this table as described by some of the occupiers, it seems certain that there would have been injuries.

303. David George testified that about four cars pulled up and proceeded towards the tables: "people were getting pushed by the cars and picnic tables were getting pushed".³⁵⁶ David George gave an implausible account that people were pinned between the picnic tables and the cruisers and that the cruisers just kept pushing.³⁵⁷

304. Despite this dramatically implausible account of several cars pushing tables and people David George also testified that the cruiser which moved the picnic tables was moving "probably no fast than – probably walking speed".³⁵⁸ The cruisers were moving "fairly slowly, like you could get out of the way".³⁵⁹

305. Clayton George testified that he saw one police cruiser slowly push a picnic table.³⁶⁰ Kevin Simon testified that the cruiser was moving slowly and "inched his way up to where the picnic tables were and... [gave] a shot of gas and push that table".³⁶¹

³⁵³ Marlin Simon 10/18/2004 at 38.

³⁵⁴ Stewart George 11/02/2004 at 62.

³⁵⁵ Nicholas Cottrelle 01/18/2005 at 80.

³⁵⁶ Abraham David George 10/20/2004 at 14.

³⁵⁷ Abraham David George 10/20/2004 at 15.

³⁵⁸ Abraham David George 10/20/2004 at 15.

³⁵⁹ Abraham David George 10/20/2004 at 15.

³⁶⁰ Clayton George 11/04/2004 at 230.

³⁶¹ Kevin Simon 12/01/2004 at 172.

vii) People sitting on the table

306. As detailed above, it is clear from both the police and occupiers testimony that picnic tables were stacked or piled against one another to form a barricade. It would be extremely unlikely anyone would sit on tables piled as a barricade.

307. Isaac Doxtator testified that he and J.T. Cousins were sitting on the table and that more people jumped on the table after the cruiser started to push it. However J.T. Cousins said that he was standing on the table and that he jumped off it and ran back into the Park when the cruiser pushed the table.

308. Isaac Doxtator testified that on the evening of September 5 police cars pulled up to the sandy parking lot, “an officer got out and told us we were trespassing and asked us to leave or... Nobody moved so he got back in his car and a vehicle came down – driving at us”.³⁶² Isaac Doxtator testified that he and J.T. Cousins were sitting on the picnic table when it was hit by a cruiser and “I told the guys jump on here. So we’re trying to hold the table down. But when the car was spinning the front end went underneath the part where you sit and it went up and so we just smashed the windshield with the table”.³⁶³

309. Isaac Doxtator also testified that the table was pushed 20 feet by the police cruiser³⁶⁴ and that there was “a whole line of (cruisers) around the bend - around the corner there... I couldn’t count them, there was too many”.³⁶⁵

310. J.T. Cousins testified that a cruiser hit a table that he was standing on. He testified that “when the picnic tables got rammed, I jumped off one (1) of those picnic tables and took off back towards the – inside the Park because they were just smashing into them and using all force with their cruisers”.³⁶⁶

³⁶² Isaac Doxtator 11/25/2004 at 130.

³⁶³ Isaac Doxtator 11/25/2004 at 130-131.

³⁶⁴ Isaac Doxtator 11/25/2004 at 134.

³⁶⁵ Isaac Doxtator 11/25/2004 at 137.

³⁶⁶ J.T. Cousins 01/12/2005 at 32.

311. Larry French also testified that a cruiser pushed a picnic table while people were sitting on it. He testified that he was standing at the end with his foot on the bench and that everyone jumped up and moved off the picnic table.³⁶⁷

312. Gabriel Doxtator testified that Isaac Doxtator and J.T. Cousins were sitting on the picnic table when the police cruiser made contact with the table.³⁶⁸

313. Marlin Simon testified that when the police cruiser “started ramming”³⁶⁹ the picnic tables there were people sitting on the table and they just kind of “got bumped around – moved around”.³⁷⁰ Marlin Simon testified that in response to this the occupiers went over to help the people who were on the picnic tables and “people started pushing back towards the police car and ended up throwing a picnic table right on top of the police car”.³⁷¹

viii) People carrying the table

314. In contrast to these accounts several occupiers testified that a cruiser hit a picnic table that was being carried and that there was no one sitting on this table at the time.

315. Elwood George testified that he did not have much recollection of the incident in the sandy parking lot and that the only significant thing he could recall was a cruiser hitting a table that was being carried by Stewart George and Nicholas Cottrelle.³⁷² Elwood George agreed in testimony that there was no one sitting on the table.³⁷³

316. Stewart George testified that he and Nicholas Cottrelle were carrying a picnic table into the sandy parking lot when a police cruiser hit the table that they were carrying. Stewart George testified that he got out of the way but that the table hit

³⁶⁷ Larry French 02/10/2005 at 31.

³⁶⁸ Gabriel Doxtator 11/29/2004 at 194.

³⁶⁹ Marlin Simon 09/29/2004 at 49.

³⁷⁰ Marlin Simon 09/29/2004 at 50.

³⁷¹ Marlin Simon 09/29/2004 at 50-51.

³⁷² Elwood George 11/03/2004 at 71-72.

³⁷³ Elwood George 11/03/2004 at 174.

Nicholas Cottrelle in the knee area.³⁷⁴ Nicholas Cottrelle testified that he was moving a table with Stewart George and that he jumped out of the way when the cruiser hit the table.³⁷⁵

317. Stewart George testified that there was no one sitting on the picnic table when it was hit by the cruiser because he and Nicholas Cottrelle were carrying it at the time.³⁷⁶

318. Leland White also testified that a cruiser hit a table while two people were carrying it.³⁷⁷

ix) Use of the cruiser was appropriate

319. Although a bit unorthodox, the use of a cruiser to move the tables in a slow and cautious manner, in the circumstances, to allow officers to gain access to the sandy parking lot, was an appropriate response to the situation that confronted the officers. Insp. Carson testified that there may be times when moving a picnic table with a cruiser would be the “only means to do it or the most expeditious way of doing it”.³⁷⁸ The circumstances present in the sandy parking lot when Cst. Whelan and Japp arrived presented such a situation. Using a cruiser to move the tables ensured officer safety and offered some protection to the officers from the rocks that were being thrown at them. Using the cruiser in this manner did not present a risk to the occupiers and no harm came to any of the occupiers as a result of this maneuver.

320. The fact that a cruiser had been used to push the picnic tables was reported to Sgt. Graham, the supervisor who arrived after the incident. Sgt. Graham reported this

³⁷⁴ Stewart George 11/02/2004 at 62.

³⁷⁵ Nicholas Cottrelle 01/18/2005 at 80.

³⁷⁶ Stewart George 11/02/2004 at 178-179

³⁷⁷ Leland White 01/10/2005 at 34.

³⁷⁸ John Carson 06/01/2005 at 196.

information, by phone, to Cst. Jacklin at the Command Post.³⁷⁹ Cst. Whelan did not receive any criticism from his supervisors for using a cruiser to move a picnic table.³⁸⁰

x) Table thrown onto cruiser

321. Cst. Whelan's notes indicate that "two natives threw a table onto the front of the cruiser".³⁸¹ Cst. Whelan had difficulty recollecting the specifics of this incident regarding how many people were involving in throwing the table onto the cruiser and how specifically this was done.³⁸² A damage report filed by Cst. Japp also states that "two natives threw table onto hood of car".³⁸³

322. Several occupiers testified that they assisted in throwing a picnic table onto a cruiser. There is no doubt that at least one picnic table was thrown onto Cst. Whelan and Cst. Japp's cruiser by more than one individual.

323. Marlin Simon testified that he was one of the individuals who threw the picnic table and that the picnic table ended up on the hood of the cruiser.³⁸⁴

324. David George testified that he assisted in throwing two picnic tables onto a cruiser.³⁸⁵ "We just flipped them up on top of the car because some of the picnic tables, they rode up on the – the bumpers and stuff, so it was kind of easy to just pick the one (1) end up and flip it over – roll it on top of the car."³⁸⁶

325. Isaac Doxtator testified that he flipped a picnic table onto the hood of the police cruiser and smashed the windshield.³⁸⁷

³⁷⁹ Robert Graham 04/21/2006 at 35-36, 46-47.

³⁸⁰ Anthony Park 02/09/2006 at 286.

³⁸¹ P-1237 at 8.

³⁸² Neil Whelan 03/29/2006 at 144-146, 195-196.

³⁸³ P-1242:

³⁸⁴ Marlin Simon 09/29/2004 at 51.

³⁸⁵ Abraham David George 10/20/2004 at 15.

³⁸⁶ Abraham David George 10/20/2004 at 16.

³⁸⁷ Isaac Doxtator 11/25/2004 at 131, 136.

326. Gabriel Doxtator testified that he and other occupiers threw a picnic table onto the windshield of the police cruiser.³⁸⁸

327. Larry French also testified that he assisted in throwing a picnic table onto a cruiser.³⁸⁹

xi) Occupiers told they were trespassing and to return to the Park

328. Police officers and occupiers testified that an officer informed the occupiers that they were trespassing in the sandy parking lot and asked them to return to the Park.

329. Cst. Gransden testified that once the cruiser was used to push the tables and open a gap the cruiser was backed out, and Cst. Gransden and other officers entered the sandy parking lot on foot.³⁹⁰

330. Cst. Gransden gave a detailed account of his conversation with the occupiers:

There was actually a steel farm fence that separates the Provincial Park from the sandy parking lot and I was indicating that that's the boundary of the Park, that that's the fence line, that this isn't part of the Park, that that, in fact, is the Park... I also cautioned them that they were committing the act of mischief under the Criminal Code by barricading the parking lot, And one of the First Nations persons that were there questioned me about why that was – why that would be considered a mischief under the Code.

So I – as we were walking towards their fence line I was discussing with them and explaining how that fell into the definition of mischief under the Criminal Code, and I would continue that discussion once they were on the other side of the fence.

All the officers just walked towards the fence and the First Nations just proceeded ahead of us and filtered back into the Park.³⁹¹

³⁸⁸ Garbiel Doxtator 11/29/2004 at 195.

³⁸⁹ Larry French 02/10/2005 at 31.

³⁹⁰ Mark Gransden 03/30/2006 at 105.

331. When Cst. Bittner arrived at the scene he observed Cst. Gransden in the sandy parking lot speaking to the First Nations people in the parking lot. Cst. Bittner heard Cst. Gransden “advise the people to leave the area or be charged with mischief”.³⁹²

332. Marlin Simon testified that “the police wanted us to go back into the Park and told us to leave – leave the parking lot area...”³⁹³

333. Larry French testified that “the OPP approached us and I don’t know they – I don’t know what they said, that we were – if we were trespassing or what the deal was, but they wanted us moved”.³⁹⁴

xii) Use of pepper spray

334. Cst. Gransden testified while he was trying to explain the law to the occupiers and that it was the OPP’s position for the occupiers to stay in the Park he was having a discussion in particular with one individual. During the course of this conversation “over his left shoulder, someone in the shadows or in the – in the – someone in the darkness behind him, threw a handful of sand and gravel directly at me and struck me in the face and eyes”.³⁹⁵ Cst. Gransden discharged his pepper spray in the location of the person who had assaulted him.³⁹⁶

335. Marlin Simon testified “[w]ell, I threw sand at them first, and then they – they responded with mace, so then we started throwing peb – or rocks”.³⁹⁷ Marlin Simon gave varying explanations for his conduct.

336. As one explanation, Marlin Simon stated “I was still charged up from them ramming us with their cruisers so I was – well they started it, the way I see it”.³⁹⁸

³⁹¹ Mark Gransden 03/30/2006 at 106.

³⁹² Bill Bittner 05/17/2006 at 176.

³⁹³ Marlin Simon 09/29/2004 at 49.

³⁹⁴ Larry French 02/10/2005 at 29.

³⁹⁵ Mark Gransden 03/30/2006 at 107.

³⁹⁶ Mark Gransden 03/30/2006 at 107.

³⁹⁷ Marlin Simon 10/18/2004 at 155.

337. Marlin Simon also testified that he threw sand in the officer's face after the officer said "welcome to Canada" and "who's going to be the first one to come out" and after the officer had singled out Dudley George.³⁹⁹ These allegations are dealt with in detail below.

338. Cst. Gransden testified that the use of pepper spray allowed the officers to disengage. "The First Nations on their side of the fence, backed away from the fence, and it gave me a chance to back away from the fence as well, and clean the sand and get my vision back."⁴⁰⁰

339. Cst. Gransden believed he had justifiable grounds for the use of pepper spray. He was assaulted by an individual who threw sand and gravel in his face and he had the authority to dispense pepper spray in order to defend himself or to prevent a further assault.⁴⁰¹

340. Cst. Gransden filed a use of force report related to the dispensing of pepper spray.⁴⁰² There were no concerns expressed to him regarding his use of pepper spray or any of his actions during this incident.⁴⁰³

xiii) Police retreat and leave area

341. Cst. Gransden testified that as the police retreated from the fence line they moved to the area where the picnic tables were piled and dismantled the barricade by hand. As the officers were dismantling the barricade they were "pelted with rocks and bottles".⁴⁰⁴ Cst. Gransden testified that "at that point, for our safety, we left the picnic

³⁹⁸ Marlin Simon 10/18/2004 at 157.

³⁹⁹ Marlin Simon 10/18/2004 at 160.

⁴⁰⁰ Mark Gransden 03/30/2006 at 108.

⁴⁰¹ Mark Gransden 03/30/2006 at 111.

⁴⁰² Mark Gransden 03/30/2006 at 112.

⁴⁰³ Mark Gransden 03/30/2006 at 112.

⁴⁰⁴ Mark Gransden 03/30/2006 at 109.

tables and then we further retreated out of that area, backed out of there back towards the cruisers".⁴⁰⁵

342. When Cst. Gransden returned to his cruiser the cruiser was hit with a rock "about the size of a softball, to the windshield shattering the windshield of the car".⁴⁰⁶ Cst. Gransden testified that this caused him concern for officer safety because of the size of the rock and strength with which it was thrown.⁴⁰⁷ At this point the officers decided to leave the area immediately.⁴⁰⁸

343. Marlin Simon testified that in response to the occupiers throwing rocks the police pulled back a bit up East Parkway and the occupiers returned to the sandy parking lot.⁴⁰⁹

344. Sgt. Graham arrived in the vicinity of the corner near the sandy parking lot, at the conclusion of the incident, and instructed the officers to go back to their original locations.⁴¹⁰

xiv) More rocks thrown later in evening

345. At 00:53 an officer reported that he had driven by the scene of the altercation at the sandy parking lot, he saw 25 males, a fire and the driveway was blocked with picnic tables. He also reported that they were hit by rocks.⁴¹¹

xv) Threat to Dudley George

346. There were varying accounts given by the occupiers concerning an alleged threat made by police to Dudley George on September 5 or 6, 1995.

⁴⁰⁵ Mark Gransden 03/30/2006 at 109.

⁴⁰⁶ Mark Gransden 03/30/2006 at 110.

⁴⁰⁷ Mark Gransden 03/30/2006 at 110.

⁴⁰⁸ Mark Gransden 03/30/2006 at 110.

⁴⁰⁹ Marlin Simon 09/29/2004 at 52-53.

⁴¹⁰ Robert Graham 04/21/2006 at 34.

⁴¹¹ John Carson 05/18/2005 at 94-96.

xvi) Allegations of a threat to Dudley George during the picnic table incident

347. Some of the occupiers allege that during the picnic table incident a police officer threatened Dudley George. These allegations are fraught with implausible accounts of the incident and should be rejected.

348. Isaac Doxtator testified that during the picnic table incident one officer said that he would fight with anyone and “starting take off his police clothes or whatever he had on. And he started to, you know, like he was waiting for somebody to come and challenge him or whatever”.⁴¹² Isaac Doxtator alleged that one of the officers was yelling at Dudley George and said “something about kicking his ass or something, he’d be first”.⁴¹³

349. Isaac Doxtator also testified that he and J.T. Cousins were initially sitting on the picnic table but that once the cruiser made contact other occupiers got on the table,⁴¹⁴ that these people held the table down,⁴¹⁵ and that the picnic table was pushed 20 feet⁴¹⁶ – presumably while these people were sitting on it and holding it down – but that no one was hit by the car.⁴¹⁷ This is inconsistent with J.T. Cousins account that he was standing on the table and jumped off and ran back into the Park when the table was hit by the cruiser.⁴¹⁸

350. Isaac Doxtator testified that occupiers only threw rocks during the incident at police after the police threw rocks and sticks at the occupiers⁴¹⁹ and that the individual who threw sand at police only did so after an officer was trying to hit him “with this big stick”.⁴²⁰ As detailed above Charles George and Isaac Doxtator are the only two individuals who alleged that police threw rocks at the occupiers and these allegations

⁴¹² Isaac Doxtator 11/25/2004 at 143.

⁴¹³ Isaac Doxtator 11/25/2004 at 144.

⁴¹⁴ Isaac Doxtator 11/25/2004 at 130.

⁴¹⁵ Isaac Doxtator 11/25/2004 at 135.

⁴¹⁶ Isaac Doxtator 11/25/2004 at 134.

⁴¹⁷ Isaac Doxtator 11/25/2004 at 133.

⁴¹⁸ J.T. Cousins 01/12/2005 at 32.

⁴¹⁹ Isaac Doxtator 11/25/2004 at 145-146.

⁴²⁰ Isaac Doxtator 11/25/2004 at 147.

are not credible. In his various explanations for why he threw sand at a police officer Marlin Simon did not mention anything about a police officer trying to hit him.

351. Isaac Doxtator also testified that the police at the picnic table incident “were carrying the telescopic whips with a the ball on the end... and they had different sticks with – like a cattle prod with things sticking out on the side, turned the handle”.⁴²¹ Police were not issued collapsible ASP batons until the following day. In any event, ASP batons do not resemble telescopic whips with balls on the end. No one else testified about telescopic whips or sticks that were like cattle prods and there are no items resembling this description that would have been issued to police officers who were present at the picnic table incident that evening.

352. In his statement to the SIU on October 12, 1995, Isaac Doxtator described the picnic table incident.⁴²² There is no mention of a threat to Dudley George during the picnic table incident in this statement. In the SIU statement Isaac Doxtator refers to a threat made to Dudley George on the morning of September 6, 1995 when Dudley was at his trailer near Highway 21. Isaac Doxtator stated that he did not witness this alleged incident but rather that he was told about it by other occupiers.⁴²³

353. Isaac Doxtator’s testimony is inconsistent with his statement given to the SIU in October 1995. His account is inconsistent with the majority of the accounts of both the occupiers and the police and is also fraught with implausible descriptions of the incident.

354. Nicholas Cottrelle testified that during the same time frame as the picnic table incident approximately eight officers walked up to the fence line, singled Dudley George out, and “told him that he was going to be the first one to go”.⁴²⁴ Nicholas Cottrelle also testified that the picnic tables were pushed 20 – 30 feet up to the fence line,⁴²⁵ that

⁴²¹ Isaac Doxtator 11/25/2004 at 148.

⁴²² 1004508.

⁴²³ 1004508 at 6-7; Isaac Doxtator 11/29/2004 at 88.

⁴²⁴ Nicholas Cottrelle 01/18/2005 at 81.

⁴²⁵ Nicholas Cottrelle 01/18/2005 at 79, 266.

three to four cruisers were used to push picnic tables,⁴²⁶ and that he did not see anyone lift a table onto the hood of a cruiser.⁴²⁷

355. Nicholas Cottrelle testified that he was sure the officer who threatened Dudley George was A/Sgt. Ken Deane.⁴²⁸ Insp. Carson testified that the TRU team was definitely not deployed on the night of September 5, 1995.⁴²⁹ Insp. Carson testified that:

The deployment of TRU is a major step which requires at least an inspector's approval. For a TRU team tasking, it would have had to been either Dale Linton or myself who would have paged them out or called Skinner to have them come out for a particular task.

It would be unreasonable to believe that Dale Linton would have gone off duty and not inform me that he called the TRU team out.⁴³⁰

356. A/S/Sgt. Skinner testified that no TRU members were deployed to Ipperwash Park on September 5, 1995. Any request for a TRU deployment would have gone through him.⁴³¹

357. There is also no indication in the scribe notes that the TRU team was deployed on the night of September 5, 1995.

358. All of Nicholas Cottrelle's allegations are completely inconsistent with the majority of the accounts of both the occupiers and the police that the picnic tables were moved a few feet, that only one cruiser pushed the tables, and that a picnic table was thrown by the occupiers onto the hood of the cruiser. Furthermore, Nicholas Cottrelle's account contains internal inconsistencies. He alleges that an officer came up to the fence to threaten Dudley George but it is unclear how this would be possible if there were picnic tables lined up along the fence after being pushed there by a cruiser.

⁴²⁶ Nicholas Cottrelle 01/18/2005 at 266.

⁴²⁷ Nicholas Cottrelle 01/18/2005 at 266.

⁴²⁸ Nicholas Cottrelle 01/18/2005 at 183.

⁴²⁹ John Carson 05/18/2005 at 92.

⁴³⁰ John Carson 05/18/2005 at 92.

⁴³¹ Kent Skinner 04/19/2006 at 78-79

359. Marlin Simon testified during the picnic table incident “one cop was doing all the talking – he was doing a lot of talking and he’s kind of asking us which one of us guys wanted to be the first. Who was going to be the first one out, get dragged out, who was going to be the first one, we’re going to take care of you guys. Who’s going to be the first one and then he looks at Dudley and Dudley, you’re going to the first one”.⁴³² Marlin Simon testified that these events led him to throw sand in the officer’s face.

360. Marlin Simon testified that the officer who made these comments was “playing with his big baton or ASP baton or whatever, telescopic baton”,⁴³³ and that this officer was wearing Sergeant stripes on his uniform.⁴³⁴ Marlin Simon stated that of the police at this incident “everybody pretty much had one in their hand and some of them had them extended out, some of them – some of them like a – made a motion like that and then it just come popping out. And he says, yeah, we want to try these out”.⁴³⁵

361. There were no police officers with the rank of Sergeant present at the picnic table incident.⁴³⁶ As discussed below, ASP batons were not issued to officers until September 6, 1995.

362. Wesley George testified that during the picnic table incident an officer who was standing near the fence told Dudley George that he was going to be the first.⁴³⁷

363. All of the officers who were present at the picnic table incident testified that they did not say, nor did they hear any other officer say, “welcome to Canada” or “you’ll be first”.⁴³⁸ Commission Counsel put David George’s testimony of the alleged comments

⁴³² Marlin Simon 09/29//2004 at 59.

⁴³³ Marlin Simon 09/29/2004 at 58.

⁴³⁴ Marlin Simon 09/29/2004 at 61.

⁴³⁵ Marlin Simon 09/30/2004 at 159-160.

⁴³⁶ See above list of officers who were at the picnic table incident.

⁴³⁷ Wesley George 11/30/2004 at 197.

⁴³⁸ See Larry Parks 03/29/2006 at 59; Neil Whelan 03/29/2006 at 157; Mark Gransden 03/30/2006 at 113; Mike Dougan 04/03/2006 at 101.

to Cst. Gransden. Cst. Gransden testified that “I didn’t hear any of that... it didn’t happen”.⁴³⁹

364. Gabriel Doxtator testified that there was no verbal exchange between the occupiers and police during the picnic table incident.⁴⁴⁰

365. Clayton George testified that he could not hear what the police were saying during this incident because the occupiers were yelling at police.⁴⁴¹ Clayton George was yelling phrases such as “go back and kiss the Queen’s ass” and “you fucking pigs”.⁴⁴²

366. Nicholas Cottrelle’s, Isaac Doxtator’s and Marlin Simon’s allegations of a threat made by police to Dudley George are not accurate.

xvii) Allegations of threat to Dudley George later in the evening

367. Some of the occupiers alleged that later in the evening of September 5, 1995 a police unit returned to the area.

368. Kevin Simon alleged that during the night of September 5:

“later on, after dark that night, they’d come up there with – I guess they were riot squad, kind of management unit or whatever – the guys with the shields and the clubs... the day before Dudley had been shot they had come up there and marched in the same fashion and they came into the parking lot, beat their clubs a bit, spread out. And then the one (1) person that was – that was doing a lot of the talking, he’d been saying some stuff about, Welcome to Canada and all this sort of stuff, but when he spotted Dudley, he’d

⁴³⁹ Mark Gransden 03/30/2006 at 116.

⁴⁴⁰ Gabriel Doxtator 11/29/2004 at 196-197.

⁴⁴¹ Clayton George 11/04/2004 at 227-228.

⁴⁴² Clayton George 11/08/2004 at 119.

recognized Dudley and pointed directly at him and said, Hey, Dudley, you're going to be first. Pointed at him.⁴⁴³

369. Kevin Simon testified that there were 20 – 30 officers with shields and batons that approached the sandy parking lot on September 5.⁴⁴⁴

370. Kevin Simon also testified that officers at the picnic table incident had telescopic batons. ASP batons, which are telescopic, were not issued until September 6, 1995.⁴⁴⁵ Officers present at the picnic table incident had wooden batons on their duty belts.

371. David George testified that on the evening of September 5 he remained in the sandy parking lot area for a couple of hours after the picnic table incident.⁴⁴⁶ While he was in the area the police did not return to the sandy parking lot.⁴⁴⁷

372. Clayton George testified that after the picnic table incident on September 5 the police did not return to the sandy parking lot that night.⁴⁴⁸

373. There is nothing in the police communications that would indicate there was a deployment or any officers in the area of the sandy parking lot later in the evening, other than a 00:53 report of a cruiser that had driven by and had rocks thrown at it.

374. Cst. Gransden, who was at Checkpoint A, testified that he did not see any deployment of officers go past his location at any point during the evening of September 5.⁴⁴⁹

375. Cst. Jacklin was assigned as Lima 1 at the Command Post on the evening of September 5. Cst. Jacklin testified that to his knowledge there was not a deployment of

⁴⁴³ Kevin Simon 12/01/2004 at 175-176.

⁴⁴⁴ Kevin Simon 12/01/2004 at 177-178.

⁴⁴⁵ Mark Gransden 03/30/2006 at 362.

⁴⁴⁶ Abraham David George 10/20/2004 at 19.

⁴⁴⁷ Abraham David George 10/20/2004 at 18.

⁴⁴⁸ Clayton George 11/08/2004 at 120.

⁴⁴⁹ Mark Gransden 03/30/2006 at 360.

10 – 20 officers that evening. If there was such a deployment it is likely he would have been aware of it.⁴⁵⁰

376. The version of events that alleges that there were two separate incidents involving officers arriving at the sandy parking lot on the night of September 5 is not plausible. There is no reference to a second deployment of officers to that area on the radio calls. There were not sufficient officers on duty during the evening of September 5 to allow for the numbers of officers allegedly involved in the second situation suggested by some of the occupiers. A call out which would have involved additional gear, such as shields, and a large number of officers would have required a Sergeant as a supervisor, would have been made known to the Incident Commander, and would have been recorded in the scribe notes and the radio logs.

377. Allegations by occupiers that there were two separate incidents are not credible. It follows that allegations of a threat to Dudley George during a second incident with police on the evening of September 5 are not credible. This evidence should be rejected.

xviii) Other versions of allegations of threat to Dudley George

378. Some occupiers alleged that various other versions of this event took place at different times.

379. Elwood George gave an account of an incident where a police officer said welcome to Canada. He was unclear in his testimony whether this incident occurred on September 5 or 6.⁴⁵¹ He stated that an officer “took off his vest or was taking off his vest or – or something and he had his baton and he got down on his one (1) knee and he struck his baton... into the sand and then he said, welcome to Canada”.⁴⁵² Elwood George testified that it was at this incident when sand was thrown in an officer’s face.⁴⁵³

⁴⁵⁰ Wayde Jacklin 04/25/2006 at 174.

⁴⁵¹ Elwood George 11/03/2004 at 69, 88; 11/04/2004 at 41-50.

⁴⁵² Elwood George 11/03/2004 at 66.

⁴⁵³ Elwood George 11/04/2004 at 44.

Elwood George also testified that he did not recall whether or not Dudley George was present at this incident,⁴⁵⁴ that he did not recall a threat made to any occupiers, and that if there had been a threat made “I would imagine I would remember”.⁴⁵⁵

380. J.T. Cousins testified that he witnessed the threat to Dudley George and that this incident occurred on the morning of September 5.⁴⁵⁶

381. David George testified that another incident, separate from the picnic table incident, occurred during the afternoon of September 5, “the sun was still kind of high. It’s probably later in the afternoon”.⁴⁵⁷ David George testified that four or five police officers came up to the fence and asked who the occupiers leaders were and one police officer told Dudley George that he was going to be the first.⁴⁵⁸ David testified that Dudley George’s response to this was to tell the officer to “fuck off” and “showed him the finger”.⁴⁵⁹ David George testified that it was during this incident that an occupier threw sand at an officer and the officer dispensed pepper spray and that officers at this incident had “those asp batons, telescopic ones”.⁴⁶⁰

xix) ASP batons and allegations of threat to Dudley George

382. One aspect of the allegations of a threat made to Dudley George that appears to be fairly consistent through the accounts is the description of police officers having ASP batons extended and using these in a threatening manner. ASP batons were not issued to officers until September 6, 1995. However, after September 6 the occupiers were in possession of an ASP baton that had been left in the sandy parking lot during the confrontation. This allowed them to familiarize themselves with the baton. At the time they were giving their accounts of the September 5 encounter with the police they did

⁴⁵⁴ Elwood George 11/03/2004 at 67.

⁴⁵⁵ Elwood George 11/04/2004 at 43.

⁴⁵⁶ J.T. Cousins 01/12/2005 at 97.

⁴⁵⁷ Abraham David George 10/19/2004 at 182.

⁴⁵⁸ Abraham David George 10/19/2004 at 180.

⁴⁵⁹ Abraham David George 10/19/2004 at 181.

⁴⁶⁰ Abraham David George 10/19/2004 at 181-182

not know that the ASP baton had not been issued to the officers until shortly before the confrontation in the sandy parking lot on September 6.

e) Reports of Automatic Gunfire

383. At 23:42 on September 5, 1995 Cst. Parks reported to Lima 2, by radio, that he had heard automatic gunfire in the area. Cst. Parks reported “(j)ust to advise that a large amount of gunfire... we’re hearing large amounts of gunfire way back in the army base”.⁴⁶¹

384. At 23:46 Cst. Parks described the gunfire “sounded fully automatic”, and that he heard 50-100 rounds. Cst. Parks confirmed that the gunfire sounded like one firearm going off.⁴⁶²

385. Cst. Parks testified that he heard bursts of automatic gunfire coming from about a kilometer away down by the beach in the Army Camp.⁴⁶³ As a police officer Cst. Parks had received firearms training, had been around automatic weapons when they were fired, and had fired automatic weapons himself.⁴⁶⁴ Cst. Parks described the sound of an automatic weapon firing as “a real sharp, crisp sound. The repetition is uniform”.⁴⁶⁵ Cst. Parks testified that this is the sound which he heard on the night of September 5, 1995.⁴⁶⁶

386. Marlin Simon testified that there were fireworks in the Park during this time frame and that these could be mistaken for gunshots.⁴⁶⁷ Simon also agreed that someone who was experienced with firearms should be able to tell the difference between a gunshot and fireworks “if they were close enough”.⁴⁶⁸

⁴⁶¹ P-1226.

⁴⁶² P-1227.

⁴⁶³ Larry Parks 03/28/2006 at 260-261.

⁴⁶⁴ Larry Parks 03/28/2006 at 261.

⁴⁶⁵ Larry Parks 03/28/2006 at 261.

⁴⁶⁶ Larry Parks 03/28/2006 at 261.

⁴⁶⁷ Marlin Simon 09/29/2004 at 80; 10/18/2004 at 10-11, 169-172.

⁴⁶⁸ Marlin Simon 10/18/2004 at 172.

387. Cst. Parks was adamant that the sounds that he heard were not firecrackers.⁴⁶⁹ Cst. Parks testified that he has heard the types of firecrackers that go off in rapid succession.⁴⁷⁰ Firecrackers do not sound like automatic gunfire from a distance.

388. There was no doubt in Cst. Parks mind either on September 5, 1995, or when he testified before the Commissioner in 2006, that what he heard was automatic gunfire.⁴⁷¹

389. Cst. Lorch also testified that he heard automatic gunfire on the evening of September 5. Lorch was near the entrance of the Army Camp when he heard the automatic gunfire coming from northeast of his location.⁴⁷² Lorch was also familiar with the sound of automatic gunfire from training and disagreed that the sounds he heard could have been fireworks.⁴⁷³

f) Tina George's Evidence Regarding Guns in the Park

390. On January 19, 2005, Tina George testified that she witnessed gunfire from the Army Camp on either the evening of September 4 or 5.⁴⁷⁴ She testified that this gunfire was from Russel Jewel and Marlin Simon taking target practice. She only saw one gun which Jewel and Simon were taking turns using.⁴⁷⁵ She was not sure how many shots were fired but it was more than one and less than ten.⁴⁷⁶

391. When questioned how she felt about target practice going on during the Park occupation Tina George testified that "I didn't like it, for the fact that I had my daughter with me".⁴⁷⁷

⁴⁶⁹ Larry Parks 03/28/2006 at 329.

⁴⁷⁰ Larry Parks 03/28/2006 at 327.

⁴⁷¹ Larry Parks 03/29/2006 at 74.

⁴⁷² Steve Lorch 06/12/2006 at 66.

⁴⁷³ Steve Lorch 06/12/2006 at 66, 159.

⁴⁷⁴ Tina George 01/19/2005 at 172, 177.

⁴⁷⁵ Tina George 01/19/2005 at 173-174.

⁴⁷⁶ Tina George 01/19/2005 at 175-176.

⁴⁷⁷ Tina George 01/19/2005 at 177.

392. After Tina George's testimony describing this incident in detail, Commission Counsel confirmed with the witness that this incident took place on September 4 or 5, 1995.

Q: ...And you are saying that this is either September the 4th, Monday, September the 4th, or Tuesday, September the 5th, at around midnight?

A: Yes.

393. The next day Tina George recanted her testimony regarding the timing of the target practice. She stated that she was certain that this incident did not occur until after Dudley George was shot because she did not see any guns before Dudley George was shot.⁴⁷⁸

394. Tina George testified that overnight, before recanting her testimony, she had spoken to her son, Dale Plain, about her testimony and he had advised her that she had made an error. She had spoken to her lawyer regarding her testimony. She had also spoken to Marg George in the morning before recanting her testimony.⁴⁷⁹

395. Tina George agreed that she came under pressure after her first day of testimony because she realized that her testimony could be damaging.⁴⁸⁰

396. It is clear that the pressure to change her testimony must have been considerable. The Commissioner should reject the recantation of her testimony that was influenced by discussions with others after her first day on the stand. The Commissioner should accept Tina George original testimony regarding the timing of the target practice on September 5 or 6, given in her first day of testimony, as accurate.

⁴⁷⁸ Tina George 01/20/2005 at 9-10.

⁴⁷⁹ Tina George 01/20/2005 at 10.

⁴⁸⁰ Tina George 01/20/2005 at 13.

g) Firearm in the Park Maintenance Shed

397. The OPP installed a hidden camera in the maintenance shed of the Park. On September 5 and 6, the camera was monitored by OPP officers at the Grand Bend Detachment.⁴⁸¹

398. The camera in the maintenance shed recorded the image of a person in the shed at 02:51 on September 6, carrying an object that appears to be a firearm.⁴⁸² The object has the shape and size of a firearm. The manner in which the individual is carrying the object, cradled in his left hand, with the end of the elongated object between his arm and his body, and the object then extending downward at a 45 degree angle, beyond the person's hand identifies it to be a firearm.

399. Abraham David George recognized Russell Jewell as the person in the photograph.⁴⁸³

400. Cst. Martin, the officer who was monitoring the camera at the time that the image were recorded, did not see it, possibly because he was making a notation in a log book at the moment the image appeared. He testified that, if he had seen the image of the person carrying a gun, he would have immediately contacted the Command Post.⁴⁸⁴

⁴⁸¹ Chris Martin 03/28/2006 at 16.

⁴⁸² P-42A

⁴⁸³ Abraham David George 10/20/2004 at 149.

⁴⁸⁴ Chris Martin 03/28/2006 at 127.

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6. Events of September 6, 1995

a) Escalation of Tensions and Aggression Towards the Police

401. The situation at the Army Base and in the Provincial Park intensified throughout the day on September 6. Hostility towards the police increased as the occupiers prepared for a confrontation. As was described by A/S/Sgt Wright, as a result of events over the course of September 6, what started as a land claim issue evolved into a public safety issue in which criminal offences had been committed and aggression towards the police and the public escalated exponentially. The actions of the occupiers were no longer contained within the Park. The occupiers' actions expanded outside of the Park, increased tensions and jeopardized public safety.⁴⁸⁵

402. The evidence of the occupiers reveals that throughout the day on September 6, they took measures to prepare actively for a confrontation with members of the OPP. In addition to antagonizing officers, for example by using mirrors to reflect sunlight into officers' eyes⁴⁸⁶, steps were taken to prepare for aggressive and assaultive conduct against the police.

403. The observation posts that had been set up on September 5 continued to be in use on September 6 and a rotation schedule was set up to keep the observation posts staffed continuously.⁴⁸⁷

404. There was an increase in vehicle activity in the Park and the Army Camp on September 6. Elwood George suggested that the occupiers drive their vehicles around "to lead the police to believe that there was actually more of us there than there actually was".⁴⁸⁸

⁴⁸⁵ Mark Wright 02/23/2006 at 102; 03/06/2006 at 192; 03/07/2006 at 119.

⁴⁸⁶ David George 10/20/2004 at 38; Roderick George 11/23/2004 at 149; Robert Huntley 04/27/2006 at 90-92; George Hebblethwaite 05/11/2006 at 110.

⁴⁸⁷ Marlin Simon 09/29/2004 at 91-92; Clayton George 11/08/2004 at 115. .

⁴⁸⁸ Elwood George 11/03/2004 at 86-87.

405. Marlin Simon testified that he filled up all the gas cans that he could find and “stashed them all over the army base”.⁴⁸⁹ Marlin Simon also retrieved the school bus and brought it to the Park “[b]ecause the bus was very helpful” in the past.⁴⁹⁰

406. The occupiers also built up a supply of rocks and sticks on September 6,⁴⁹¹ and possessed both baseball bats and steel pipes.⁴⁹² Elwood George described the occupiers gathering stones and carrying clubs on September 6 which ranged from “small sticks to large sticks”.⁴⁹³

407. Roderick George testified that he observed people collecting stones and pieces of wood around the time when it was starting to get dark. These items were collected as “[a]nticipated weapons for in case something happened...”⁴⁹⁴ Roderick George agreed that these items included rocks, bricks, clubs and metal poles. He himself had a metal pole.⁴⁹⁵

408. In addition to the baseball bat he carried in his car, David George also had an axe. He testified that he kept the axe for chopping wood but the baseball bat was for “self-protection”.⁴⁹⁶

409. David George and Clayton George both testified that they were around the intersection at Army Camp Road and East Parkway Drive with a baseball bat (David George) and a stick (Clayton George) in their hands on September 6.⁴⁹⁷ This occurred around the time Cecil Bernard George came to the Park with scanners for the

⁴⁸⁹ Marlin Simon 09/29/2004 at 93; 09/30/2004 at 9.

⁴⁹⁰ Marlin Simon 09/29/2004 at 93.

⁴⁹¹ Marlin Simon 09/29/2004 at 92; Elwood George 11/03/2004 at 89-90; Clayton George 11/08/2004 at 80.

⁴⁹² Marlin Simon 09/29/2004 at 92.

⁴⁹³ Elwood George 11/03/2004 at 89.

⁴⁹⁴ Roderick George 11/23/2004 at 151-152.

⁴⁹⁵ Roderick George 11/24/2004 at 150-151.

⁴⁹⁶ David George 10/20/2004 at 37.

⁴⁹⁷ David George 11/01/2004 at 17-20; Clayton George 11/08/2004 at 92.

occupiers. David George agreed that September 6 was the first time that the occupiers were out in the sandy parking lot with sticks and bats in their hands.⁴⁹⁸

b) Removal of Picnic Tables from the Sandy Parking Lot

410. On the morning of September 6, Insp. Carson instructed ERT team members to remove the picnic tables from the intersection of Army Camp Road and East Parkway Drive, which had been the focus of the confrontation with the police the previous evening. Insp. Carson was concerned about the tables being piled adjacent to private property, and the potential risk to the property if the tables were set on fire. The blockade also obstructed access to one cottage's entrance that was directly off of the sandy parking lot. Insp. Carson requested a helicopter to observe the removal of the tables. D/Cst. Dew observed the removal of the picnic tables from the helicopter.⁴⁹⁹

411. A large number of officers were required to reduce the likelihood of further confrontation with the police and to facilitate the rapid removal of the tables. Members of the 1 and 2 District ERT attended. Members of the 1 District ERT provided cover while members of the 2 District ERT loaded the tables onto a flatbed trailer. To protect themselves from projectiles, some of the officers carried crowd control shields. On orders from Sgt. Huntley, some officers carried their rifles with them.⁵⁰⁰

412. Although officers' recollections regarding the picnic table removal varied, the evidence is clear that it was uneventful. Two natives who were in the area of the tables, one of whom was Dudley George, ran back into the Park when they saw the police arrive.⁵⁰¹

413. D/Cst. Speck testified that upon arriving at the intersection, the police found 21 picnic tables in a circle around a fire in the middle of the public roadway leading to the

⁴⁹⁸ David George 11/01/2004 at 17-20.

⁴⁹⁹ John Carson 05/18/2005 at 62; Mark Dew 04/04/2006 at 67.

⁵⁰⁰ Mark Wright 03/07/2006 at 72; Robert Huntley 04/27/2006 at 79, 85.

⁵⁰¹ Larry Parks 03/28/2006 at 266; Neil Whelan 03/29/2006 at 191; Mark Gransden 03/30/2006 at 120; Michael Dougan 04/03/2006 at 103; Robert Graham 04/21/2006 at 61, 134; Wayde Jacklin 04/25/2006 at 171; Sheldon Poole 05/16/2006 at 56, 148; Jim Root 05/16/2006 at 344; Bill Bittner 05/17/2006 at 181; John Slack 05/05/2006 at 221.

beach. A tent was pitched by the fire. It was apparent that the tables had been arranged to block access to the public roadway and the parking lot.⁵⁰² The tables were loaded onto the flatbed truck and removed without incident or physical confrontation.

414. Following the removal of the picnic tables, Sgt. Huntley spoke with Fran Hannahson who lived in the cottage closest to the Park. Having witnessed the confrontation between the police and the occupiers in the parking lot the previous evening, she was concerned for her personal safety. As a result of these concerns, Sgt. Huntley moved Checkpoint "A" to the base of her driveway where it remained until it was ordered moved later that night. Sgt. Huntley periodically visited the Checkpoint throughout the day where he witnessed numerous acts of harassment by persons inside the Park, including children shining mirrors in officers eyes and males armed with clubs patrolling the fence line.⁵⁰³

c) Public Meetings

415. In addition to the escalating hostility from occupiers, local cottagers and property owners began to express their frustrations with the situation. Late in the afternoon on September 6, A/S/Sgt. Wright was advised of a public meeting in Port Franks to discuss issues relating to Ipperwash. He went to the Port Franks Community Centre but found no one there. He returned to the MNR parking lot where he was shocked to find a gathering of 20 to 40 people, including Mayor Fred Thomas. The goal of this group of people was to march to the Park to express their frustrations regarding what was taking place.

416. A/S/Sgt. Wright spoke with the group, advising them that the ongoing police presence would continue until the situation was resolved. He warned the people of

⁵⁰² George Speck 03/27/2006 at 237.

⁵⁰³ Robert Huntley 04/27/2006 at 81.

potential dangers and threats to their safety if they marched to the Park. He was ultimately successful in preventing a confrontation.⁵⁰⁴

d) OPP Who Car on the beach at Port Franks

417. At about 16:44 on September 6 the OPP Who car⁵⁰⁵, also referred to as the “Batmobile”, was reported stuck in the sand at Port Franks beach with four male occupants present.

418. Sgt. Korosec was instructed that Insp. Carson wanted the occupants arrested for possession of stolen property (MNR lights on the vehicle).⁵⁰⁶ This required sending eight OPP officers to carry out the arrests.⁵⁰⁷

419. Sgt. Korosec also took the initiative to locate a tow truck to tow the OPP Who car from the Port Franks beach where it was stuck in the sand. He telephoned a tow truck operator. In the course of directing the tow truck operator to the general location of the vehicle, Sgt. Korosec also told the tow truck operator that “there’s no concern about damaging this vehicle, to tow it out”.⁵⁰⁸

420. Sgt. Korosec was concerned “just to get that vehicle out of there as quickly as possible... Certainly if there was any damage [to the OPP Who car], then the OPP would have been liable for it because we’re telling him we want it towed out of there quickly... and it’s happened in the past where the OPP would look after any damage or the repairs”.⁵⁰⁹

421. Before the OPP could arrest the male occupants of the Batmobile, and two the vehicle, the car “came unstuck and went back to the Army Camp”.⁵¹⁰

⁵⁰⁴ Mark Wright 02/22/2006 at 254.

⁵⁰⁵ Marlin Simon 08/29/2004 at 66; a car on which the occupiers painted the words “OPP Who?”

⁵⁰⁶ Stan Korosec 04/06/2006 at 183.

⁵⁰⁷ Stan Korosec 04/06/2006 at 184-187; P-1315.

⁵⁰⁸ Stan Korosec 04/06/2006 at 189-192; P-1316.

⁵⁰⁹ Stan Korosec 04/06/2006 at 194-195.

⁵¹⁰ Stan Korosec 04/06/2006 at 195.

e) OPP attempts to establish dialogue with the occupiers on September 6*i) Attempts to speak to the occupiers*

422. On September 6, A/S/Sgt. Wright and Sgt. Eve again attended at the Park to attempt to speak with the occupiers there. At 15:02 they went to the Park fence where teenagers reflected sunlight in their eyes using mirrors. Eventually a black Camaro containing two occupants came to the fence. One of the occupants asked A/S/Sgt. Wright if he spoke for his people. A/S/Sgt. Wright replied that he did and responded with the same question. The passenger told A/S/Sgt. Wright “they would do their talking with guns”. A/S/Sgt. Wright interpreted this as a threat and left. Notes taken by Sgt. Eve indicated that Dudley George was the passenger of the vehicle and that David George was the driver.⁵¹¹

ii) Discussions with Earl Bressette

423. On September 6, at 10:20, Sgt. Seltzer, along with Lorne Smith, visited with Earl Bressette at Kettle Point.⁵¹² The purpose of the meeting was not to gather intelligence but rather to determine the community’s views on the occupation. Sgt. Seltzer’s role was to listen to what was said as he would have to earn the right to speak.⁵¹³

424. During this meeting, Sgt. Seltzer and Lorne Smith were advised that:

- there were 300 people at the base, most of whom were not from Stony Point;
- there were heavy machine guns on the Army Camp property;
- cars were hidden in the bush;
- most people in the community did not agree with what was taking place on the property;

⁵¹¹ Mark Wright, 02/22/2006 at 227-246; P-737; P-1108.

⁵¹² Brad Seltzer 06/13/2006 at 137; P-1704 at 189.

⁵¹³ Brad Seltzer 06/13/2006 at 138-141.

- there were no known burial grounds on the property; and
- there was a man on the property who had killed two people.

425. According to Earl Bressette, most of the blame for the Ipperwash situation rested with the federal government and their mishandling of the return of the Army Base.⁵¹⁴

iii) Discussions with Bob “Knobby” George

426. Sgt. Seltzer and Lorne Smith subsequently attended at 15:00 at the residence of Bob George.⁵¹⁵ Ron George joined them. In addition to discussing the history of the appropriation of the Base in 1942, Bob George and Ron George suggested the possibility that Roderick (“Judas”) George might agree to speak with them if they agreed that he would not be arrested.⁵¹⁶

427. Sgt. Seltzer met again with Lorne Smith at a restaurant at 21:50 before going off duty. Lorne Smith and Sgt. Seltzer discussed the information they had received from that Judas George would check with his people to see if he could meet with Sgt. Seltzer in the morning and that this potential meeting was conditional on Judas George not being arrested or charged. Sgt. Seltzer then called Bob George and said he would look into the feasibility of these conditions.⁵¹⁷ Sgt. Seltzer also attempted, unsuccessfully, to contact Insp. Carson, leaving a message on his pager. Based on this information, it was Sgt. Seltzer’s view that negotiations were probable, as there was time to make contacts with the First Nations community, to develop a rapport and to progress slowly.⁵¹⁸

⁵¹⁴ Brad Seltzer, 06/13/2006 at 140.

⁵¹⁵ Brad Seltzer 06/13/2006 at 144.

⁵¹⁶ Brad Seltzer, 06/13/2006 at 149; Ron George, 02/28/2005 at 123.

⁵¹⁷ Brad Seltzer, 06/13/2006 at 150.

⁵¹⁸ Brad Seltzer, 06/13/2006 at 150, 173.

f) Information Provided by Gerald George

i) Gerald George's statement to Sam Poole

428. On September 6, at about 18:30, Cst. Poole was on duty at Checkpoint "C" when he was approached by Gerald George. Gerald George pointed out damage that had been done to the corner panel of the vehicle he was driving. Cst. Zacher radioed the information to the Command Post. A/S/Sgt. Wright instructed Cst. Poole to take a statement from Gerald George.⁵¹⁹

429. Cst. Poole took the statement while seated in Gerald George's vehicle which was parked on the side of the road near the checkpoint. Cst. Poole noticed vehicles driving back and forth in the Army Camp and had Gerald George move his vehicle further away to an adjacent trailer park.⁵²⁰

430. Gerald George told Cst. Poole that he was a Band Councillor. Moments before, Gerald George had been speaking with occupiers at the intersection of East Parkway Drive and Army Camp Road about an article he had published in the Forest Standard. The article, which was critical of the occupation, was a bone of contention between Gerald George and the occupiers. Although he was aware of the article, Cst. Poole did not read it, nor did he delve into the details of its contents, as the contents of the article would not have affected his evaluation of the information provided by Gerald George.⁵²¹

431. Gerald George provided only a damage to property complaint. He did not tell Cst. Poole that he had been punched in the head by Stewart George. Gerald George indicated that as he drove away from the intersection, Stewart George threw a rock, causing damage to the car. Cst. Poole found Gerald George to be a sincere witness who was clearly upset about the damage that had been done to his sister's vehicle.⁵²²

⁵¹⁹ Sam Poole 05/16/2006 at 59; P-1114.

⁵²⁰ Sam Poole 05/16/2006 at 64-65.

⁵²¹ Sam Poole 05/16/2006 at 67, 69.

⁵²² Sam Poole 05/16/2006 at 67, 69.

432. After recounting the incident with Stewart George and the damage to the car, Gerald George told Cst. Poole about the existence of firearms inside the Army Camp. This information was very specific and obviously reflective of Gerald George's familiarity with weapons. Gerald George told Cst. Poole that the police needed to be careful. He provided specific information about three types of firearms – AK-47s with 30 round magazines duct taped to the back, mini Rugers (like those used by the OPP) and hunting rifles.⁵²³

433. Cst. Poole suggested to Gerald George that the information regarding the weapons not be included in his complaint regarding the damage to the vehicle, because of concerns about Gerald George's personal safety and the possibility of retribution by occupiers. Similarly, Cst. Poole did not include the information regarding the firearms in his police notes because once the notes were disclosed through the criminal process (i.e. in relation to the property damage claim) the source of the information would be revealed and attempts to preserve Gerald George's identity would be lost. Cst. Poole believed that the appropriate procedure for dealing with what was intelligence information was to communicate the information to D/Cst. Mark Dew, a seasoned investigator in the Crime Unit.⁵²⁴

ii) Gerald George statement to Mark Dew

434. Following Gerald George's statement to Cst. Poole, D/Cst. Dew, acting on instructions from D/Sgt. Richardson, met with Gerald George to take a further statement. Gerald George did not advise D/Cst. Dew that he was a Band Councillor who had written a newspaper article criticizing the occupation of the Park. D/Cst. Dew took Gerald George's information which he said was freely offered.

435. D/Cst. Dew testified that during the meeting, Gerald George provided him with specific information about weapons in the possession of the occupiers. Gerald George advised D/Cst. Dew that the occupiers had in their possession the following weapons:

⁵²³ Sam Poole 05/16/2006 at 72.

⁵²⁴ Sam Poole 05/16/2006 at 73-76; Gerald George 01/13/2005 at 82-104; P-123.

- 4 SKS semi-automatics with 30 round magazines;
- 2 Ruger mini-14s with 30 round magazines;
- several hunting rifles which were equipped with scopes

436. Gerald George also told D/Cst. Dew that the occupiers might be building gas bombs and planning to set fire to buildings on the Army Base.⁵²⁵

437. In his evidence before the Commission, Gerald George was not able to recall his conversation with Cst. Poole regarding the presence of weapons on the base. Gerald George acknowledged meeting with D/Cst. Dew and providing him with information about firearms on the Army Base, including specific information about the presence of rifles, including Mini-Rugers of the type used by members of the OPP. Gerald George advised D/Cst. Dew that his personal rifle was semi-automatic and was scoped and that it was his assumption that other rifles in the Park were as well. Gerald George was not able to recall whether the issue of semi-automatic weapons was raised when he spoke with D/Cst. Dew. Although Gerald George himself owned a Chinese SKF firearm, he denied providing D/Cst. Dew with this information. Gerald George similarly denied telling D/Cst. Dew that the occupiers intended to burn down buildings. However, Gerald George acknowledged that he gave similar information to that described by D/Cst. Dew to the London Free Press on August 3, 1995.⁵²⁶

i) Preparation of the report regarding Gerald George statement

438. When he finished speaking with Gerald George, D/Cst. Dew phoned the Command Post to convey the weapons information provided by Gerald George, because he was concerned about conveying such potentially sensitive information over the police radio system.⁵²⁷ D/Cst. Dew did not recall what he did with the written statement from Gerald George although, pursuant to his duties and obligations, he would have passed on the statement to the Command Post. At 22:30 on September 6,

⁵²⁵ Mark Dew 04/04/2006 at 85.

⁵²⁶ Gerald George 01/13/2005 at 43; 01/17/2005 at 13-26, 37-39, 162; P-120

⁵²⁷ P-1137.

D/Cst. Speck prepared a written report at the Forest Detachment from the statement which was taken from Gerald George.⁵²⁸

g) Events During Early Evening Hours of September 6, 1995

439. Events in the hours preceding the call-out of the Crowd Management Unit ("CMU") intensified. The following events and observations illustrate the heightened hostility towards the police and increased tensions in the Ipperwash area:

i) Report of gunfire

440. At 18:27, officers stationed at Checkpoint "A" reported hearing what sounded like one small caliber gunshot.⁵²⁹

ii) Activity in the kiosk

441. At approximately 20:12, Cst. Chris Martin, who was monitoring the video feed of activity in the Park kiosk, reported an individual in the kiosk with the blinds drawn.⁵³⁰ This information was of significant concern and raised officer suspicion about the activities taking place inside the kiosk.⁵³¹

iii) Presence of occupiers outside of the Park

442. Throughout the evening of September 6, officers reported the presence of occupiers outside of the Park on Army Camp Road. Some of these people were reported to be armed with bats.⁵³²

443. Following the conclusion of the citizens' meeting in the MNR parking lot, A/S/Sgt. Wright went to the sandy parking lot. Dressed in civilian clothing and driving an unmarked vehicle, A/S/Sgt. Wright observed eight to ten native men standing in a line

⁵²⁸ Mark Dew 04/04/2006 at 112; George Speck, 03/22/2006 at 253; P-1184.

⁵²⁹ Stan Korosec 04/06/2006 at 209; P-1317; P-1318; P-1319.

⁵³⁰ Stan Korosec 04/06/2006 at 224.

⁵³¹ Chris Martin 03/28/2006 at 34; Trevor Richardson 06/08/2006 at 173; P-0090, P-0130. P-0134, P-0473.

⁵³² Stan Korosec 04/06/2006 at 213; P-1110; P-1111.

which spanned the park fence to the edge of the roadway. Some of the men were holding clubs. One of the men came onto the roadway to speak with A/S/Sgt. Wright. A/S/Sgt. Wright asked what they were doing. The man told A/S/Sgt. Wright that it was not his problem. A/S/Sgt. Wright was advised that it was best that he leave. A/S/Sgt. Wright asked to go into the Park and was again told that he should leave. As he spoke with this man, A/S/Sgt. Wright noticed other men tapping their clubs into their open hands in a threatening manner. Concerned that he might be recognized as a police officer, A/S/Sgt. Wright left. He reported the information to the officers at Checkpoint “C”.⁵³³ A/S/Sgt. Wright interpreted the aggressive actions of the person in the parking lot as a threat to his personal safety – a threat that, if left unattended, could well be directed towards members of the public. The aggression demonstrated by the men in the intersection introduced a new set of considerations, which needed to be addressed.⁵³⁴

iv) Increased vehicle traffic inside the Park

444. Officers also observed increased traffic and vehicle movement inside the interior road running between the Army Camp and the Park. For example, Cst. Jacklin, who was initially stationed at Checkpoint “C” on the night of September 6, observed a “tremendous” increase in traffic traveling up and down the road inside the Army Base. He witnessed the dump truck traveling back and forth several times, sometimes with people riding in the back of the dump truck. It appeared to Cst. Jacklin that “supplies” were being brought into the Park.⁵³⁵

445. The amount of traffic increased during the evening. At 21:39, officers at Checkpoint “D”, which at that time was located across from the main gate to the Army Camp, reported an increase of traffic, including the dump truck and the Batmobile. In addition, the occupiers also started a large fire on the road inside the Base. Officers feared for their safety as the situation appeared to be escalating.⁵³⁶

⁵³³ Mark Wright 02/23/2006 at 19, 32.

⁵³⁴ Mark Wright 03/20/2006 at 127; 03/21/2006 at 213.

⁵³⁵ Wayne Jacklin 04/25/2006 at 179, 248-250.

⁵³⁶ Wayne Jacklin 04/25/2006 at 210; P-1128.

446. Sgt. Slack instructed the officers at Checkpoint “D” to take cover in the ditch. While stationed in the ditch, the increased traffic and attempts to jacklight the officers continued.⁵³⁷

v) Jacklighting of OPP officers

447. “Jacklighting” of OPP officers – the use of large spotlights in an attempt to spotlight and temporarily blind the officers – who were on check-point duties persisted throughout the evening of September 6, before the confrontation. Cst. Dougan testified that a brown pick-up truck shone its headlights on the officers who were located at Checkpoint “C” for a period of approximately 15 minutes. The dump truck and other vehicles also shone their lights on the officers.⁵³⁸

vi) Departure of women and children from the Base & arrival of “outsiders”

448. D/Cst. Dew received information from officers at Checkpoint “C” that women and children were leaving the Army Camp in anticipation that something significant was about to occur. Officers did not want this information to be broadcast over the radio, and possibly subject to public interception. D/Cst. Dew contacted Insp. Linton via telephone to report the information. Sgt. Graham subsequently confirmed with officers at Checkpoint “D” that women and children had already left.⁵³⁹ Information was also received that persons opposed to the occupation were arriving from Kettle Point.⁵⁴⁰

h) Deployment of the Oscar Team

449. At 21:00 on September 6, Cst. Whelan and Cst. Mortimer were deployed as an observation (Oscar) team on the instructions of Sgt. Korosec. Dressed in green tactical camouflage outfits and equipped with their standard duty belts, night vision goggles, and Ruger semi-automatic rifles, Cst. Whelan and Cst. Mortimer were instructed to find

⁵³⁷ John Slack 06/05/2006 at 229-236; Steve Lorch 06/12/2006 at 77.

⁵³⁸ Mike Dougan 04/03/2006 at 112, 118; John Slack 06/05/2006 at 229-236; Mark Gransden 03/30/2006 at 129; Michael Dougan 04/03/2006 at 110.

⁵³⁹ Mark Dew 04/04/2006 at 79, 203; Robert Graham 04/21/2006 at 103; P-1136.

⁵⁴⁰ Stan Korosec 04/06/2006 at 252.

a position which would allow them to make observations of the sandy parking lot, and the Park area, adjacent to the sandy parking lot.⁵⁴¹

450. The Oscar team left the MNR parking lot at 21:00. They traveled along the beach and cut through the bush. The Oscar team assumed a position in the bush between the road and the first cottage to the west of the Park. It took approximately 40 to 60 minutes for the Oscar team to get into position.⁵⁴²

451. Upon their arrival, the Oscar team observed that:

- more than 20 people were in the sandy parking lot;⁵⁴³
- a fire was burning in proximity to the parking lot;⁵⁴⁴
- vehicles were coming and going from the area, many depositing rocks, clubs and pieces of wood which were clearly being stockpiled.
- silhouettes reaching into the trunks of vehicles removing items and dropping them onto the ground;⁵⁴⁵
- the fence between the Park and the Base had been dismantled and vehicles were observed traveling between the Army Base and the Park;⁵⁴⁶
- all terrain vehicles were being driven on the beach.⁵⁴⁷

452. Due to concerns about their safety, Cst. Whelan radioed back to the TOC to report that the Oscar team had changed its position.⁵⁴⁸ The Oscar team ultimately met

⁵⁴¹ Neil Whelan 03/29/2006 at 200.

⁵⁴² Neil Whelan 03/29/2006 at 203, 209.

⁵⁴³ P-1246; Neil Whelan 03/29/2006 at 213.

⁵⁴⁴ Neil Whelan 03/29/2006 at 216, 218.

⁵⁴⁵ P-1246; Neil Whelan 03/29/2006 at 214.

⁵⁴⁶ Neil Whelan 03/29/2006 at 219, 220.

⁵⁴⁷ Neil Whelan 03/29/2006 at 221, 223, 224.

up with the TRU team before returning to the TOC site. When they returned to the TOC site, members of the Crowd Management Unit were suiting up to go down the road to the parking lot.⁵⁴⁹

⁵⁴⁸ P-1244.

⁵⁴⁹ Neil Whelan 03/29/2006 at 233; P-1246; P-1247.

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7. Activation of CMU and TRU

a) Background to the Crowd Management Unit (CMU)

i) Evolution of the police approach to crowd control

453. The police approach to crowd control has changed dramatically over time. In the 1980s, the approach was limited to police officers positioned in a shoulder-to-shoulder formation facing an already agitated crowd. This approach lacked fluidity, as officers would often wait until a disruption occurred and a situation was out of control before reacting.⁵⁵⁰

454. As a result of these limitations, police forces worldwide, including the OPP, began to reconsider their approach to crowd control. As the name implies, crowd management reflects a proactive, progressive, dynamic approach, geared at managing crowds at an early stage of an event, prior to the situation getting out of hand.

455. Modeled on a British approach, police efforts at crowd control start with involvement in crowd situations at the very early stages of an event, ideally using officer presence and involvement to deter members of the crowd from getting out of control. Police involvement at the early stages of an event is designed to permit early and successful control of the situation. Over time, police forces worldwide have standardized their approach to crowd management tactics. The crowd management approach continues to be the method used to handle crowd situations today. The police unit responsible for crowd management is often referred to as the “Public Order Unit”.⁵⁵¹

456. The goal of a Crowd Management or Public Order Unit is to retain and maintain control, order and peace using the least amount of force possible. Ideally, officer presence is sufficient to dissuade people from engaging in unlawful behaviour.⁵⁵²

⁵⁵⁰ George Hebblethwaite 05/10/2006 at 399.

⁵⁵¹ George Hebblethwaite 05/10/2006 at 406.

⁵⁵² George Hebblethwaite 05/10/2006 at 400, 422; Stan Korosec 04/05/2006 at 254-258.

ii) Crowd management in practice

457. The theory underlying crowd management recognizes that not all crowds are alike. Each crowd has its own particular dynamics. The first task of crowd management is to identify the type of crowd - casual, cohesive, aggressive or explosive. The nature of the crowd is often determined by the purpose of the gathering. Police response will be determined by the nature of the crowd, its actions and behaviour.⁵⁵³

458. Whereas some crowds are passive and orderly, others are aggressive and disorderly. The crowd's behaviour determines the characterization of the crowd. The most serious type of crowd is one which becomes explosive or riotous, such as the crowd in the sandy parking lot on the night of September 6, 1995.

459. Police response to crowd management is guided by the principles of Graduated Application of Force (GAP) and Show of Force Theory (SOFT). In the most benign example, no police action is required as police presence is sufficient, by itself, to deter unlawful or aggressive behaviour.⁵⁵⁴

460. The various CMU officer formations are designed to respond to the nature of the task being performed by the police, levels of crowd activity and the nature of the crowd at issue. For example, the box formation is commonly used by a CMU to travel as a group when not engaged by an aggressive crowd.⁵⁵⁵ The cordon formation allows officers to fill the area they are attempting to control.⁵⁵⁶ The cordon formation presents a very imposing picture to a crowd. It is intended to leave the impression that there are more officers present than are at the scene.⁵⁵⁷

⁵⁵³ George Hebblethwaite 05/10/2006 at 408; 05/11/2006 at 22, 45.

⁵⁵⁴ George Hebblethwaite 05/10/2006 at 400, 412.

⁵⁵⁵ P-1454.

⁵⁵⁶ P-1455.

⁵⁵⁷ George Hebblethwaite 05/10/2006, at 415, 419; 05/11/2006 at 24.

iii) CMU composition & structure in 1995

461. In 1995, Crowd Management Units were comprised of members of the Emergency Response Teams (ERT). The broader function of ERT included containment, search and rescue, crowd management, K9 backup, witness protection and V.I.P security. In 1995, there were 16 ERT, drawn from local uniform detachments throughout the province. Uniform members on ERT carried out their normal police functions but were available to function as ERT when required.

462. The selection process for membership on ERT started with an application by the interested officer, required a recommendation from the officer's detachment commander, and included selection interviews and a physical fitness criteria. Consideration was also given to the location of the Applicant's home detachment to ensure that all officers on ERT were not drawn from the same detachment.

463. ERT training consisted of a five week course, with the sixth week of training devoted to Crowd Management training. By the end of May, 1995, all sixteen ERT throughout the province had been trained in Crowd Management.⁵⁵⁸

464. In 1995, the typical CMU consisted of 32 police officers, comprised of two 16 member ERT. Each CMU was divided into four squads of eight members each – the contact squad, which serves as the lead element, followed by the Left Cover Squad, the Right Cover Squad, and the Arrest Squad at the rear. The four squads occupied different positions within different formations. The size of the CMU could also be augmented, for example, by the inclusion of prisoner vans or canine units, as required by specific events.

465. In 1995, a CMU was called out by the Incident Commander for the event or incident. Once the CMU was called out, it was deployed under the direct command of a Level 1 Incident Commander trained in crowd management tactics. If violence was

⁵⁵⁸ George Hebblethwaite 05/10/2006 at 401; Robert Huntley 04/27/2006 at 18-19; Wayde Jacklin 04/25/2006 at 17-23; Stan Korosec 04/05/2006 at 254; P-1453; P-1475.

anticipated, deployment of the CMU required a Level 2 Incident Commander to oversee the CMU operation. While deployed, it was the Level 1 Incident Commander who directed the tactics and who provided the members of the CMU with specific directions and orders.⁵⁵⁹

466. Prior to September 5, 1995, the ERT had neither been deployed as a Crowd Management Unit, nor had the CMU been called out in conjunction with the TRU.

b) Provision of ASP Batons

467. ERT training involved instruction in the use of police equipment, including batons. Prior to September, 1995, OPP officers were issued a 26 inch hickory stick baton. As several witnesses testified before the Inquiry, the wooden baton was large, bulky, cumbersome, and difficult to maneuver when getting in and out of police vehicles. Due to its awkward nature, some officers would attend calls without their batons.⁵⁶⁰

468. The OPP decided to replace the wooden baton with a collapsible, telescopic metal baton, called an ASP baton.⁵⁶¹

469. The collapsible ASP baton is employed under identical circumstances to those in which the wooden baton was used. The advantage of the ASP baton is that it collapses, and thus can be easily and comfortably worn on an officer's duty belt.

470. The ASP baton extends with a flick of the wrist. In its extended position, the ASP baton is the same length as its hickory predecessor. Today, due to the potential for the ASP baton to loosen and suddenly collapse while in use, the hickory baton is again part of the Public Order Unit (formerly the CMU). The ASP baton remains the standard baton for uniform OPP officers.⁵⁶²

⁵⁵⁹ George Hebblethwaite 05/10/2006 at 417; Wade Lacroix 05/08/2006 at 97.

⁵⁶⁰ George Hebblethwaite 05/11/2006 at 29.

⁵⁶¹ ASP is the name of the company (ASP Inc.) that markets the baton; John Carson 05/18/2005 at 82, 85; 05/31/2005 at 186-190; P-445.

⁵⁶² George Hebblethwaite 05/11/2006 at 32.

471. While both types of batons qualify as hard impact weapons on the use of force continuum, there is no difference in the training, instruction or use of either baton, apart from the instruction to extend and collapse the ASP baton. The ASP baton is not more likely or capable of inflicting serious harm or damage than its wooden predecessor.⁵⁶³

472. On September 6, CMU members were issued their collapsible ASP batons. As Insp. John Carson testified, the ASP batons were ordered by the OPP well before September 6 for all uniform officers. CMU members were either provided with the ASP batons as they commenced their shift or at the Forest Detachment prior to the deployment of the CMU. Prior to the deployment of the CMU, members received training on how to extend and collapse the ASP baton.⁵⁶⁴

c) CMU Call Out and Briefing on September 6, 1995

i) Wade Lacroix as CMU leader

473. In 1995, when a CMU was deployed, the officer assigned to lead the Unit had to hold the rank of Staff Sergeant or higher, due to the size of the Unit. The officer was also required to be trained as a Level 1 Incident Commander. It is this officer who directed the entire Unit throughout its deployed operations. On the night of September 6, Sgt. Korosec contacted S/Sgt. Wade Lacroix, at the behest of Insp. Linton, to lead the CMU.⁵⁶⁵

474. By all accounts, S/Sgt. Lacroix was a very experienced officer who was highly qualified to lead the CMU on September 5, 1995. He was familiar with the sandy parking lot and the Provincial Park.⁵⁶⁶

⁵⁶³ George Hebblethwaite 05/11/2006 at 30.

⁵⁶⁴ George Hebblethwaite 05/11/2006 at 118; Stan Korosec 04/18/2006 at 276; Wayde Jacklin 04/25/2006 at 236, 305; Robert Huntley 04/27/2006 at 83; Sheldon Poole 05/16/2006 at 93; Kevin York 05/18/2006 at 31; Dennis LeBlanc 05/23/2006 at 54.

⁵⁶⁵ Stan Korosec 04/06/2006 at 230.

⁵⁶⁶ Wade Lacroix 05/09/2006 at 34.

ii) Marcel Beaubien

475. Marcel Beaubien, the local Member of Provincial Parliament, was present at the Command Post on the night of September 6. There is no evidence to suggest that his presence affected the actions of any police officers that evening, and certainly not those of S/Sgt. Lacroix.

476. Indeed, S/Sgt. Lacroix was not aware that Marcel Beaubien had attended at the Command Post on September 6. He was not advised that the Premier was interested in the events at Ipperwash, although he assumed that the Premier would be interested in any events taking place in the province.⁵⁶⁷

477. It was suggested at the Inquiry by some counsel that there may have been a “special relationship” between S/Sgt. Lacroix and Marcel Beaubien that permitted the latter to influence the conduct of S/Sgt. Lacroix. No such special relationship existed.⁵⁶⁸

478. Pursuant to the *Police Services Act*, it was S/Sgt. Lacroix’s job, as Petrolia Detachment Commander, to communicate with community members and politicians. Marcel Beaubien was a politician. However, any information relayed by S/Sgt. Lacroix to Marcel Beaubien was not confidential. To the contrary, the information provided to Marcel Beaubien by S/Sgt. Lacroix was publicly observable and a matter of public record. S/Sgt. Lacroix was well aware of his obligation not to release confidential information, including details of future police operations.⁵⁶⁹

479. The evidence is unequivocal that neither S/Sgt. Lacroix’s previous dealings with Marcel Beaubien in his capacity of Petrolia Detachment Commander nor his discussions with Marcel Beaubien on September 5 and 6 had any impact on S/Sgt. Lacroix’s conduct as leader of the CMU on September 6.

⁵⁶⁷ Wade Lacroix 05/09/2006 at 101-103.

⁵⁶⁸ Wade Lacroix 05/09/2006 at 158-162; Marcel Beaubien 01/19/2006 at 62.

⁵⁶⁹ Wade Lacroix 05/09/2006 at 154, 158-159.

iii) CMU training/review at Forest Detachment

480. Prior to S/Sgt. Lacroix's arrival at the Forest Detachment, Sgt. Hebblethwaite gathered the members of the 3 and 6 District ERT together. He assigned officers to their respective squads and he reviewed CMU maneuvers, orders and formations. Sgt. Hebblethwaite's briefing was a summary review of previous CMU training received by ERT members. At this point, the decision had not yet been made to deploy the CMU. Rather, the CMU had been told to stand by, should its deployment be necessary.⁵⁷⁰

iv) Complement of the CMU on September 6

481. The normal complement of the CMU on September 6 was increased from 32 to 40 members. The added officers included eight officers who served as an additional arrest team situated at the rear of the CMU. These officers were taken from Checkpoint "C". They were not present for any of the briefings. Two canine officers and two prisoner vans (operated by an officer in each van) were also added to the CMU complement.⁵⁷¹

v) Briefing of Wade Lacroix upon arrival at the TOC

482. At approximately 20:13 on September 6, Sgt. Korosec requested S/Sgt. Lacroix to report to the Forest Detachment. S/Sgt. Lacroix took his time driving to Forest, as he understood that he had only been called out on standby. Upon arriving at the Forest Detachment, he found the Command Post to be a hub of activity. Sgt. Korosec briefed him. Sgt. Korosec advised him that District 3 & 6 ERT would form the CMU with two canine teams to accompany them in support. S/Sgt. Lacroix was also told that Sgt. George Hebblethwaite would act as his second in command.⁵⁷²

483. Insp. Carson told S/Sgt. Lacroix that he was to command the CMU to move demonstrators out of the sandy parking lot and back into the Park. The CMU was to

⁵⁷⁰ George Hebblethwaite 05/11/2006 at 125.

⁵⁷¹ George Hebblethwaite 05/11/2006 at 134-136.

⁵⁷² Wade Lacroix 05/08/2006 at 189.

then hold a position at the Park boundary until a police checkpoint could be established. Demonstrators who failed to comply with a request that they return to the Park could be arrested and criminally charged with unlawful assembly or mischief. The mission Insp. Carson assigned to the CMU was clear – move the demonstrators back into the Park and ensure the safety of local residents and motorists. Officers were not to enter the Park under any circumstances.⁵⁷³

484. Prior to the CMU deployment, Sgt. Hebblethwaite spoke with S/Sgt. Lacroix to bring him up to date on events that evening and to advise him of the brief training he had conducted with the CMU members.⁵⁷⁴

485. Insp. Carson and A/S/Sgt. Skinner provided S/Sgt. Lacroix with a final briefing at 22:30. S/Sgt. Lacroix was told that the TRU team had deployed two Sierra teams to provide both cover and up-to-date intelligence. They also advised him that there were 10-15 men with clubs in the sandy parking lot, and that the occupiers had been seen stockpiling rocks.⁵⁷⁵ S/Sgt. Lacroix was not advised that by deploying the CMU it was anticipated that this might function as a diversionary tactic to permit the TRU Sierra teams to get into position. However, S/Sgt. Lacroix testified that taking advantage of such a distraction to get observers into position would be appropriate.⁵⁷⁶

vi) *S/Sgt. Lacroix's briefing of CMU members*

486. During S/Sgt. Lacroix's briefing of the CMU prior to its deployment, officers were advised that occupiers had moved into the intersection of Army Camp Road and East Parkway Drive, and that they were blocking the public access road. The CMU members were told that they would march to the intersection to clear people and property from the

⁵⁷³ John Carson 05/19/2005 at 204; Wade Lacroix 05/08/2006 at 189.

⁵⁷⁴ George Hebblethwaite 05/11/2006 at 126.

⁵⁷⁵ Wade Lacroix 05/08/2006 at 204, 212.

⁵⁷⁶ Wade Lacroix 05/08/2006 at 260.

sandy parking lot. The officers clearly understood the instructions that they were not to go into the Park.⁵⁷⁷

487. Cst. Jacklin led the arrest team. He was instructed that if it was necessary to arrest people in the parking lot, the arrest team would arrest and take control of individuals.⁵⁷⁸

d) Deployment of the CMU

488. In accordance with OPP protocol, the decision to deploy the CMU on September 6, was made by the Incident Commander, Insp. John Carson. It was not a decision which could be made by any lower ranked officer. Insp. Carson gave lengthy and detailed testimony regarding the factors which lead him to deploy the CMU.⁵⁷⁹

e) TRU Team Background and Training

489. As of 1995, there were three OPP Tactics and Rescue Unit ("TRU") teams in Ontario – one in London, one in Barrie and one in Belleville, generally with 12 members on each team.⁵⁸⁰ The OPP TRU provide tactical responses to high-risk occurrences, generally where the subjects had firearms. These occurrences include barricaded persons, high risk warrant services, witness protection, hostage rescue, high-risk prisoner escorts, high-risk court security and other details considered by a Regional Commander to be high-risk. Most situations to which a TRU team is sent out involve a threat to life. The function of the TRU team is primarily to contain the scenario and to facilitate negotiations. The deployment of the TRU team requires a request from a Regional Signing Officer and the authorization of a Level 2 Incident Commander carrying the rank of Inspector or above.⁵⁸¹

⁵⁷⁷ Wayde Jacklin 04/25/2006 at 242; Robert Huntley 04/27/2006 at 104; Sheldon Poole 05/16/2006 at 93; Kevin York 05/18/2006 at 38.

⁵⁷⁸ Wayde Jacklin 04/25/2006 at 226.

⁵⁷⁹ John Carson 06/07/2005 at 171; 06/08/2005 at 76, 149, 153, 161.

⁵⁸⁰ Kent Skinner 04/19/2006 at 16. In September, 1995, the London TRU team had ten members.

⁵⁸¹ Kent Skinner 04/19/2006 at 18.

490. The goal of any occurrence in which the TRU team is involved is to protect and preserve life. The tragic events at Ipperwash were contrary to TRU team objectives.⁵⁸²

i) TRU team selection and training

491. The TRU team selection process takes place periodically, approximately every year and a half to two years. Interested members of the OPP apply initially through their Detachment Commander, who must provide a positive commendation and a Detachment Profile assessing the officer's performance. The applicant's personnel file is reviewed. Applicants are interviewed by the Provincial Coordinator of the TRU team. In addition, they are subjected to psychological and physical assessments.⁵⁸³

492. The TRU team seeks individuals who have demonstrated confidence as police officers. The psychological and physical assessments identify candidates who possess the requisite skills and characteristics – individuals who are able to perform effectively under stressful conditions, who are able to perform cooperatively in a team environment with good decision making skills, who are capable of maintaining cognitive and spatial awareness through lengthy and stressful conditions, and individuals who are well spoken with good reasoning abilities.⁵⁸⁴

493. The selection process seeks to exclude officers who are automatons, who are not capable of recognizing or appreciating situations as they unfold, and who are not capable of exercising independent judgment.⁵⁸⁵

494. Following the interview phase and psychological assessment, successful candidates are sent to a two-week selection process. The goal of this two-week selection process is to expose candidates to stressful conditions and to exhaust them physically.⁵⁸⁶

⁵⁸² Kent Skinner 04/19/2006 at 251-252.

⁵⁸³ Kent Skinner 04/19/2006 at 22, 24.

⁵⁸⁴ Kent Skinner 04/19/2006 at 22.

⁵⁸⁵ Kent Skinner 04/19/2006 at 22-23.

⁵⁸⁶ Kent Skinner 04/19/2006 at 23.

495. Generally, of the 40 to 50 officers who apply, only ten or eleven successfully complete the recruitment and selection process. The successful candidates go on to complete three levels of training consisting of containment, clearing, TRU team firearms and dynamic entry.⁵⁸⁷

496. In addition to the initial TRU team training, which is updated and maintained on a regular and continuous basis, members of the team undertake specialized courses including sniper, explosives disposal, and repel master.⁵⁸⁸

497. Membership on the TRU team is subject to constant scrutiny. Upon completion of five years on the TRU team, continued membership is reviewed annually.⁵⁸⁹

ii) Composition of the London TRU team in 1995

498. The Provincial TRU Coordinator assigns individual officers to their respective TRU teams. In 1995, A/S/Sgt. Kent Skinner led the London TRU team. He was responsible for the administration and operational preparedness of the team. A/Sgt. Kenneth Deane was second in command of the team. He filled A/S/Sgt. Skinner's role in his absence. There were nine additional members of the team – Csts. Beauchesne, Irvine, Kamerman, Klym, McCormack, O'Halloran, Strickler and Zupancic.⁵⁹⁰ Ted Slomer was a registered nurse who served in a voluntary capacity as a medic for TRU.

iii) TRU team equipment and firearms

499. In September, 1995, members of the TRU team carried, as their primary weapons, a 9mm semi-automatic Browning pistol, as their sidearm, and a 9mm short rifle or carbine. Certain specialist roles or terrain required different weapons.⁵⁹¹

500. Like all other police officers, firearms can only be discharged by TRU team members in circumstances in which the officer fears for her or his own life or the lives of

⁵⁸⁷ Kent Skinner 04/19/2006 at 24.

⁵⁸⁸ Kent Skinner 04/19/2006 at 28, 30.

⁵⁸⁹ Kent Skinner 04/19/2006 at 32.

⁵⁹⁰ Kent Skinner 04/19/2006 at 20.

⁵⁹¹ Kent Skinner 04/19/2006 at 37.

others, fears grievous bodily harm to the officer or others, to dispatch a wounded animal, or as a signaling device. Contrary to media portrayals, police officers are not trained to shoot to incapacitate. Rather, they are trained to shoot to the centre of the visible mass. A police officer who fears for her or his life or safety (or that of another individual) need not seek permission to discharge her or his weapon. Indeed, time constraints might not permit for such action. Ultimately, the discharge of a firearm is a matter of individual officer discretion.⁵⁹²

501. In addition to their firearms, in 1995 TRU team members carried portable radios which were linked to an independent and self-contained TRU team radio channel. Though all members had radios and were logged on to the TRU team channel, it was the senior member of each TRU team element⁵⁹³ that conveyed information to the TRU team Tactical Operations Centre (TRU TOC).⁵⁹⁴

iv) TRU team uniform

502. The TRU team uniform varied depending on the role of the TRU team member and the environment of the operation. Members wore a two-piece olive drab uniform and body armour when deployed on the ground. TRU team members also carried a full range of use of force equipment including batons, OC spray, and firearms, as well as handcuffs, binoculars, scopes, radios and batteries. Due to the length and conditions involved in some calls, members were often equipped with food and additional clothing.⁵⁹⁵

v) TRU team Tactical Operations Centre (TRU TOC)

503. In September, 1995, the TRU TOC consisted of a cube truck which served as a communications vehicle at all TRU team occurrences. All radio communications from TRU members on the ground were with the TRU TOC. The TRU TOC was powered by

⁵⁹² Kent Skinner 04/19/2006 at 38.

⁵⁹³ A TRU team "element" is a pairing of two TRU team members who are assigned a specific task or function (i.e. sniper/observer, scout/reconnaissance, immediate action plan).

⁵⁹⁴ Kent Skinner 04/19/2006 at 35.

⁵⁹⁵ Kent Skinner 04/19/2006 at 42; P-451.

either an electrical connection, by a generator, or it was powered directly by the engine of the van, as it was on September 6.⁵⁹⁶

504. The rear compartment of the truck measured approximately six feet by seven feet. It contained white boards, the TRU radio equipment, OPP radio equipment and the logger recorder used to record radio communications.⁵⁹⁷

vi) TRU team communications system

505. TRU team communications were on a separate radio channel from uniform member (i.e. ERT) communications, for officer safety purposes.⁵⁹⁸ It was not possible for officers on the ERT and TRU team to communicate through radios directly, because they operated on separate radio channels. The TRU communications system consisted of a Motorola radio system with portable radios. The reliable range of the TRU radio system was limited to one kilometer. The TRU TOC in the MNR parking lot was 800 metres from the intersection of Army Camp Road and East Parkway Drive.⁵⁹⁹

506. On September 6, there was also an ERT TOC at the MNR parking lot, located in the St. John's Ambulance communications trailer. This ERT TOC was designated as "Lima 2".⁶⁰⁰ The TRU TOC held both its own dedicated radio system for the TRU team, and the ERT channel so that it could monitor and communicate by radio with the ERT TOC and with ERT members. However, members of the TRU team did not have access to the ERT radio channels. The only direct radio communication for members of the TRU team was with the TRU TOC which, in turn, communicated with ERT on the ERT radio channel.

507. Because it was not possible for officers on the TRU channel to communicate with officers on the ERT channel, Cst. Zupancic's role on September 6 was to act as a "go-between" for the two radio networks. In this capacity, Cst. Zupancic would listen to both

⁵⁹⁶ Kent Skinner 4/19/2006, at 70.

⁵⁹⁷ Rick Zupancic 04/24/2006 at 91-92.

⁵⁹⁸ Kent Skinner 04/19/2006 at 67.

⁵⁹⁹ Kent Skinner 04/19/2006 at 67, 69.

⁶⁰⁰ The Command Post at the Forest Detachment was designated as "Lima 1".

radio channels simultaneously and convey information over the other channel, as required. In addition to monitoring both channels, Cst. Zupancic maintained a written summary log of the information heard over the two channels.⁶⁰¹

508. As of October 1994, all TRU team communications were recorded using a logger recording device located in the TRU TOC vehicle. During occurrences, a TRU team member was responsible for setting up the recording equipment which recorded transmissions onto a VHS videotape. The functions on the recording machine were analogous to those on a cassette recorder and included “stop”, “play”, “record”, “rewind” and “fast forward” buttons. In order to activate the record function, the operator simultaneously pressed the “play” and “record” buttons. The cargo straps which held the machine in place were situated such that they obscured the lights indicating which mode the logger recording machine was in.⁶⁰²

vii) Sniper/observer team – “Sierra”

509. TRU team members work in pairs (called 2 persons teams) that performed different roles or functions. Contrary to popular conceptions, the role of the TRU team sniper in 1995 (and today) was primarily intelligence gathering. Snipers are expert in invisible deployment. They are trained in camouflage and concealment to be able to position themselves to observe events without being seen. The role of the sniper during the majority of TRU calls to act as “eyes” and to report observations.⁶⁰³

510. Snipers worked in pairs as a sniper/observer teams. The sniper makes focused observations on particular targets. The observer maintains a wider field of view to provide further information and to protect the sniper. Members of the sniper/observer team are generally cross trained to switch roles. The sniper role also involves specialized firearms training in the event lethal force is required. This training relates

⁶⁰¹ Rick Zupancic 04/24/2006 at 94, 102; P-476.

⁶⁰² Kent Skinner 04/19/2006 at 69; Rick Zupancic 04/24/2006 at 97-98, 123.

⁶⁰³ Kent Skinner 04/19/2006 at 29.

primarily to hostage scenarios. "Sierra" is the sniper/observer team call sign, and hence the team is referred to as the Sierra team.⁶⁰⁴

viii) Immediate action team – "Alpha"

511. The TRU team members who performed the role of an immediate action team generally work in close proximity to the incident. The immediate action team often functions as the arrest team. It is generally assigned to carry out the Immediate Action Plan ("IAP"), such as a forced entry or some other hands-on action close to the incident. Its call sign is "Alpha". It is referred to as the Alpha team.

512. On September 6, the TRU team functioned as two two-officer Alpha teams and two two-officer Sierra teams.⁶⁰⁵

ix) TRU involvement in previous call to Kettle Point – February, 1995

513. Prior to the events at Ipperwash, members of both the TRU and ERT teams were called out to Kettle Point on February 25, 1995. The call concerned Daryl George, who had escaped police custody and was unlawfully at large. Daryl George barricaded himself in a home and made threats involving firearms. Members of the TRU team contained the house and attempted to negotiate with him. However, members of the Kettle Point community objected to the presence of OPP officers. Consequently, efforts by ERT and TRU to establish a perimeter were unsuccessful, as members of the Kettle Point community failed to observe the perimeter, thus posing a danger to officers, civilians and the suspect.

514. The Daryl George incident at Kettle Point was resolved when Miles Bressette, the Chief of the Kettle Point Police, approached the front of the residence and called Daryl George out. The actions of Chief Bressette, in directly approaching an armed individual without cover, were in violation of all standard operating police procedures. Chief Bressette "placed himself in jeopardy and again placed the suspect in jeopardy.

⁶⁰⁴ Kent Skinner 04/19/2006 at 32; Jim Irvine 05/25/2006 at 234.

⁶⁰⁵ Kent Skinner 04/19/2006 at 33-34.

And the reason I would say that is...the suspect may make some kind of movement towards the officer which would then create a belief in a TRU team member's mind that the officer's in jeopardy and his life may be in danger and he may now have to react to that."⁶⁰⁶ Fortunately, the incident was resolved peacefully and Daryl George was apprehended.

x) TRU team preparation for Park occupation

515. On August 29, 1995, the 1 District ERT leader, Sgt. Korosec, and A/Sgt. Deane attended at the Ipperwash Provincial Park to survey the location and to discuss various logistical and tactical issues including the establishment of checkpoints, staffing requirements, communications, and Command Post locations in the event of an occupation of the Park.⁶⁰⁷

516. On August 31, Csts. Zupancic and Beauchesne of the London TRU team attended the Ipperwash Provincial Park in anticipation of an occupation of the Park. They conducted a reconnaissance to examine entry, exit and perimeter for the Park in the event the TRU team was required. During this reconnaissance, the officers measured the distance from the Park to a parking lot on East Parkway Drive to ensure that, in the event the team was deployed, its communications equipment would function adequately.

517. A/S/Sgt. Skinner testified that these measures taken by team members in late August, 1995 were sufficient to provide all necessary information in the event TRU was activated. He noted that, in most TRU team calls, the opportunity for advanced preparation does not arise and members are not familiar with the terrain.⁶⁰⁸

⁶⁰⁶ Wade Lacroix 05/10/2006 at 217; Kent Skinner 04/20/2006 at 311; Brad Seltzer 06/13/2006 at 49-50.

⁶⁰⁷ Stan Korosec 04/05/2006 at 287-288, 291-294.

⁶⁰⁸ Kent Skinner 04/20/2006 at 347-348.

f) TRU Team Callout to Ipperwash

i) September 5, 1995

518. On September 5, A/S/Sgt. Skinner and A/Sgt. Deane met with Insp. Carson in Forest. Insp. Carson brought them up to date on the Park occupation. He requested that the remainder of the TRU team be brought from London on standby. A/Sgt. Deane and A/S/Sgt. Skinner then drove around the area to familiarize themselves with it.

519. At 13:00, A/S/Sgt. Skinner reviewed the Project Maple Plan before he returned to London to make preparations to proceed with the TRU team to Forest.

520. Due to concerns about raising public awareness of police presence in the area, the TRU team traveled over back roads to Pinery Provincial Park ("the Pinery") where the team was available on standby. The TRU team was not deployed on September 5.⁶⁰⁹

ii) TRU team involvement on September 6, 1995

521. At 07:00 on September 6, A/S/Sgt. Skinner attended a briefing at the Forest Detachment. During this briefing, he learned of the previous evening's events. A/S/Sgt. Skinner's principal concern was that 50 to 100 rounds of automatic weapons fire had been heard coming from the area of the Army Base or the Park the previous evening. This information indicated a higher potential for the presence of firearms, and it raised the level of threat of violence towards officers. A/S/Sgt. Skinner relayed this information to members of the TRU team who remained on standby at the Pinery.⁶¹⁰

522. At 20:13, Insp. Linton requested the TRU team attend the Forest Detachment from the Pinery. This was the first indication of the possible deployment of the TRU team. Sixteen minutes later, when the TRU team was on route, Insp. Carson advised

⁶⁰⁹ Kent Skinner 04/19/2006 at 55, 78-80.

⁶¹⁰ Stan Korosec 04/06/2006 at 224; Kent Skinner 04/19/2006 at 93; P-1320; P-1342; P-1343; P-1348.

A/S/Sgt. Skinner by phone that the TRU team was to return the gun trucks⁶¹¹ to the Pinery, although A/S/Sgt. Skinner was told to proceed to the Forest Detachment.⁶¹²

iii) Deployment of the Sierra teams

523. A/S/Sgt. Skinner arrived at the Command Post at Forest at approximately 20:40. The TRU team was directed to deploy Sierra teams to the intersection of Army Camp Road and East Parkway Drive to observe the activities of the occupiers and, in particular, activities that focused on the possibility of firearms in the Park kiosk. Two two-man Sierra observation teams were to be deployed. Their role was limited to observations and intelligence gathering.⁶¹³

524. A/S/Sgt. Skinner asked that the roads leading into the Park be closed in order to isolate the incident and to ensure community safety.⁶¹⁴

iv) Relay of information to TRU members regarding presence of weapons in the Park

525. At 21:09, A/S/Sgt. Skinner contacted Cst. Zupancic who was en route to meet A/Sgt. Deane. A/S/Sgt. Skinner provided Cst. Zupancic with detailed information regarding weapons which were believed to be in the possession of the occupiers. This information was subsequently relayed by Cst. Zupancic to the remaining members of the TRU team.⁶¹⁵

526. Although the presence of the weapons had not been confirmed by the police, from the perspective of TRU members, there was a fairly good probability that there were weapons in the Park. This information was clearly pertinent to TRU members as the ability to engage police at a longer range substantially increased the potential threat to both officers and civilians. As the A/S/Sgt. in charge of the TRU team, it would have

⁶¹¹ 3 large (5 tonne) white cube vans that house all the TRU team equipment - John Carson 05/17/2005 at 150.

⁶¹² P-1320; P-1350.

⁶¹³ Kent Skinner 04/19/2006 at 151.

⁶¹⁴ Kent Skinner 04/19/2006 at 160.

⁶¹⁵ Kent Skinner 04/19/2006 at 161; P-1351.

been negligent for A/S/Sgt. Skinner to ignore this information - to do so could potentially jeopardize the safety of police officers and members of the community.⁶¹⁶

527. As a result of problems with communications between the TOC and the Command Post, Insp. Carson and A/S/Sgt. Skinner went to the TRU TOC, which was located in the MNR parking lot, to conduct operations from that location. Upon their arrival, all of the members of the TRU team were present at the TRU TOC.⁶¹⁷

v) Route taken by the TRU gun trucks to the MNR parking lot

528. Following the decision to deploy the Sierra teams, the TRU team members in the TRU gun trucks traveled from Pinery Park to the TRU TOC site. In order to avoid increased community tensions, the TRU team drove the gun trucks by back roads to the MNR parking lot. The TRU team did not drive by the Army Base with its gun trucks on September 6, contrary to evidence that this occurred.⁶¹⁸

vi) Set up of the TRU TOC on September 6, 1995

529. On September 6, 1995, Cst. Zupancic was the TRU member assigned to the TRU TOC. Normally, A/Sgt. Deane, as second in command of the TRU team, would have staffed the TRU TOC. However, because Cst. Zupancic was recovering from a back injury, he was assigned to the TRU TOC and was responsible for activating the TRU team recording apparatus.⁶¹⁹ While attempting to set up the equipment, Cst. Zupancic repeatedly experienced difficulty with the power source to the TRU TOC, as the truck kept stalling. Every time the engine stalled, it tripped off the power inverter which functioned to convert power into a useable form for the purposes of the logger recorder. This turned off the power and the logger recorder. This power failure happened on three separate occasions.

⁶¹⁶ P-347.

⁶¹⁷ Kent Skinner 04/19/2006 at 174.

⁶¹⁸ Rick Zupancic 04/24/2006 at 80, 327; Mark Beauchesne 05/25/2006 at 19.

⁶¹⁹ Rick Zupancic 04/24/2006 at 68.

530. In order to restart the power, Cst. Zupancic left the rear of the truck, went to the driver's side of the vehicle, restarted the engine and returned to the rear of the vehicle to restart the logger recorder machine. Cst. Zupancic could not recall whether or not he restarted the logger recording machine on three separate occasions, or whether he reset the machine once, but omitted to restart the machine when the truck subsequently stalled.⁶²⁰

531. Cst. Zupancic could not recall testing the communications recorder prior to the occurrence on September 6. He believed that the machine had been set up correctly and was functioning at the start of the occurrence.⁶²¹

532. In addition to being responsible for the logger recordings of the occurrence, Cst. Zupancic maintained a written log of the transmissions he heard over the TRU and ERT radio systems.⁶²²

g) Deployment of Sierra Teams

533. The primary role of the Sierra teams was to provide information on the occupiers' activities at the intersection, the sandy parking lot, and the gatehouse, and to determine if the sight lines permitted a line of fire from the kiosk into the parking lot.⁶²³ The Sierra Teams' secondary role was to provide cover for the CMU in the event it was sent along East Parkway Drive to the sandy parking lot. Prior to their deployment, the TRU team members were briefed about the events which had occurred earlier that evening, including the information about specific weapons. TRU team members were also briefed on their specific roles.⁶²⁴

534. The first Sierra team - Sierra I – consisted of Csts. Irvine and Strickler. The second Sierra team – Sierra II – was comprised of Csts. McCormack and Kamerman. Sierra I was assigned to the lake side of the roadway while Sierra II was assigned to the

⁶²⁰ Rick Zupancic 04/24/2006 at 97, 119.

⁶²¹ Rick Zupancic 04/24/2006 at 99-100.

⁶²² P-476.

⁶²³ John Carson 05/19/2005 at 167 & 05/30/2005 at 14.

⁶²⁴ Kent Skinner 04/19/2006 at 176, 194.

inland side of the road. The Sierra teams carried assault rifles⁶²⁵ as well as their sidearms. The Sierra teams shared one piece of night vision equipment.⁶²⁶

535. The Sierra teams were transported partially down the roadway in a white suburban vehicle. A/S/Sgt. Skinner testified that, in retrospect, this was a tactical error as it compromised the officers' ability to get into position. Rather, they should have deployed on foot from the TOC.⁶²⁷ The Sierra teams experienced great difficulty moving into position as occupiers were outside of the Park scanning for officers.

h) Deployment of the Alpha Teams to Cover the CMU

536. Two Alpha teams were comprised of A/Sgt. Ken Deane with Cst. O'Halloran, and Cst. Beauchesne with Cst. Klym.⁶²⁸

537. Once Insp. Carson decided to deploy the CMU, he also deployed the TRU Alpha teams to provide cover for the CMU in the event of an armed confrontation. The role of the Alpha teams was to scan, observe threats, and respond as required. The Alpha teams proceeded with the CMU as it moved in formation down the roadway, remaining hidden and close to cover to the left and right, and somewhat ahead of the CMU.

⁶²⁵ longer rifle with .223 or .308 calibre – Kent Skinner 04/19/2006 at 38.

⁶²⁶ Kent Skinner 04/19/2006 at 177, 181.

⁶²⁷ Kent Skinner 04/19/2006 at 190.

⁶²⁸ Kent Skinner 04/19/2006 at 179.

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8. The Confrontation

538. For all involved, the night of September 6 was tragic. A life was lost, many were put in harm's way, and lives were changed forever. For those who were there, police officers and occupiers alike, those minutes have produced years of painful memories, fear and doubt, and a world of regret and frustration for all that was lost that night. These are events that could have been stopped many years before they started.

539. No one can know precisely what happened. No one can have a full appreciation for how it felt to be there, in the midst of the violence and chaos, other than those who were actually there. Even after two years of Inquiry testimony, a review of thousands of documents, and the evidence of thirty-three witnesses who actually took part, the best that anyone could ever hope for is some insight, some glimpse into how this incident got so out of control, and why those who lived through it continue to have such painful memories.

a) March Down East Parkway Drive

540. At 22:27, the CMU was assembled in box formation at the TOC site, ready to proceed down East Parkway Drive towards the sandy parking lot.⁶²⁹ The mission communicated from Insp. Carson to S/Sgt. Lacroix was clear - move the occupiers out of the sandy parking lot and back into the Park, but do not enter the Park.⁶³⁰

541. S/Sgt. Lacroix briefed the CMU at the TOC. He reiterated that they were to secure the public access area, and force the occupiers to retreat into the Park. The occupiers who stayed would be arrested.⁶³¹

⁶²⁹ P-438 at 1.

⁶³⁰ Wade Lacroix 05/10/2006 at 330-334.

⁶³¹ George Hebblethwaite 05/11/2006 at 136.

i) CMU deployment

542. Although the Sierra teams had been deployed almost an hour earlier at 21:37, they were not yet in position to provide updated intelligence of the activities in the Park, or provide cover to the CMU in the event they were confronted with a firearms threat.⁶³² However, they did provide important information to the TOC about some of the occupiers' activities outside the Park, including the occupiers' persistent attempts to locate the Sierra teams.⁶³³

543. Numerous occupiers, including David George, Clayton George, Cecil Bernard George, Jeremiah George, Isaac Doxtator, and Gabriel Doxtator, testified that they left the Park area, and traveled down East Parkway Drive and up Army Camp Road looking for the police.⁶³⁴ Both Clayton George and Cecil Bernard George admitted they carried sticks at the time, and Cecil Bernard George, who was dressed in camouflage, carried a radio.⁶³⁵

544. This evidence is consistent with Cst. Irvine's evidence that, at one point, he saw two men in camouflage walk up a cottage laneway in front of him. One of the men had a very large handheld radio in one hand, and something long in the other. The individual wore glasses and had a brimmed or peaked hat. Eventually the two individuals returned to the roadway where Cst. Irvine lost sight of them.⁶³⁶ Cst. Zupancic recorded this incident in the TOC notes at 22:28.⁶³⁷

545. As a result, the occupiers' activities, and their continuing hindrance to the Sierra teams, a decision was made by Insp. Carson and A/S/Sgt. Skinner to deploy the CMU, with Alpha in support, on to the roadway and into a position where they would be seen by the occupiers. It was A/S/Sgt. Skinner's evidence that the CMU would act as a

⁶³² P-1607; P-438 at 3.

⁶³³ Kent Skinner 04/20/2006 at 290, 359-361.

⁶³⁴ David George 10/20/2004 at 81; Isaac Doxtator 11/25/2004 at ; Gabriel Doxtator 11/30/2004 at 28.

⁶³⁵ Clayton George 11/08/2004 at 23; Cecil Bernard George 12/07/2004 at 23, 148.

⁶³⁶ Jim Irvine 05/25/2006 at 280-286.

⁶³⁷ P-476 at 1.

distraction and draw the attention of the occupiers, which would allow the Sierra teams to move undetected into position.⁶³⁸

546. The CMU was given instructions to move to within 300 meters of the Park, and await further information. The CMU began their advance at 22:29.⁶³⁹ At this time, S/Sgt. Lacroix was also informed, and he advised members of the CMU, that the occupiers had been seen piling up sticks and rocks.⁶⁴⁰

547. S/Sgt. Lacroix testified that his mission was clear and that he was unaware, or could not recall that he was informed that the CMU would be used as a diversion. He stated:

Q: Were you of the view at the time that you had the time and an opportunity to make further observations?

A: if somebody told me that I was taking a CMU down that road merely to be a diversion, I – I would have had difficulty with that. **But if somebody said to me, well while you are going down the road to do your mission, we're going to take advantage of that as a distraction and to move in closer, that's good tactics. [emphasis]**⁶⁴¹

548. Sgt. Hebblethwaite testified that there was no change to the CMU's mission, or the instruction not to enter the Park, prior to deployment. He had no knowledge that CMU was deployed as a diversionary tactic to allow the Sierra teams to get into position, but it would not concern him if that was one of the reasons the CMU was deployed.⁶⁴²

⁶³⁸ Kent Skinner 04/19/2006 at 191.

⁶³⁹ P-1153 at 10; P-438 at 1.

⁶⁴⁰ Wade Lacroix 05/08/2006 at 257-258.

⁶⁴¹ Wade Lacroix 05/08/2006 at 260.

⁶⁴² George Hebblethwaite 05/11/2006 at 142.

549. Whether S/Sgt. Lacroix or any member of the CMU was aware that the CMU would be used as a distraction or diversion, it is fair to say that the approach of the CMU to the sandy parking lot accomplished just that.

ii) Alpha deployment

550. The Alpha members were driven up East Parkway Drive to within 300 meters of the intersection of East Parkway Drive and Army Camp Road. They were deployed ahead of the CMU to get an advance eye on the situation but, from that position, they could not see the intersection. Cst. Beauchesne and Cst. Klym went to the south side of the road. A/Sgt. Deane and Cst. O'Halloran took the north side. Cst. Beauchesne was the only member of Alpha whose rifle was equipped with night vision.⁶⁴³

551. While advancing towards the parking lot, Cst. Beauchesne observed two individuals on the south side of the road moving towards them, using the bush for concealment. One individual had a floppy brimmed hat, possibly a ponytail, and he was carrying something in his hand. It did not appear to Cst. Beauchesne to be a firearm. The individuals squatted by the side of the road for a few minutes, and then they returned back towards the Park. Cst. Beauchesne last saw the individuals heading towards the lake.⁶⁴⁴ The TOC notes written by Cst. Zupancic record this incident at 22:30.⁶⁴⁵

552. At approximately 22:33, A/S/Sgt. Skinner reported to the CMU that they had been spotted by the occupiers, and the occupiers were in retreat.⁶⁴⁶ The TOC notes state at 22:35: "A – TAC 2 forward observers have spotted CMU and are running back to Park – Carson & CMU advised."⁶⁴⁷

553. Jeremiah George testified that he and Cecil Bernard George traveled down East Parkway Drive approximately half a kilometer to see what the police were doing. Upon

⁶⁴³ Mark Beauchesne 05/26/2006 at 30-32, 37; P-476 at 2.

⁶⁴⁴ Ibid; P-476 at 3.

⁶⁴⁵ P-476 at 2.

⁶⁴⁶ P-438 at 2.

⁶⁴⁷ P-476 at 2.

seeing the police coming down East Parkway Drive, he ran back to the Park to warn the others. Clayton George, who was down East Parkway Drive near driveway 6842, testified that, after seeing the police approach, he ran back towards the Park.⁶⁴⁸

554. At 22:35, S/Sgt. Lacroix reported to the TOC that the CMU were 200 to 300 meters from the Park, and that he was awaiting instructions. S/Sgt. Lacroix was told to standby.⁶⁴⁹

555. S/Sgt. Lacroix testified that Insp. Carson had instructed him to proceed 300 meters down the road, then check in. In OPP parlance, this is called a "phase line". Up to that point, it is very easy for the Incident Commander to recall the CMU. The "phase line" concept gives the Incident Commander the opportunity to change his mind, or provide updated intelligence. S/Sgt. Lacroix was checking in at that point to see if the mission was still a go.⁶⁵⁰

556. From this location, the CMU was lit up by spotlights from the occupiers. Sgt. Hebblethwaite requested an update on whether Sierra 1 had reached its position. At 22:37, the CMU was again told that Sierra 1 and Sierra 2 were not yet in position.⁶⁵¹

iii) Person or occupier on the roadway with a rifle

557. At 22:44⁶⁵², Cst. Beauchesne observed an individual wearing a floppy hat at the end of the road. He appeared to be carrying a long gun. Because his radio was not functioning properly, Cst. Beauchesne crossed the road, and told A/Sgt. Deane what he had seen. A/Sgt. Deane passed on the information to the TOC, and Cst. Beauchesne moved forward up the road to conduct a further assessment.⁶⁵³

⁶⁴⁸ Jeremiah George 02/07/2005 at 131-134; Clayton George 11/08/2004 at 23.

⁶⁴⁹ P-438 at 3.

⁶⁵⁰ Wade Lacroix 05/08/2006 at 268-269.

⁶⁵¹ P-438 at 3.

⁶⁵² P-476 at 3.

⁶⁵³ Mark Beauchesne 05/25/2006 at 37-38.

558. Upon hearing the report of an individual on the road with a gun, A/S/Sgt. Skinner immediately advised the CMU of the possible weapon, and S/Sgt. Lacroix ordered the CMU to split and take cover.⁶⁵⁴

559. According to the TAC⁶⁵⁵ logger, the first report over the radio of a party on the roadway with a rifle was made at approximately 22:42, and further confirmation of the long gun was radioed at 22:45 by A/S/Sgt. Skinner. It was not until approximately 22:46, four minutes after the initial sighting and report of a possible firearm, that Cst. Beauchesne was able to confirm, using night vision equipment, that the object the individual was carrying was not a rifle but a stick.⁶⁵⁶

560. Cst. Beauchesne testified with respect to this occurrence:

Q: ...When you observed the person that had what you thought might have been a gun or a weapon in his hand, was that object in his hand, was that pointed at the CMU or, in your view, was the CMU at immediate risk because of that person?

A: No. It was -- when I first viewed him he was moving across my point of view and it was in a suitcase style of carry, I call it, low, to his right side and...

Q: Were you of the view at the time that you had the time and an opportunity to make further observations?

A: Yes.

Q: And if you had been of the view, if the circumstances had been that the object was being carried differently and you felt that the CMU was in danger from the person, what actions would you have taken or could you have taken?

A: There's a number of them, but I would have had to take some sort of action immediately to either deter the subject or to take action against them, depending on what he was

⁶⁵⁴ Kent Skinner; Wade Lacroix; P-438 at 4.

⁶⁵⁵ Total Access Channel ("TAC") – John Carson 05/12/2005 at 201.

⁶⁵⁶ Mark Beauchesne 05/26/2006 at 38; P-438 at 4-5.

doing. If he was pointing the gun in our direction and I felt the CMU was threatened, I might shoot him or shoot at him immediately, light him up, yell at him, somehow prevent him from potentially causing grievous bodily harm or death to other members.

Q: Because your job, like the other members of the TRU, is to protect life?

A: Yes.

Q: And if the CMU were at risk you would be obligated to take action?

A: Yes.⁶⁵⁷

iv) Sierra teams in position

561. At approximately 22:46, Sgt. Hebblethwaite made a further inquiry to the TOC of whether the Sierra teams were in position. At approximately 22:48, A/S/Sgt. Skinner reported to the CMU that Sierra 2 and Alpha were in a position to cover them.⁶⁵⁸

562. Upon hearing this information, S/Sgt. Lacroix understood that he “was good to go”, to carry out the mission given to him by Insp. Carson. He understood the Sierra 2 and the Alpha teams were in a position to respond if the CMU encountered a weapons threat, and that TRU had “an eye on the ground.” They could provide up-to-date intelligence to him if required.⁶⁵⁹

563. At 22:48, A/S/Sgt. Skinner further informed the CMU that Sierra 1 was also now in position, off to left flank of the CMU.⁶⁶⁰

564. The CMU continued to the sandy parking lot.

⁶⁵⁷ Mark Beauchesne 05/25/2006 at 218.

⁶⁵⁸ P-438 at 5, 6.

⁶⁵⁹ Wade Lacroix 05/10/2006 at 386.

⁶⁶⁰ P-438 at 6.

b) Confrontation in the Sandy Parking Lot***i) Clearing the sandy parking lot***

565. According to the TAC logger, Sgt. Hebblethwaite reported to the TOC at 22:48 that the CMU was “engaging”. It was his evidence that, at this point in time, the CMU was still on East Parkway Drive, about 150 meters away from the parking lot but, in his words, they were “into it.” An ATV had driven out towards the CMU, and two or three powerful spotlights were being shone at the CMU, impairing his night vision. Also, as they approached the parking lot, rocks started hitting the officers’ shields.⁶⁶¹

566. Although Sgt. Hebblethwaite could not recall any occupiers in the sandy parking lot when the CMU arrived at the intersection, he stated that there were clearly people outside the Park prior to CMU's arrival due to the location of spotlights, the projectiles thrown, and the ATV that drove towards them. By the time CMU arrived at the fence line, the occupiers were back in the Park.

567. S/Sgt. Lacroix testified that, as they moved towards the parking lot, he sighted the “sentries”. He was able to see a couple of people with floodlights at the bend of Army Camp Road milling around. They lit up the police. He could see other silhouettes moving behind, people who were backlit by the bonfire. He also recalled an ATV on the road “tooling around a bit.”⁶⁶² As they approached, Sgt. Hebblethwaite radioed to the TOC that they been spotted by the occupiers, and were engaging. S/Sgt. Lacroix explained this meant that the occupiers could see the police, and the police could see them. No physical contact had yet been made the occupiers.⁶⁶³

568. When the CMU caught up to Alpha’s position, Cst. Beauchesne and Cst. Klym joined the unit on the right flank. As they passed the bend in the road, Cst. Beauchesne saw about six individuals in the sandy parking lot with sticks, bats, and other items. The officers were illuminated with headlights and spotlights. He saw there was a large fire

⁶⁶¹ P-438 at 6.; George Hebblethwaite 05/11/2006 at 174-175.

⁶⁶² Wade Lacroix 05/08/2006 at 217.

⁶⁶³ Wade Lacroix 05/08/2006 at 218-219.

inside the Park, and a bus, a car, and at least one ATV. There were 30 to 40 males in the area, including the ones in the sandy parking lot, some carrying clubs and sticks.⁶⁶⁴

569. As the CMU arrived at the curve of the intersection, Cst. York saw 15 to 20 occupiers in the sandy parking lot. All of them had either a bat, club, or pipe. Cst. York also noted a steel sign carried as a weapon. The occupiers stepped backed towards the Park as the CMU advanced.⁶⁶⁵

570. The occupiers outside the Park backed up at a walking pace as the CMU approached. By the time the CMU crossed into the sandy parking lot, and moved into cordon formation, four or five occupiers were still lingering near the bush line at the fence outside the Park.⁶⁶⁶

571. The front contact squad advanced to within 15 to 20 feet of the fence. S/Sgt. Lacroix was about 30 to 40 feet from the fence. From this position, he was able to see 15 to 20 males around a large fire inside the Park. There was a picnic table burning in the fire, and there a number of cars parked in the area. S/Sgt. Lacroix also observed a bus behind the gate. A dumpster blocked the gate.⁶⁶⁷

572. At this point, S/Sgt. Lacroix halted the CMU, and the last remaining occupiers in the sandy parking lot returned to the Park. S/Sgt. Lacroix felt the CMU had accomplished its mission.⁶⁶⁸

573. With respect to the police's approach to the sandy parking lot, David George testified:

Q: Okay, and I believe you also said – and correct me if I'm wrong -- that when the officers were approaching or when

⁶⁶⁴ Mark Beauchesne 05/25/2006 at 45.

⁶⁶⁵ Kevin York 05/18/2006 at 55-56.

⁶⁶⁶ Wade Lacroix 05/08/2006 at 216-218.

⁶⁶⁷ Wade Lacroix 05/08/2006 at 220.

⁶⁶⁸ Wade Lacroix 05/08/2006 at 221.

you first saw them, you, and perhaps some others, were on the paved roadway?

A: Yeah, we were checking it out.

Q: And -- and the purpose of being out on the paved roadway was just that -- to see where they were?

A: Yeah.

Q: Okay. And the purpose of going there was in response to information Cecil Bernard George had given you?

A: Yeah.

Q: Okay. And if I recall correctly, Mr. George, it was at that point -- at the point that you saw the officers coming down East Parkway Drive -- it was then that you and perhaps the others, moved back into -- inside the fence in the Park?

A: Yes.

A: Okay. And is it fair to say that at that point, everyone, including Cecil Bernard George, was inside the fence?

A: Yes.⁶⁶⁹

574. David George also testified that, “[w]e just waited for them and we were watching them. We kept our eyes on them and when they got close enough we lit them up with the spotlights.”⁶⁷⁰

ii) Mission accomplished

575. At this point, the mission was accomplished.⁶⁷¹

⁶⁶⁹ David George 10/12/2004 at 85-86.

⁶⁷⁰ David George 10/20/2004 at 95.

⁶⁷¹ George Hebblethwaite 05/11/2006 at 187.

576. When the CMU stopped at the Park fence on the first approach, Sgt. Hebblethwaite observed a large fire towards the lake, and a smaller fire directly ahead, both inside the Park. There was also a Chrysler automobile inside the Park, headlights shining towards the officers, and a bus, with headlights on, approximately 100 feet behind a dumpster at the gate.⁶⁷²

577. Following some “dressing” commands to organize the CMU’s position in the parking lot, S/Sgt. Lacroix advised the TOC that the occupiers were back in the Park. This communication was recorded at 22:53. He was then ordered by A/S/Sgt. Skinner to take up a defensive position. S/Sgt. Lacroix directed the contact squad to back up slowly.⁶⁷³

578. Sgt. Huntley, who was the right contact squad element leader, testified that the right flank of the CMU proceeded to within seven meters of the fence on the initial advance to clear the parking lot. In this position, the element was blinded by spotlights, and debris was thrown at them from behind the fence. He was hit in the upper thigh, and he observed Cst. Schwass, a member of right contact squad, hit on the helmet. He also recalled a burning log thrown at them.⁶⁷⁴

579. Cst. York, who was in the front contact squad of the CMU, testified that he advanced to within five feet of the fence. Cst. York saw two fires inside the Park, a bus, and a dumpster in front of the bus. All of the occupiers appeared to be male, and they were all armed with bats, clubs, or pipes. The occupiers were throwing objects at the officers, including a fire log that landed near Cst. York, a piece of pipe that struck his shield, and rocks.⁶⁷⁵

580. The occupiers were close to the fence, but more than an arm's length away. The only physical engagement was the throwing of objects by the occupiers. There was no physical contact with the occupiers over the fence. The occupiers were insulting and

⁶⁷² George Hebblethwaite 05/11/2006 at 179-181.

⁶⁷³ Wade Lacroix 05/08/2006 at 278-279 and 280-281; P-438 at 6.

⁶⁷⁴ Robert Huntley 04/27/2006 at 110.

⁶⁷⁵ Kevin York 05/18/2006 at 59.

swearing at the officers. Cst. York recalled that one male said, "come and get it. Those things won't help."⁶⁷⁶

581. Meanwhile, Cst. Beauchesne and Cst. Klym advanced to the top of a grassy dune adjacent to the south end of the sandy parking lot. They were positioned next to a hydro pole. From that position, Cst. Beauchesne observed the occupiers in the Park yelling at the police. He testified he heard insults, "war cries", and taunts directed at the police, such as, "whites go back to England." The occupiers also threw burning sticks and other objects at the CMU.⁶⁷⁷

582. Cst. Irvine and Cst. Strickler advanced parallel to the CMU, in a concealed position. Their final location was the cottage nearest the Park. From that position, Cst. Irvine could see into the Park. He observed a fire inside the fence, and a number of vehicles moving around. The occupiers were yelling, and moving towards the gate. He heard the word "cowards" a couple of times. The occupiers threw burning sticks towards CMU, but the CMU were not within his field of vision.

583. At 22:54 the TAC recorded an order for "shield chatter". S/Sgt. Lacroix testified that he made the order in response to the debris that was being thrown at the CMU by the occupiers, and the fact that the occupiers were pounding on the hoods of the vehicles and "screaming and hollering" at them.⁶⁷⁸

584. Shield chatter is officers striking their batons against their shields to produce a loud noise. The purpose of shield chatter is to intimidate individuals to cease their activities without the need for physical contact.⁶⁷⁹ It was a prescribed technique for the CMU, and part of its training.

⁶⁷⁶ Kevin York 05/18/2006 at 62.

⁶⁷⁷ Mark Beauchesne 05/25/2006 at 47-48.

⁶⁷⁸ Wade Lacroix 05/08/2006 at 286.

⁶⁷⁹ George Hebblethwaite 05/11/2006 at 39.

585. There was broad consensus in the evidence from the occupiers that they yelled at police, threw rocks and other debris, and used the spotlights to impair the officers' vision.

586. At 22:55, Sgt. Hebblethwaite reported to the TOC, the "badgers" are in the Park. Sgt. Hebblethwaite testified that "badgers" is an informal police term for suspects. The radio call informed the TOC that the occupiers had returned to the Park.⁶⁸⁰

iii) Left punch out

587. David George testified as follows with respect to the CMU's movements:

Q: In the Park? Okay. And you described also, the officers approaching or rushing or descending upon the fence area on two (2) occasions, I believe, right?

A: Yes.

Q: Okay. And it was after the second approach or rush, if I can call it that, that Cecil Bernard George proceeded out into the parking lot area?

A: Yes.⁶⁸¹

588. As the CMU backed up towards the pavement, a man came through the turnstile swinging wildly a pole or long stick, and yelling that he was not afraid. S/Sgt. Lacroix ordered a left punch out. The left cover squad ran towards the individual, who returned to the Park as they approached.⁶⁸²

589. There was no contact between officers and this individual.

⁶⁸⁰ George Hebblethwaite 05/11/2006 at 189-190.

⁶⁸¹ David George 10/12/2004 at 85-86.

⁶⁸² George Hebblethwaite 05/11/2006 at 187-192; Robert Huntley 08/27/2006 at 107; Wayde Jacklin 04/25/2006 at 261; Wade Lacroix 05/08/2006 at 222-223.

590. The CMU resumed its backwards maneuver. Sgt. Lacroix's ordered the contact squad to "hold up...let that left cover catch up". It was Sgt. Hebblethwaite's evidence that this command, at approximately 22:56, was moments after the left punch out. The whole unit was backing up, and the left contact squad was not back in position.⁶⁸³

591. During the time that the police were backing up towards the tarmac, a black dog from the occupiers' group came towards the left cover squad. Sgt. Hebblethwaite testified that he gave it a "hoof" to get it away. There were two police dogs to the rear of the CMU, and the black dog presented a significant problem with maintaining control of the K-9 dogs. He also did not want the dog to bite any of the CMU members. Sgt. Hebblethwaite testified that he believed this incident occurred after the left punch out.⁶⁸⁴

592. Glenn Bressette testified that, after the first rush to the fence, the dog went out and started "smelling up their legs." One officer hit or kicked the dog. Glenn Bressette and others threw debris at the police when they approached, but there was no fighting at that point.⁶⁸⁵

593. Elwood George testified that Stewart George went over the fence into the sandy parking lot after the dog yelped, and other occupiers followed him into the sandy parking to "back him up." Then he testified:

Q: Okay. Okay. And I think you had told us that at that -- and we'll call this the first confrontation, if that's okay, just so that --

A: Yeah.

Q: -- there's some language that we have, so, the first confrontation is when your brother goes over the fence, or you understand he goes over the fence, and the other occupiers, including yourself, follow him --

⁶⁸³ George Hebblethwaite 05/11/2006 at 187-192.

⁶⁸⁴ George Hebblethwaite 05/15/2006 at 29.

⁶⁸⁵ Glenn Bressette 11/09/2004 at 236.

A: Well -- it -- it really wasn't -- it -- it -- well there was no hitting going on, I don't believe anybody hit anybody at that first skirmish. It was just simply that we were rushed and we retreated right back into the fence. I don't believe there was any striking -- anybody striking each other at that time.⁶⁸⁶

594. Stewart George testified that someone told him that the police had hit the dog, and he went over the fence asking “who hit my fucking dog.” Further, he also testified that an officer hit him at this point, and he got an ax handle and hit the officer back.⁶⁸⁷

iv) Full punch out

595. The CMU had withdrawn from the sandy parking lot, and was standing at the edge of the tarmac.⁶⁸⁸

596. A group of about ten occupiers came over the fence into the sandy parking lot carrying steel poles, sticks, and clubs. Another group of five to ten came out behind the first group. They picked up projectiles that had already been thrown, and again threw them at the CMU.

597. At the point, S/Sgt. Lacroix thought the occupiers were just coming out to antagonize the police. During CMU training, he had been taught that hostile crowds would often run up and taunt police, and then retreat. However, as the occupiers continued out further into the sandy parking lot, they broke into a run at the CMU. Once the first group made contact with the front contact squad, which was essentially a fight between ten occupiers and six police officers, S/Sgt. Lacroix gave the order to “go”, the command for a full CMU punch out.⁶⁸⁹

598. The “go” command came at 22:58.

⁶⁸⁶ Elwood George 11/03/2004 at 73.

⁶⁸⁷ Stewart George 11/02/2004 at 214.

⁶⁸⁸ Wade Lacroix 05/18/2006 at 224; Mark Beauchesne 05/25/2006 at 49.

⁶⁸⁹ Wade Lacroix 05/08/2006 at 225-228; George Hebblethwaite 05/11/2006 at 193.

599. As this point, S/Sgt. Lacroix saw a person directly in front of him swinging a six-foot steel pole. The individual lifted the pole over his head and swung it. S/Sgt. Lacroix deflected the blow with his shield, which broke in half. The pole then glanced off his helmet and shoulder. S/Sgt. Lacroix struck the individual in the shoulder area, causing him to drop the pole and fall to the ground. S/Sgt. Lacroix continued running with the CMU to within 30 feet of the fence, as the Arrest Squad moved forward to make the arrest of S/Sgt. Lacroix's assailant.⁶⁹⁰

600. After the order was given to "go", Sgt. Huntley ran past an occupier on the ground who was being arrested. The individual was fighting vigorously with officers. There were other occupiers attacking the CMU at that moment, and one attempted to strike Sgt. Huntley with a large stick. Sgt. Huntley deflected the blow with his shield. He struck the individual with his baton. The occupier returned to the Park limping.⁶⁹¹

601. Sgt. Hebblethwaite testified that there were major individual fights that occurred in front of him, to his left, and to his right. He observed S/Sgt. Lacroix's shield broken in half. Another individual came at Sgt. Hebblethwaite with a club. He deflected a blow with his shield.⁶⁹²

602. During the fighting, a large individual with a baseball bat struck Cst. York's shield. Cst. York hit him on the left knee with his baton. The individual then turned, and went back towards the Park.

603. S/Sgt. Lacroix testified that the "crowd exploded". Earlier in his evidence, he explained that "explosive crowds" are riotous.⁶⁹³ From his vantage point at the top of the grassy knoll, Cst. Beauchesne described the confrontation between the CMU and

⁶⁹⁰ Wade Lacroix 05/08/2006 at 225-228.

⁶⁹¹ Robert Huntley 04/27/2006 at 112.

⁶⁹² George Hebblethwaite 05/11/2006 at 193.

⁶⁹³ Wade Lacroix 05/09/2006 at 110; 05/08/2006 at 110.

the occupiers as a “pitched battle”. The Director of the SIU described the scene as “a violent battle raging between members of the CMU and various protestors”.⁶⁹⁴

604. In addition to Cecil Bernard George, whose arrest is discussed later in this chapter, the following occupiers testified that they were in the sandy parking lot fighting with police:

- David George hit two officers with a baseball bat, breaking the second officer’s shield;⁶⁹⁵
- Stewart George, who carrying a pick-axe handle three feet long, testified “we were all out in the parking lot just fighting with the cops”,⁶⁹⁶
- Elwood George was carrying a large club, four feet long and two inches wide, which he used to strike an officer in the helmet area;⁶⁹⁷
- Michael Cloud had a club four feet long, which he threw at police;⁶⁹⁸
- Isaac Doxtator was carrying a stick, which he broke striking an officer and then threw it at the officer;⁶⁹⁹
- Gabriel Doxtator had a six foot long stick, two inches in diameter which he used to strike a number of shields;⁷⁰⁰
- Nick Cottrelle was carrying a bat, and he broke the bat above the handle when he struck an officer;⁷⁰¹

⁶⁹⁴ P-626 at 45.

⁶⁹⁵ David George 10/20/2004 at 118, 11/01/2006 at 162 .

⁶⁹⁶ Stewart George 11/02/2004 at 90.

⁶⁹⁷ Elwood George 11/03/2004 at 115-116.

⁶⁹⁸ Michael Cloud 11/08/2004 at 222.

⁶⁹⁹ Isaac Doxtator 11/25/2004 at 202-203.

⁷⁰⁰ Gabriel Doxtator 11/30/2004 at 49-50.

⁷⁰¹ Nicholas Cottrelle 01/18/2005 at 118-119.

- Roderick George was carrying a metal sign post; and⁷⁰²
- Stacey George was carrying a baseball bat.⁷⁰³

v) Arrest of Cecil Bernard George

605. Although S/Sgt. Lacroix was never able to identify the individual who assaulted him, Cecil Bernard George was arrested by officers in the Arrest Squad for his assault on S/Sgt. Lacroix. At the Commission, Cecil Bernard George testified that, as he stood inside the Park fence watching the police, he became enraged. The anger overcame him, and he picked up a steel pipe and went over the fence. As the police charged, he swung a pipe at an officer, and he heard “an echo”, which was the sound of breaking glass.⁷⁰⁴

606. While the clashes between CMU and the occupiers were ongoing, Cst. Jacklin, who was the leader of the Arrest Squad, saw an individual on the ground, about 30 to 50 meters from his position. The CMU officers were attempting to arrest him. Cst. Jacklin moved the Arrest Squad forward and, as he approached, he observed the individual on the ground kicking violently at the CMU officers. He was thrashing, and resisting their attempts to gain control.⁷⁰⁵ At the time, Cst. Jacklin was unaware of the circumstances that led to the person being on the ground.⁷⁰⁶ The Arrest Squad was composed of eight officers. They all proceeded to the location of the man on the ground who was struggling with the officers.

607. Cst. Jacklin cleared one of the CMU officers out of the way, who he had observed kick the person on the ground. Cst. Jacklin then created a protective barrier for the person on the ground, and for the Arrest Squad. Rocks and other projectiles were being thrown. None of the members of arrest team were carrying shields. It was Cst. Jacklin realized that they needed to remove the individual from the parking lot as

⁷⁰² Roderick George 11/24/2004 at 186, 192.

⁷⁰³ Stacey George 11/22/2004 at 97-98, 160, 186.

⁷⁰⁴ Cecil Bernard George 12/07/2004 at 64, 70.

⁷⁰⁵ Wayne Jacklin 04/25/2006 at 264.

⁷⁰⁶ Wayne Jacklin 04/26/2006 at 56.

quickly as possible for everyone's protection.⁷⁰⁷ He did not observe any officer strike the individual with a baton.⁷⁰⁸

608. Cst. Poole, one of the eight members of the Arrest Squad, testified that he noticed a man on the ground, ahead and to his right. As Cst. Poole moved closer, he saw the individual on his side, kicking his legs. Cst. Poole observed one officer kick the man in the stomach. It was a quick snap kick, not a football kick.⁷⁰⁹

609. When Cst. Poole reached the man, he physically moved two officers out of the way. He attempted to gain control the individual; however, the man did not want to be handcuffed, and was actively struggling with Cst. Poole. At the time, the projectiles intensified greatly, and he heard someone yelled, "get him out of there." It was a dangerous spot, as the projectiles rained down them. Four arrest team officers picked up the man, one on each limb, and moved him to the rear, out of range of the projectiles.⁷¹⁰ At no time did Cst. Poole observe any officer strike the individual with a baton.⁷¹¹

610. As the arrest team moved forward, Cst. Root, one of the eight members of the Arrest Squad, saw approximately eight to ten officers standing around an individual who was on the ground. They were not arrest team members. Several of the officers were using their hands trying to subdue him. The individual was on his back, kicking and flailing his arms wildly. He observed the man struck with a baton, two or three times.⁷¹² He viewed the strikes as intended to assist the arrest in order to get the man to stop resisting, and that the strikes were appropriate in the circumstances.⁷¹³

611. Cst. Root attempted to handcuff the man, but he could not get control of his flailing arms. He testified that a barrage of debris was raining down "all over us". Cst.

⁷⁰⁷ Wayde Jacklin 04/26/2006 at 264.

⁷⁰⁸ Wayde Jacklin 04/26/2006 at 307.

⁷⁰⁹ Sam Poole 05/16/2006 at 103.

⁷¹⁰ Sam Poole 05/16/2006 at 103.

⁷¹¹ Sam Poole 05/16/2006 at 103.

⁷¹² Jim Root 05/17/2006 at 21.

⁷¹³ Jim Root 05/17/2006 at 151.

Root was hit with something that took a chunk out of his helmet. He was directed by Cst. Jacklin to move the man, and Cst. Root and other arrest team officers picked him up and carried him to the prisoner van. The man was never dragged, and no one pulled his hair.⁷¹⁴

612. Cst. Bittner, another member of the Arrest Squad, saw a person face down on the ground, approximately thirty feet away and to his left. Five or six CMU officers were over him. The man was kicking. Cst. Bittner saw him struck with a baton twice in the right shoulder area as he approached the man. Cst. Bittner assisted the officers to secure the individual on the ground. One officer attempted to handcuff him, and another was attempted to cuff his ankles. The individual was still kicking as Cst. Bittner removed his boots and put flex cuffs on his ankles. The other officers were still having difficulty handcuffing the man's hands, so Cst. Bittner placed his metal cuffs on his hands.⁷¹⁵

613. As the arrest team tried to handcuff and gain control of the man, he was still very actively resistant and assaultive. The dangerous situation around the officers was continuing to escalate. Cst. Jacklin directed the team to pick the individual up and carry him to the rear.⁷¹⁶ At the prisoner van, Cst. Jacklin did a cursory physical check. He saw a cut and some blood around the man's mouth, and some swelling to his face.⁷¹⁷ Cst. Jacklin directed that he be placed in the van, and he assigned Cst. Zacher to stay with him.⁷¹⁸

614. As for the kick by one of the CMU officers, Cst. Jacklin testified that such use of force was reasonable in the circumstances.⁷¹⁹ The man was actively resisting, kicking and flailing his arms.

⁷¹⁴ Jim Root 05/17/2006 at 21.

⁷¹⁵ Bill Bittner 05/17/2006 at 25-26.

⁷¹⁶ Wayde Jacklin 04/25/2006 at 274.

⁷¹⁷ Wayde Jacklin 04/25/2006 at 276.

⁷¹⁸ Wayde Jacklin 04/25/2006 at 277.

⁷¹⁹ Wayde Jacklin 04/26/2006 at 264.

615. Officers are trained to take the wind out of someone with a kick to a person's mid-section, to reduce the desire to fight. It is a basic technique. Cst. Poole did not believe the kick he observed was excessive in the circumstances.⁷²⁰

616. Cst. LeBlanc, one of the prisoner van drivers, testified that he saw a male come into the middle of the CMU formation. He was enveloped by officers. Cst. LeBlanc then noticed a man on the ground in the middle of CMU, who he believed was the same person.

617. Cst. LeBlanc observed a CMU officer with a baton deliver two strikes to the man on the ground. He did not see anyone kick him. He did not see any officer do anything that caused him concern. He thought the baton strike was totally appropriate in the circumstances, and he did not think excessive force was used.⁷²¹

618. Officers from the arrest team converged on the man. He observed the person on the ground on his back kicking and flailing, fighting the officers who were trying to gain hold of him. After a short period the officers picked him up, and carried him to the roadway.⁷²²

619. While this was going on, the occupiers continued to throw debris as they fought with the CMU. Cst. LeBlanc noticed that the man under arrest was still fighting the officers, and he was trying to escape. It appeared the arrest team was starting to lose control. They placed the man on the ground. The arrest team then handcuffed the man, and picked him up again, and carried him to the prisoner vans.⁷²³

620. A number of occupiers who witnessed Cecil Bernard George's arrest testified that he was "beaten" by officers. These are the same witnesses who testified that Cecil Bernard George was in the sandy parking lot "negotiating" when he was "run over" and "beaten" by the police. That evidence is completely at odds with Cecil Bernard

⁷²⁰ Sam Poole 04/26/2006 at 306.

⁷²¹ Dennis LeBlanc 05/23/2006 at 168.

⁷²² Dennis LeBlanc 05/23/2006 at 83.

⁷²³ Dennis LeBlanc 05/23/2006 at 83.

George's own evidence about his actions that night of picking up the pipe, and striking an officer.

621. No such beating took place. Certainly from a by-stander's perspective, having a number of officers converge on an individual and attempt to take control of a person can often look ominous. However, a number of officers is necessary in take and keep control. Quick control is safe for the individual arrested and for the officers.

622. The injuries that Cecil Bernard George received were, in large part, explainable by the circumstance of his violent encounter and ferocious struggle with the CMU officers, before the arrest team was able to take control of him. He may have also been hit by the objects thrown towards him and the officers by the occupiers.

623. It is important to remember that none of the occupiers were actually "by-standing" when Cecil Bernard George was arrested. Many of them were fighting with the CMU at the same time, and they had an obstructed views, at best, the extended struggle and resistance of Cecil Bernard George, and the efforts of the officers to take control of him.

624. Based on all the evidence, it is clear that Cecil Bernard George was struck, with both kicks and by batons, during his encounter with police, first by S/Sgt. Lacroix and then by members of the CMU who attempted to gain control of him. However, the officers who witnessed these blows testified that, in all the circumstances, they were appropriate and not excessive. That view was also shared by the SIU. It concluded, after an exhaustive investigation into the arrest, that the injuries suffered by Cecil Bernard George were not a result of excessive use of force by the officers.

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9. Retreat of CMU

a) The Bus Leaves the Park

625. Prior to Sept 6, 1995, the school bus was used in an aggressive manner on a number of occasions:

- on June 21, 1995, passengers on the bus threw a camera at a military patrol vehicle;⁷²⁴
- on June 22, 1995, the bus entered the built up area and attempted to ram or bump a military patrol vehicle; one occupant mooned and shouted obscenities at the vehicle; the bus then collided with a second military vehicle, knocking it forward about 10 meters;⁷²⁵
- on June 23, 1995, the bus pursued a military patrol vehicle while passengers threw objects at it; there were barrels inside the bus, indicating that it had been prepared for this type of confrontation;⁷²⁶
- on June 23, 1995, Harley George and Nicholas Cottrelle removed 2 large warning signs and loaded them on the bus; Harley George then drove the bus towards a military vehicle and attempted to collide with it;⁷²⁷
- on July 29, 1995, when the barracks were occupied, the bus drove through a locked gate into the built up area, smashed into the doors of a building, then backed into a DND jeep, pushing it some 50 feet.⁷²⁸

⁷²⁴ Donald Bell 06/07/2006 at 204-205; P-411 at 11.

⁷²⁵ Donald Bell 06/07/2006 at 205; P-411 at 11.

⁷²⁶ Donald Bell 06/07/2006 at 206; P-411 at 12.

⁷²⁷ Nicholas Cottrelle 01/18/2005 at 228-231; Harley George 01/20/2005 at 232-236.

⁷²⁸ Donald Bell 06/07/2006 at 206-207; Harley George 01/20/2005 at 151-155, 213-216; P-411 at 20.

626. Marlin Simon testified that the bus had not been running for about one month prior to Sept. 6/95. That afternoon he spent a few hours getting it ready for use. He obtained a battery, fixed the alternator, cleaned it, gassed it up, put some gas cans on board, and moved it to the Park.⁷²⁹

627. Nicholas Cottrelle testified that on the night of Sept 6/95 the bus was inside the Park, near the gate, facing the sandy parking lot. The motor was running. Someone yelled “(g)et that bus out there”. Nicholas Cottrelle ran to the bus and jumped in.⁷³⁰

628. Several CMU members saw the bus parked inside the fence as they approached the Park.⁷³¹

629. Several First Nations and OPP witnesses testified that the CMU was backing up or retreating when the bus left the Park.⁷³²

630. Nicholas Cottrelle testified that he and Leland White were the only persons on the bus when it exited the Park. Leland White’s evidence is less clear. He testified that he got on the bus before Nicholas Cottrelle. Leland White “thinks” there was no one on the bus when he got on, but “(i)t’s hard to remember”. His SIU statement, dated Oct 14/95, indicates that Robert Isaac got off the bus after Leland White got on. Leland White cannot recall, however, whether Robert Isaac was on the bus when he got on, or whether Robert Isaac or anyone else got on the bus at any other point. Robert Isaac’s SIU statement, dated Oct 14/95, indicates that his brother jumped on the bus. In the end, Leland White says no one got on the bus except Nicholas Cottrelle and him.⁷³³

⁷²⁹ Marlin Simon 09/30/2004 at 9-10, 203-204; 10/18/2004 at 85-86.

⁷³⁰ Nicholas Cottrelle 01/18/2005 at 120-121.

⁷³¹ Kevin York 05/18/2006 at 58; Mark Beauchesne 05/25/2006 at 44-45; Wayne Jacklin 04/25/2006 at 260; George Hebblethwaite 05/11/2006 at 180.

⁷³² Abraham George 10/20/2004 at 118-119; 11/01/2004 at 149-151; Stacey George 11/22/2004 at 101-102, 201; Wesley George 12/10/2004 at 38-40; Warren George 12/08/2004 at 188; Wade Lacroix 05/08/2006 at 234-237; Robert Huntley 04/27/2006 at 133-134; Kevin York 04/18/2006 at 122-123; Chris Cossitt 05/24/2006 at 70-73; John Carson 04/30/2005 at 142-145.

⁷³³ Nicholas Cottrelle 01/18/2005 at 122-123, 246; Leland White 01/10/2005 at 65-68, 131-134; 1002221 at 3; 1002479 at 2.

631. Cst. Irvine was a member of a TRU observer team on Sept 6. As such, he concentrated on people inside the Park, not on the confrontation. He saw the bus approach the fire inside the Park and stop. Two people got on, meaning there were 3 individuals on the bus, the driver and 2 passengers.⁷³⁴

632. Given the evidence of Cst. Irvine, the ambivalent evidence of Leland White, and the Robert Isaac SIU statement, the Commission should not make a finding that Nicholas Cottrelle and Leland White were the only persons on the bus when it left the Park on September 6. At best, the evidence supports a finding that there were 2 or 3 people on the bus, and that if there were 3, the third individual may have been Robert Isaac or his brother.

633. Nicholas Cottrelle testified that he drove the bus towards the Park gate, pushed a dumpster through the gate, steered to his right to push the dumpster away, then headed towards the line of police officers. He acknowledged that he drove the bus “through the police line”, and that the officers jumped out of the way “at the last second”.⁷³⁵

634. Several CMU members testified that the bus was accelerating as it approached them. Nicholas Cottrelle testified that the bus has 5 forward gears, and that he changed from first, to second, to third gear, during his trip.⁷³⁶ The bus (and car) were estimated by their drivers to be going at up to 20 km/hr⁷³⁷, and by some others present (Larry French and S/Sgt. Lacroix) to be traveling up to 25-30 mph (40-48 km/hr).⁷³⁸

635. Officers ran or jumped to the north and south shoulders of East Parkway Drive to avoid being hit by the oncoming bus.⁷³⁹

⁷³⁴ James Irvine 05/26/2006 at 293-295; 05/26/2006 at 131-133.

⁷³⁵ Nicholas Cottrelle 01/18/2005 at 122-123, 126.

⁷³⁶ Dennis LeBlanc 05/23/2006 at 90; Chris Cossitt 05/24/2006 at 73; Mark Beauchesne 05/25/2006 at 59; George Hebblethwaite 05/11/2006 at 215-216; Robert Huntley 04/27/2006 at 136; Nicholas Cottrelle 01/18/2005 at 255-256; 01/19/2005 at 22-23, 38-39.

⁷³⁷ Warren George 12/08/2004 at 88; 12/09/2004 at 101; Nicholas Cottrelle 01/18/2005 at 258.

⁷³⁸ Larry French 02/10/2005 at 50; Wade Lacroix 05/09/2006 at 22.

⁷³⁹ Wade Lacroix 05/08/2006 at 237-238; Sheldon Poole 05/16/2006 at 114-116.

636. Cst. Jacklin testified that the bus followed the officers who went to the ditch on the south side of the road, to the extent that the driver's side wheels were off the road. Cst. Jacklin thought the officers who had gone to ground at that location had been run over. The bus then swerved back onto the road.⁷⁴⁰

637. S/Sgt. Lacroix testified that the bus "drove off onto the grass shoulder and right along that fence right towards those Members". One officer jumped over the fence. Others threw their shields and batons over, and tried to climb the fence. Others dove back towards the pavement.⁷⁴¹

638. Cst. Bittner jumped into the south ditch, where he got stuck in a page wire fence. When he looked up, the bus was coming directly towards him. He thought he would be killed. At the last second the bus veered to its right, back onto East Parkway Drive.⁷⁴²

639. Cst. Cossitt testified that the bus seemed to follow him to the south shoulder of the road. Some officers tried to jump over the fence. Cst. Cossitt ran back to the center of the road. The bus missed him by about 18 inches.⁷⁴³

640. Cst. Bittner got out of the ditch after the bus passed him, and followed it down East Parkway Drive. He approached the rear of the bus when it stopped. S/Sgt. Jacklin was with him. Cst. Bittner was about to disable the bus by puncturing a rear tire when the backup lights came on. He yelled at Cst. Jacklin to get out of the way. They both moved to the north shoulder of the road.⁷⁴⁴

641. Cst. York was standing in the eastbound lane when he saw the bus reversing towards him. He ran to the closest ditch, which was on the south side. The wheels of

⁷⁴⁰ Wayde Jacklin 04/25/2006 at 282-283.

⁷⁴¹ Wade Lacroix 05/08/2006 at 238-239.

⁷⁴² William Bittner 05/17/2006 at 213-214, 330-331.

⁷⁴³ Chris Cossitt 05/24/2006 at 73-74, 96.

⁷⁴⁴ William Bittner 05/17/2006 at 214-215.

the bus passed within feet of his head. S/Sgt. Lacroix also testified that the bus almost hit him as it was reversing back towards the Park.⁷⁴⁵

b) The Car Leaves the Park

642. Warren George testified that when someone yelled to get the bus, he got in his car and followed the bus through the Park gate. He headed towards a crowd of officers where he assumed Cecil Bernard George would be. An officer pointed a gun at him. He turned to his right, stepped on the brakes, and hit a number of officers on the north side of the road. He acknowledged that he knocked a few of the officers down. He then reversed his vehicle.⁷⁴⁶

643. Several officers testified that they saw the car hit the group of CMU members on the north side of the road. One or more officers wound up on the hood of the car. Others were knocked to the ground. Sgt. Hebblethwaite saw one officer fall on the hood, another fly back in the air, and another on the ground with his arms on the hood and one leg under the car. Had the car moved forward another meter, that officer would likely have been crushed. Sgt. Hebblethwaite later learned that the officer on the ground was Cst. Cloes.⁷⁴⁷

644. Sgt. Huntley saw officers go over the hood, and one officer partially underneath the front of the car. S/Sgt. Lacroix saw one officer's face shield hit the hood, and another get struck by the fender. A third officer was sent flying backwards and landed on other officers, knocking them down. The third officer wound up with his legs under the car.⁷⁴⁸

645. The car reversed after it hit the officers, then stopped. Cst. Beauchesne testified that he watched the car very carefully because he was concerned about what it would do next. He decided he would shoot if the driver moved towards the officers a second

⁷⁴⁵ Kevin York 05/18/2006 at 76-77; Wade Lacroix 05/08/2006 at 242-243; 05/09/2006 at 29.

⁷⁴⁶ Warren George 12/08/2004 at 182-183, 188-189.

⁷⁴⁷ George Hebblethwaite 05/11/2006 at 219-220; Kevin York 05/18/2006 at 73-75; Dennis LeBlanc 05/23/2006 at 91; Chris Cossitt 05/24/2006 at 77-78; Mark Beauchesne 05/25/2006 at 61-63.

⁷⁴⁸ Robert Huntley 04/27/2006 at 137-139; Wade Lacroix 05/08/2006 at 240-241.

time. The car started moving forward. Cst. Beauchesne fired 2 shots in rapid succession.⁷⁴⁹

646. S/Sgt. Lacroix testified that after the car reversed, “it lurched – I saw the front end come up and it went to go forward again”. It appeared to S/Sgt. Lacroix that the driver had “slammed” the vehicle into drive. S/Sgt. Lacroix fired 2 or 3 rounds at the driver’s compartment.⁷⁵⁰

647. Sgt. Hebblethwaite and Cst. York also believed that the car was about to move forward, and run over the officers it had already hit. Cst. York fired one shot. Sgt. Hebblethwaite fired 4 rounds at the windshield where the driver would be sitting. Cst. York testified that the car had not actually moved forward when he fired.⁷⁵¹

c) The Bus and Car Were Intentionally Driven at Police Officers

648. On cross-examination, Nicholas Cottrelle agreed with the suggestion that he drove the bus out to “assist Cecil Bernard George”. Nicholas Cottrelle’s SIU statement, however, indicates that his intention was to “move them (the police) back a little bit”. Confronted with his statement, Nicholas Cottrelle said that rescuing Cecil Bernard George was “part of it”.⁷⁵²

649. Commission counsel asked Warren George why he drove his car out of the Park. He replied “I wasn’t exactly sure on that”. Counsel subsequently referred Warren George to his SIU statement, which refreshed his memory. His intention was “(t)o try and help Bernard”. On cross-examination, Warren George agreed that his purpose was twofold: first, to force the CMU back so they could not take any more people, and

⁷⁴⁹ Mark Beauchesne 05/25/2006 at 63-65.

⁷⁵⁰ Wade Lacroix 05/08/2006 at 241-242.

⁷⁵¹ Kevin York 05/18/2006 at 75-76, 125; George Hebblethwaite 05/11/2006 at 220-222.

⁷⁵² Nicholas Cottrelle 01/18/2005 at 189, 247-249; 1004443 at 9.

second, to even the balance between police and occupiers, because the occupiers were outnumbered.⁷⁵³

650. Roderick George testified as follows:

“I heard somebody yell, Get the bus, because the idea was to ... split the police officers up because ... we didn’t have no weapons or anything, so, the bus was intended to divide them up ...”.⁷⁵⁴

651. In a City Television news broadcast on September 7, 1995, Roderick George told the reporter that the occupiers used the bus against the police as retaliation.⁷⁵⁵

652. Isaac Doxtator thought the bus went out “to separate the police”. Gabriel Doxtator assumed that the bus and car went out “to push the police back”.⁷⁵⁶

653. Glen Bressette testified that “they decided to ram them (the police) with the bus”. Asked how that decision was made, Glen Bressette replied:

“Everybody just started yelling. Got to get that dumpster out of the way and ram that bus through the police and try and get through to Bernard.”⁷⁵⁷

654. Elwood George testified that: “We were badly outnumbered. Things weren’t going too good ... for us ...”. He and others yelled to get the bus out there. He wanted the bus “to help us”, and to stop the beating of Cecil Bernard George.⁷⁵⁸

655. Elwood George also gave evidence at Nicholas Cottrelle’s trial. He testified that he yelled for the bus in order to stop the beating, and to “back the police off of us”. He also testified that he wanted the bus to get the police “off our ass” and “down the road”,

⁷⁵³ Warren George 12/08/2004 at 187-188, 195-199; 12/09/2004 at 107-108.

⁷⁵⁴ Roderick George 11/23/2004 at 191.

⁷⁵⁵ P-1681; video played at Inquiry 06/08/2006.

⁷⁵⁶ Isaac Doxtator 11/25/2004 at 208-209; Gabriel Doxtator 11/30/2004 at 53-54.

⁷⁵⁷ Glen Bressette 11/09/2004 at 249-250.

⁷⁵⁸ Elwood George 11/03/2004 at 116-117.

because the occupiers were outnumbered. He gave similar evidence at the Deane trial. Confronted with his evidence at those 2 trials, George agreed that “a big part” of the reason he yelled for the bus was that the occupiers were losing the fight with police.⁷⁵⁹

656. Leland White testified that Nicholas Cottrelle did not tell him where the bus was going when it left the Park. They had no conversation. Leland White had no idea why the bus was driven through the gate. His SIU statement indicates that they “crashed” the dumpster out of the way, then “tried to chase the cops off with the bus”. His statement refreshed his memory. The purpose for driving the bus out was to help Cecil Bernard George, and “chase away the cops”.⁷⁶⁰

657. The evidence of Elwood George and the other First Nations witnesses is consistent with the evidence of Nicholas Cottrelle and Warren George, who drove the two vehicles. The occupiers participating in the confrontation were outnumbered. Cecil Bernard George was being arrested, and in the words of the First Nations witnesses, “beaten” by a group of officers. Nicholas Cottrelle drove the bus out to move the police back, and in “part” to rescue Cecil Bernard George. Warren George drove his car out to force the police back, prevent further arrests, even up the numbers, and help Cecil Bernard George.

658. The evidence of Nicholas Cottrelle and Warren George indicates that the bus and car were intentionally driven at the officers. Nicholas Cottrelle acknowledged that he drove the bus towards, then through, the line of police. Several officers testified that the bus left the pavement and followed them to the ditch or shoulder on the south side of the road, narrowly missed them, then returned to the pavement. Warren George testified that he drove his car towards a group of officers where he assumed Cecil Bernard George would be, then turned and hit the officers. Several officers testified that the car was about to, or did, move forward towards the officers a second time.

⁷⁵⁹ Elwood George 11/04/2004 at 105-112; 3000847 at 42, 52 (transcript of Cottrelle trial); 1005291 at 125, 137.

⁷⁶⁰ Leland White 01/10/2005 at 120-121, 142-143; 1002221 at 4.

659. Fortunately, none of the officers were seriously injured by either vehicle. However, the Commission should find, based on the above evidence, that the bus and car were intentionally used as weapons against the police, even if the motive was in “part” to rescue Cecil Bernard George. It made little logic to drive the car and bus off the roadway into police officers *if* the motive was really to “rescue” Cecil Bernard George, who the drivers knew was in the prisoner van located on the roadway. Intentionally driving a motor vehicle at a group of officers on foot is using the vehicle as a weapon, knowing that it can cause serious injury or death.

d) The Firearms Evidence

i) Gunfire from the bus

660. S/Sgt. Lacroix testified that he heard “popping noises” as the bus moved forward on the south shoulder of East Parkway Drive. He yelled “shots fired”, which is heard on the logger tape. He acknowledged that it could have been someone firing from the bus, or at the bus.⁷⁶¹

661. A/Sgt. Deane observed a distinctive muzzle flash from the interior of the bus as it moved forward past his position. The flash originated from the rear area of the bus, on the driver’s side, approximately one half to three quarters back from the front. It was directed at CMU members. A/Sgt. Deane reported ‘shots fired at CMU’ over his communications system. That communication is reflected in the notes of A/S/Sgt. Skinner.⁷⁶²

662. Cst. Irvine was a member of the TRU observer team, Sierra 1, on the lake side of the road. Facing south, towards East Parkway Drive, he heard shots coming from the area behind the bus, to his left, then responding fire from the area in front of the bus, to his right. Different types of weapons were fired, but he could not say which weapons, or in what order they were fired. He agreed that the gunshots were “not inconsistent” with

⁷⁶¹ Wade Lacroix 05/08/2006 at 242, 294-295; 05/10/2006 146-147; Kent Skinner 04/19/2006 at 222; P-438 at 8.

⁷⁶² P-1776: 1000293 at 3, 14, 27; P-1768 at 109-110, 136, 195-197; Kent Skinner 04/19/2006 at 240.

the various weapons in the possession of police officers that night, but he does not know who fired.⁷⁶³

663. Cst. Cossitt was kneeling on the south shoulder of the road to avoid the bus as it reversed towards the Park. When it passed his position he heard shots from above, and the only thing above him was the bus. The shots seemed to follow the bus. Cst. Cossitt testified that the shots came from the area of the bus, but he could not say they came from the bus.⁷⁶⁴

664. Cst. Rusk was not called as a witness at the Inquiry. Her statement, dated Sept. 7/95, indicates that she heard gunfire from the bus as it was reversing.⁷⁶⁵

ii) Gunfire from the car

665. After the car hit the officers and reversed, S/Sgt. Lacroix saw 2 or 3 muzzle flashes at the driver's window or windshield area of the car. They were circular, not elongated, which indicated it was possibly aimed in his direction. He acknowledged, however, that it could have been a reflection from his own weapon, which he fired, or from someone else's weapon.⁷⁶⁶

666. Cst. LeBlanc saw muzzle flashes in the area of the car, and heard 2 or 3 gunshots, followed by a flurry of shots. The first shots were lower in volume, and different from the second series, which were evenly placed with a much stronger report. He associated the second series of shots with the .40 calibre police pistol. He believed that an exchange of gunfire had occurred.⁷⁶⁷

667. Cst. Cossitt ran to the side of the car after it hit the officers, to a point near the rear view mirror on the driver's side. He intended to strike the driver with his baton.

⁷⁶³ James Irvine 05/25/2006 at 264, 269, 297-304; 05/26/2006 at 98-105.

⁷⁶⁴ Chris Cossitt 05/24/2006 at 101-112, 172-3.

⁷⁶⁵ 1002815 at 5.

⁷⁶⁶ Wade Lacroix 05/08/2006 at 242, 248-250; 05/09/2006 at 31-32; 05/10/2006 at 271-272.

⁷⁶⁷ Dennis LeBlanc 05/23/2006 at 92, 101-102.

Before he could do so, he saw about 4 inches of a gun barrel come out of the driver's side window. The barrel was pointing upwards at a 30 to 45 degree angle. It started at the rear of the window, swept forward, then discharged. Cst. Cossitt heard a loud thunderous bang, and saw a muzzle flash extend approximately 12 to 15 inches from the barrel.⁷⁶⁸

668. Cst. Cossitt is trained on shotguns, and owns a 12 gauge shotgun himself. The barrel of the weapon he saw, and the sound of the discharge, were consistent with a shotgun. Cst. Cossitt does not know if it was a sawed off shotgun, because he only saw the end of the barrel. However, if the driver of the car had pointed a full length shotgun out the side window, much more than 4 inches of the barrel would have extended from the vehicle. Cst. Cossitt's evidence suggests that a sawed off shotgun was fired from the car, similar to the "Bastard Blaster" weapon owned by David George.⁷⁶⁹

669. Cst. McKnight was not called as a witness, but did swear an affidavit in the Deane appeal. He was one of the officers who was hit by the car. He heard 3 gunshots from the car as it reversed. The shots were distinct and close.⁷⁷⁰

iii) Gunfire from the sandy hill/intersection area

670. As the car was heading towards the group of officers on the side of the road, A/Sgt. Deane saw 2 muzzle flashes from the bush area adjacent to the sandy parking lot. The shape of the flashes indicated that the fire was directed towards his position. He discharged four rounds at that area.⁷⁷¹

671. A/Sgt. Deane acknowledged at his trial that TRU officers had been in the area where he saw the muzzle flashes, but prior to that occurrence. He did not personally check with those officers to ensure they had left the area before he fired his weapon. It would make no sense, however, that the officers would remain on the sand

⁷⁶⁸ Chris Cossitt 05/24/2006 at 79-87.

⁷⁶⁹ Chris Cossitt 05/24/2006 at 81, 83-84, 184; Abraham George 10/19/2004 at 121.

⁷⁷⁰ 2005319 at 3.

⁷⁷¹ P-1776 at 3, 15-16, 23-24; P-1768 at 110-112, 200, 204.

embankment when the entire CMU was retreating down East Parkway Drive. Moreover, TRU officers would not shoot in his direction.⁷⁷²

672. Cst. Beauchesne confirms A/Sgt. Deane's belief. Cst. Beauchesne testified that he and Cst. Klym were on the right flank of the CMU as it approached the sandy parking lot. When the CMU advanced to the Park fence, he and Cst. Klym moved forward to the top of the grassy dune by the hydro pole. They mirrored the CMU's movement when it fell back to the roadway. When the full punch out occurred, Cst. Beauchesne and Cst. Klym moved forward again, to their previous position on top of the little hill. When the CMU retreated down East Parkway Drive, Cst. Beauchesne and Cst. Klym also moved back, parallel to the CMU. At that point the bus left the Park, then the car. A/Sgt. Deane saw the muzzle flashes as the car was coming. Cst. Beauchesne's evidence therefore confirms A/Sgt. Deane's belief that the TRU officers had left the sandy hill area before he saw the muzzle flashes.⁷⁷³

673. After the bus had passed the CMU, Cst. Poole heard two gunshots from the bush area to the inland side of the dumpster. There is no doubt in his mind that the shots were fired from behind the fence. They sounded like shotgun blasts, not a pistol or rifle, but he is not certain it was a shotgun. Cst. Poole then heard responding fire from his left. He was satisfied it was a police officer firing because of the proximity, and because it had the even rhythm of a trained shooter. The responding fire was different, both in the type of report and the flow of the shooting.⁷⁷⁴

674. Sgt. Hebblethwaite had his weapon aimed at the car after it reversed to the roadway. He was 20 to 25 feet from the car, which was between him and the Park. As he was about to fire, he saw an intense small flash of light from beyond the car, from the field section abutting the intersection. He then heard gunshots.⁷⁷⁵

⁷⁷² P-1768 at 203-205.

⁷⁷³ Mark Beauchesne 05/25/2006 at 43-44, 46-51, 58-59.

⁷⁷⁴ Sheldon Poole 05/16/2006 at 118-119, 122-130, 140, 159-161, 193-197, 208-215.

⁷⁷⁵ George Hebblethwaite 05/11/2006 at 220-222, 234-235.

675. Csts. Gayos, Aitchison, and Madison were not called as witnesses. Each swore an affidavit in the Deane appeal.

Cst. Madison indicates that he heard one or two gunshots from the area of the intersection, and that a TRU member fired his weapon at the area where the shots originated.⁷⁷⁶

Cst. Gayos heard 2 shots from the direction of the intersection that sounded like a rifle, not a 40 caliber weapon. He believed the gunshots came from First Nations persons because there were no officers in that area.⁷⁷⁷

Cst. Aitchison also heard gunfire from the area of the intersection. There were no officers there. He believed that First Nations persons were firing at the police, and that the police had returned fire.⁷⁷⁸

676. Gabriel Doxtator testified that he ran towards the Park when shots were fired. On the way back he saw a police officer with an assault rifle standing on top of the hill. He also saw muzzle flashes from that location, fired in a westerly direction. He had seen an individual at the same location earlier, before the confrontation in the sandy parking lot, and illuminated him with a spotlight. The individual he saw at that time was wearing a police uniform. Gabriel Doxtator knew the individual was still there when he was running back to the Park because of the muzzle flashes. It was “logical” that the individual he saw on his way back was a police officer, because an officer had been at that location earlier.⁷⁷⁹

677. As previously indicated, however, the TRU officers who were on top of the sandy hill had retreated with the rest of the CMU, before the bus and car left the Park, and before the shooting started. There were no police officers at that location when Gabriel

⁷⁷⁶ 2005331 at 3.

⁷⁷⁷ 2005319 at 2.

⁷⁷⁸ 2005305 at 2.

⁷⁷⁹ Gabriel Doxtator 11/30/2004 at 56-57, 143-145, 147-149.

Doxtator was running back to the Park. The muzzle flashes Gabriel Doxtator saw were not from a police weapon.

iv) Reports of gunfire

678. Cst. Jacklin heard someone yell “gun”, and then gunfire, after the bus came out of the Park. He is not sure whether the bus was moving forward, stopped, or reversing, when he heard that warning. He does not know who yelled “gun”, but he believes it was another officer. “Gun” is a universal signal that someone else has a gun. Police officers never yell “gun” when an officer draws a weapon.⁷⁸⁰

679. When S/Sgt. Lacroix was firing at the car, he was aware of other gunfire coming from the area of the bus. Someone yelled ‘there’s fire coming from the bus’.⁷⁸¹

680. A/S/Sgt. Skinner was at the TOC and had radio communication with both the CMU and TRU. He heard someone say ‘They’re shooting at us’. He heard A/Sgt. Deane report that Natives were shooting at the CMU. He heard S/Sgt. Lacroix say “shots fired”. He also heard Lacroix say “We took gunfire from a car”.⁷⁸²

681. A/S/Sgt. Wright was at the Command Post in Forest, monitoring CMU communications during the confrontation. He heard S/Sgt. Lacroix say they took gunfire from the bus and from the car. A/S/Sgt. Wright’s notes state: “Team ... moving back. Bus and a vehicle come through fence ... CMU reports being fired upon and returns fire.”⁷⁸³

682. Cst. Zupancic monitored TRU and CMU communications at the TOC. He heard reports that the police were fired upon and returned fire. Sgt. Graham was at the

⁷⁸⁰ Wayde Jacklin 04/25/2006 at 287-290; 04/26/2006 at 51-52, 182-183, 187-189.

⁷⁸¹ Wade Lacroix 05/08/2006 at 242.

⁷⁸² Kent Skinner 04/19/2006 at 197, 205, 222, 226, 240.

⁷⁸³ Mark Wright 02/23/2006 at 223-224, 225-226, 229-230; 03/06/2006 at 22-24.

Command Post monitoring the CMU channel. He heard a report of “gunshots or taking fire”.⁷⁸⁴

683. The reports that CMU was fired upon went up the chain of command. Insp. Carson understood that shots were fired from both the bus and car, and reported that information to Supt. Parkin. Insp. Linton told Supt. Parkin that TRU officers were fired on from the Park.⁷⁸⁵

v) Submissions re the firearms evidence

684. The evidence referred to above makes it clear that numerous police officers believed, at the time of the confrontation, that First Nations individuals were shooting at members of the CMU. The officers either heard gunfire, or saw muzzle flashes, coming from the bus, the car, or the sandy hill/intersection area.

685. Notwithstanding what they believed at the time, several officers candidly acknowledged that the gunfire they attributed to the bus or car could possibly have come from police weapons, because they did not actually see a First Nations person with a firearm. The evidence that there was gunfire from the sandy hill/intersection area is strongest. A/Sgt. Deane, Sgt. Hebblethwaite, and Csts. Poole, Gayos, Madison, and Aitchison all heard gunfire or saw muzzle flashes from that area, when there were no police officers there.

686. The First Nations witnesses consistently testified that there were no guns in the Park, at the confrontation, on the bus, or in the car. Among the First Nations witnesses, Gabriel Doxtator gave evidence that there was gunfire from the sandy hill area.

687. SIU and OPP investigators did not examine the scene of the confrontation, or the bus or the car, until Sept 18 and 19/95, 12 days after the confrontation. In the interval, numerous First Nations individuals and groups of individuals were in the sandy parking

⁷⁸⁴ Rick Zupancic 04/24/2006 at 100-101, 116; Robert Graham 04/21/2006 at 110, 111-112.

⁷⁸⁵ John Carson 06/01/2005 at 209; Anthony Parkin 02/07/2006 at 138-140, 147, 152.

lot and on East Parkway Drive, including those who marched on the TOC site on Sept 7. A backhoe was used to pile sand and dig bunkers in the sandy parking lot. Concrete blocks and barricades were put in place. Various individuals gathered shell casings from the sandy parking lot and East Parkway Drive. The bus was used to transport groups of people from the Army Camp to the Park. Some individuals slept on the bus, used it as a kitchen, and watched TV on the bus. The investigators went a short distance into the Park to examine the bus and car, but did not search the Park or Army Camp for weapons. (The evidence relating to these events is described in a subsequent section of this Brief).

688. Given the contamination of the scene, and the failure to search the Park and Army Camp for weapons, no forensic evidence is available to confirm or refute the proposition that some First Nations individuals fired weapons at the police during the confrontation on Sept 6. The police and First Nations witnesses contradict each other, except for the evidence of Gabriel Doxtator. There is no evidentiary basis for finding that the police officers who saw or heard gunfire from the bus, the car, or the sandy hill area were all mistaken, or that the evidence of the First Nations witnesses is more credible than the police officer's evidence.

689. In these circumstances the Commission is not in a position to make a finding, based on the evidence, that some First Nations individuals did or did not shoot at the police on Sept 6. The Commission should find that the evidence on this question is inconsistent and inconclusive, and that it is not possible to make a reliable finding one way or the other.

e) The Shooting of Dudley George

i) The police evidence

690. A/Sgt. Deane's statement and trial evidence indicate that he fired at the muzzle flashes he saw from the bush area adjacent to the sandy parking lot. He subsequently saw an individual leave that general area, cross Army camp Road, duck down by the

ditch at the intersection, enter the roadway carrying a rifle, bring the rifle to his shoulder, and scan the CMU. A/Sgt. Deane fired three rounds. The individual faltered, went to the ground, then got up.⁷⁸⁶

691. Sgt. Hebblethwaite was in the general area where the car hit the officers. He saw movement in his peripheral vision towards the corner. He turned and saw a male individual at the elbow of the road spinning in a clockwise motion. The individual went to the ground on his knee, then got back up almost immediately. Sgt. Hebblethwaite did not see the individual face on, only his backside, with his arms to the front. Sgt. Hebblethwaite saw the extension of an object over the individual's shoulder that had the shape of a pole or stick, or an object of similar dimension. He could only see what was above the person's shoulder. At first, Sgt. Hebblethwaite thought the man had been shot, but discounted that because he got up so quickly, and stumbled in his haste to retreat to the Park.⁷⁸⁷

692. S/Sgt. Lacroix moved to the north side of the road to avoid the bus as it reversed. At that time he heard someone yell 'man on the road with a rifle'. S/Sgt. Lacroix took cover behind a nearby sand or garbage container.⁷⁸⁸

693. On cross-examination, S/Sgt. Lacroix was confronted with the Team Use of Force Report for the CMU. S/Sgt. Lacroix reviewed the Report, but did not prepare it. It was prepared "prior to A/Sgt. Ken Deane being charged. So it's what the police felt they met that night." Under the heading 'Weapons carried by subjects', the Report indicates that one individual had a "rifle". S/Sgt. Lacroix explained:

A: That would be the allegation of a man on the road with a rifle.

Q: Not the man on the road with the rifle that turned out to be a stick?

⁷⁸⁶ P-1776: 1000293 at 3-4, 17-19, 24-26; P-1768 at 113-114, 207, 216-221, 223-225.

⁷⁸⁷ George Hebblethwaite 05/11/2006 at 223-224, 233-234, 245-250.

⁷⁸⁸ Wade Lacroix 05/08/2006 at 243-244.

A: Yes. Yeah, at this time, this is prior to trials, this is after SIU statements, prior to SIU's findings, and prior to any trials. This would be – I don't know, days after.⁷⁸⁹

694. It is submitted that this passage should not be construed as S/Sgt. Lacroix agreeing that the 'man on the road with a rifle' report refers to the incident that occurred when the CMU was part way down East Parkway Drive, prior to the confrontation. His evidence in-chief was that he heard this warning when the bus was reversing towards the Park, as the CMU members were picking themselves up after avoiding the bus the first time. It is submitted that S/Sgt. Lacroix did not intend to, and did not, recant or change that evidence. His agreement that the rifle turned out to be a stick, it is submitted, is merely an acknowledgement that the Judge at the Deane trial found that Dudley George did not have a rifle on September 6. S/Sgt. Lacroix believed then and now, it is submitted, that the man on the road was Dudley George, and that if he did not have a rifle, it must have been a stick.

ii) The First Nations evidence

695. Several First Nations witnesses testified that they saw Dudley George standing or moving towards the Park when he said he'd been shot, or when they observed him fall to the ground.

696. Gabriel Doxtator saw Dudley George running back to the Park holding his chest. Dudley George said he thought he'd been hit. He was on his feet at that point, but then fell to his knees. Charles George and Alan George picked up Dudley George and put him into the 'OPP Who' car.⁷⁹⁰

697. Isaac Doxtator saw Dudley George walking backwards. There was nothing in his hands. He was holding his chest. Isaac Doxtator grabbed him by the shoulder and asked if he'd been hit. Dudley George said he thought so. Isaac Doxtator turned and

⁷⁸⁹ Wade Lacroix 05/10/2006 at 154, 159-161, 163-164.

⁷⁹⁰ Gabriel Doxtator 11/30/2004 at 57-60, 145-147.

yelled for the car. When he looked back, Dudley George was on the ground. He was then loaded into the car.⁷⁹¹

698. Elwood George was heading back to the Park when he heard Dudley George say he was hit. Dudley George was upright when Elwood George reached him, and helped him towards the fence. Dudley George took 3 or 4 steps, then collapsed to the ground. Others arrived and assisted him to the car. Elwood George did not notice Dudley George take any steps before he reached him, and cannot recall whether Dudley George was walking or standing still when he first saw him. He does not recall whether Dudley George had a stick in his hands when he first saw him, but he thinks not.⁷⁹²

699. James Thomas Cousins saw Dudley George fall and hit the cement. Dudley George had nothing in his hands. Stewart George, Roderick George, and Robert Isaac were picking him up and bringing him back to the Park.⁷⁹³

700. Charles George ran towards the bus when it was out on East Parkway Drive. He saw Dudley George in front of him, to the west, coming towards him. Charles George turned and headed back to the Park, because the police were shooting. He heard someone behind him say he'd been shot. He turned and saw Dudley George clutching his chest, then fall to the ground. Dudley George had nothing in his hands. Charles George ran to Dudley George and turned him over on his back. Charles George and Robert Isaac carried him to the Park and put him in the car.⁷⁹⁴

701. Roderick George saw Dudley George right in front of him. Dudley George yelled to Robert Isaac that he'd been hit, then fell backwards against Roderick George, turned around and went down. Dudley George was carried away.⁷⁹⁵

⁷⁹¹ Isaac Doxtator 11/25/2004 at 214-216, 219-221; 11/29/2004 at 8, 111-114.

⁷⁹² Elwood George 11/03/2004 at 121-125, 128; 11/04/2004 at 126-131.

⁷⁹³ J.T. Cousins 01/12/2005 at 60-61, 100.

⁷⁹⁴ Charles George 02/08/2005 at 181-183, 185-190, 248-259; 1002462 at 5-8.

⁷⁹⁵ Roderick George 11/23/2004 at 197; 11/24/2004 at 34-35, 203-206.

702. Robert Isaac's video and SIU statement indicate that he was on the ground when Dudley George told him he'd been hit. Robert Isaac got to his feet. Dudley George was coming towards him, but dropped about 5 feet away. Dudley George had nothing in his hands. Robert Isaac asked him where he'd been hit. He said in the shoulder. Robert Isaac and others carried Dudley George to the car and put him in the back seat.⁷⁹⁶

703. Wesley George was in the sandy parking lot jogging back to the Park. He saw Dudley George behind him, also jogging towards the Park, also in the sandy parking lot. The bus was already back at the fence area. Wesley George glanced back and saw Dudley George standing for a second, then fall to his knees. Wesley George does not recall whether Dudley George was holding anything in his arms. Wesley George did not approach Dudley George. Others carried him to the car.⁷⁹⁷

704. Wesley George apparently thought that Dudley George was shot between the first time he saw him, when Dudley George was jogging towards the Park, and the second time he saw him, when Dudley George fell to his knees. Wesley George was likely mistaken about this, because Dudley George could not have been shot in the chest when he was in the sandy parking lot heading for the Park. It is more likely, consistent with the evidence referred to above, that Dudley George had already been shot when Wesley George saw him the first time, jogging towards the Park.

iii) Submissions re the shooting of Dudley George

705. The First Nations witnesses' accounts of Dudley George's actions are not identical. However, the First Nations evidence generally supports the proposition that Dudley George was moving towards the Park, holding his chest, when he told others he'd been shot, or fell to the ground, and was carried to the 'OPP Who' car.

706. The First Nations evidence is therefore substantially consistent with Sgt. Hebblethwaite's evidence that Dudley George got up and went towards the Park after

⁷⁹⁶ Robert Isaac (video) 04/05/2005 at 280-281; 1004520 at 2-3, 5-7.

⁷⁹⁷ Wesley George 11/30/2004 at 244-250; 12/01/2004 at 41-48, 50, 57-58.

he was shot. Several First Nations witnesses saw Dudley George moving towards the Park clutching his chest. Others saw him standing, then fall to the ground. None of the First Nations witnesses testified, however, that they were observing Dudley George at the precise moment he was shot, as Sgt. Hebblethwaite did. All of the First Nations witnesses saw Dudley George after he'd been shot, when he was still on his feet heading to the Park. Accordingly, none of the First Nations witnesses were in a position to, or did, refute Sgt. Hebblethwaite's evidence that Dudley George was holding an elongated object in his hands when he was shot.

707. Dr. Shkrum performed the autopsy on Dudley George. He testified that he could not say with any certainty or specificity how long it might have taken Dudley George to go into shock, and become incapable of purposeful activity such as running or walking. There is a wide variation in how long it takes different individuals with similar injuries to go into shock. It is possible that an individual with Dudley George's injuries could walk some distance.⁷⁹⁸

708. Sgt. Hebblethwaite's evidence relating to the shooting supports A/Sgt. Deane's account, to the extent that Dudley George had a long object in his hands when he was shot. A/Sgt. Deane saw a gun. Sgt. Hebblethwaite thought it was a stick or a pole.

709. A/Sgt. Deane had the better and longer view of Dudley George. A/Sgt. Deane saw him enter the roadway and scan the CMU with the object in his hands. Sgt. Hebblethwaite only saw Dudley George's back as he was spinning and falling to his knee, and only saw the extension of the long object over Dudley George's shoulder.

710. A/Sgt. Deane's Statement and trial testimony are the best evidence before this Commission on the question whether Dudley George was holding a gun or a stick when he was shot. The Commission should find, based on the best evidence available, that it is more likely that Dudley George was holding a gun than a stick when he was fatally injured.

⁷⁹⁸ Dr. Michael Shkrum 04/28/2005 at 88-90, 214-216.

711. In the alternative, the Commission should find, based on Sgt. Hebblethwaite's evidence, that Dudley George was holding a stick, pole, or similar object when he was shot, and that A/Sgt. Deane was mistaken in thinking that the object in his hands was a gun.

712. A stick or elongated object was in fact mistaken for a gun when the CMU was proceeding down East Parkway Drive, before it reached the sandy parking lot. TRU members spotted an individual on the road, in front of the CMU, with what appeared to be a long gun. The logger tape indicates that A/S/Sgt. Skinner passed this information to the CMU at approximately 22:42. S/Sgt. Lacroix ordered the CMU to split right and left. The officers crouched in the underbrush on either side of the road. Cst. Beauchesne moved forward to get a better view. Using his night vision equipment, he was able to determine that the object in the individual's hand was not a gun. At approximately 22:46 A/S/Sgt. Skinner advised the CMU that the object was a stick, not a long gun. The CMU then continued down the road.⁷⁹⁹

713. The logger tape indicates that it took 2 to 4 minutes to confirm that the individual on the road was not carrying a gun. Insp. Carson agreed that during the confrontation the officers did not have the luxury of time to determine whether a particular individual had a stick or a gun. He also agreed that he knew in advance there was a risk that officers could mistake a stick for a gun in the situation they faced that night.⁸⁰⁰

714. On cross examination, A/S/Sgt. Skinner agreed that it is hard to tell the difference between a stick and a long gun in the dark, without the aid of night vision equipment. A/Sgt. Deane did not have night vision equipment on the night of Sept 6.⁸⁰¹

715. If Dudley George did not have a gun when he was shot, the most credible explanation for the shooting is that A/Sgt. Deane misidentified a long object in Dudley George's hands as a rifle. Given the reports that Dudley George had previously pointed

⁷⁹⁹ Wade Lacroix 05/08/2006 at 273-276; Mark Beauchesne 05/25/2006 at 32-39; Kent Skinner 04/20/2006 at 62.

⁸⁰⁰ John Carson 06/27/2005 at 121.

⁸⁰¹ Kent Skinner 04/20/2006 at 62-63; Mark Beauchesne 05/25/2006 at 37; P-1768 at 169-170.

firearms at military personnel, and otherwise antagonized OPP and military police officers, it would not be out of character for Dudley George to point a stick at police officers, pretending it was a gun, as an expression of his anger at the officers who confronted the First Nations people on September 6.

716. In conclusion, the Commission should find, based on the evidence given at this Inquiry, that Dudley George had a gun when he was shot, or alternatively, that Dudley George had a stick or pole in his hands when he was shot, which A/Sgt. Deane mistook for a long gun.

f) The CMU Retreats to the TOC

717. After the shooting stopped, S/Sgt Lacroix ordered the CMU to reform on the roadway, and asked TRU to provide cover. He asked the Sergeants to determine whether all their people were accounted for, and what their injuries were. They reported sore shoulders, an ankle injury, minor aches and pains, but no serious injuries. S/Sgt. Lacroix had a hard time believing there were no broken bones, or worse, and asked them to double check. Insp. Carson instructed the CMU to return to the TOC. S/Sgt. Lacroix ordered a quick march back.⁸⁰²

718. Cst. Beauchesne described the march back as “pretty intense”. He knew that danger could erupt at any moment. Cst. Jacklin was concerned about the possibility of retribution. TRU members retreated at the rear of the CMU formation, facing the Park, to provide cover.⁸⁰³

719. S/Sgt. Lacroix, Cst. Jacklin, and Sgt. Hebblethwaite had a brief discussion on the way back to the TOC. S/Sgt. Lacroix recalled he and Sgt. Hebblethwaite asking each other: did that really happen? are we actually walking out alive? Sgt. Hebblethwaite recalled a “few words” with other officers on the way back, but could not recall with

⁸⁰² Wade Lacroix 05/08/2006 at 244-246, 299-301; 05/09/2006 at 12-14; George Hebblethwaite 05/11/2006 at 254; Mark Beauchesne 05/25/2006 at 66-67.

⁸⁰³ Mark Beauchesne 05/25/2006 at 225-226; Wayde Jacklin 04/25/2006 at 207; Wade Lacroix 05/09/2006 at 14.

whom. The conversation was about the well being of the officers. Cst. Jacklin recalled a “short conversation” with S/Sgt. Lacroix and Sgt. Hebblethwaite, which left him with the impression that those officers may have discharged their firearms. In his interview with Ron Piers, Cst. Jacklin stated there was “a great deal of discussion”. Confronted with that statement, Cst. Jacklin said there was “some conversation”.⁸⁰⁴

720. S/Sgt. Lacroix marched the CMU into the MNR parking lot. He told the team leaders to take care of any injuries. Insp. Carson joined S/Sgt. Lacroix. They advised the unit that this was now a SIU matter, that any officers who had fired their weapon should report to S/Sgt. Lacroix after the break-off, and that the weapons would be collected when they could be replaced. The unit was told it was still operational because the incident was not over. At this point the TRU officers had not yet returned to the TOC.⁸⁰⁵

721. S/Sgt. Lacroix reported to Insp. Carson what had happened during the confrontation. Insp. Carson addressed the CMU again. It was not a debriefing, certainly not the operational debriefing that normally follows an incident. Insp. Carson told the officers to remain professional, continue doing their job, and that support services and additional officers were on the way.⁸⁰⁶

722. Sgt. Hebblethwaite testified that there was some discussion among the officers at the TOC after the break-off. They asked each other if they were okay, in a supportive fashion.⁸⁰⁷

723. Six officers advised S/Sgt. Lacroix that they had fired their weapons. Three were TRU members; three were CMU officers. A/Sgt. Deane and Csts. Klym and Beauchesne reported firing their weapons to A/S/Sgt. Skinner. A/Sgt. Deane reported firing at an individual who was scanning the CMU with a long gun. The officers'

⁸⁰⁴ Wade Lacroix 05/09/2006 at 19-20; George Hebblethwaite 05/11/2006 at 255-256; Wayde Jacklin 04/25/2006 at 308-309; 04/26/2006 at 217-221.

⁸⁰⁵ Wade Lacroix 05/09/2006 at 15-17; John Carson 05/30/2005 at 153-154.

⁸⁰⁶ Wade Lacroix 05/09/2006 at 52-54; George Hebblethwaite 05/11/2006 at 261-262; Wayde Jacklin 04/25/2006 at 309; John Carson 05/31/2005 at 21-24.

⁸⁰⁷ George Hebblethwaite 05/11/2006 at 260-261.

weapons were not seized at that time because there were no replacement weapons at the TOC.⁸⁰⁸

724. Insp. Carson agreed that the situation after the shooting was tense and chaotic. He did not know who had been shot. He did not know who was armed, where they would go, or what they would do. His first priority was to maintain control and ensure everyone's safety. He instructed A/S/Sgt. Skinner to deploy officers in the bush to intercept anyone who might approach the TOC through the wooded area.⁸⁰⁹

725. The officers remained operational at the TOC after the shooting. There was concern that the incident may not be over. There was scant opportunity for the officers to discuss what had happened during the confrontation, beyond checking on each other's well being.

g) Cecil Bernard George Treatment at the TOC and Strathroy Hospital

726. When Cecil Bernard George was taken to a prisoner van by members of the arrest team, Cst. Jacklin, who was responsible for the arrest team and who had observed that Cecil Bernard George had some swelling on his face and a cut around his lip area, assigned Cst. Zacher to stay with the prisoner and monitor him.⁸¹⁰

727. Cst. Jacklin also asked for an ambulance to attend because he had some concern for Cecil Bernard George who was a "person in (his) care". By asking for an ambulance for Cecil Bernard George, Cst. Jacklin was "acting on the side of safety or caution". This was the last that Cst. Jacklin saw or had anything to do with Cecil Bernard George.⁸¹¹

728. Cst. Leblanc was the driver of one of the two prisoner vans then located west of the intersection of Army Camp Road and East Parkway Drive. He was instructed to call

⁸⁰⁸ Wade Lacroix 05/09/2006 at 16-17; Kent Skinner 04/19/2006 at 232-235, 238.

⁸⁰⁹ John Carson 05/30/2005 at 157; 06/01/2005 at 209-210.

⁸¹⁰ Wade Jacklin 04/25/06 at 277

⁸¹¹ Wade Jacklin 04/25/06 at 279

the TOC for an ambulance, which he did. At the time, Cecil Bernard George had been placed in the other prisoner van driven by Cst. Marrissen. Very shortly after Cst. LeBlanc called for an ambulance he cancelled the ambulance because of “gunshots going off”.⁸¹²

729. The prisoner vans retreated to the TOC a few minutes later, after the bus and car returned to the Park, ahead of the CMU members. At the TOC, Cst. LeBlanc checked on Cecil Bernard George. He requested the OPP medic, Ted Slomer, rather than the ambulance attendants, to examine the prisoner because the medic was better trained.⁸¹³

730. Ted Slomer recalls that he was asked by an ERT member to examine a prisoner in the prisoner van. He went to the van and saw the prisoner lying on his side on the floor of the van with his hands cuffed behind him. There was no blood or vomit on the van floor. Ted Slomer immediately started performing his initial primary assessment, which consisted of steps to identify whether there were any immediate life threats to the patient. He described this stage of the assessment as checking airway, breathing and circulation (“A,B,C”) and a brief neurological check to ascertain whether the patient was alert, responded to pain, or was unconscious (“APU”). The patient was responsive to touch and able to speak. He did not appear to have a compromised airway. His breathing appeared regular, and his skin was moist but warm. The pulse was strong and regular at the wrist which indicated an adequate blood pressure. There was no apparent active bleeding. From that primary assessment, Ted Slomer determined that the patient possibly had some degree of head injury as he had a decreased level of consciousness. He also noted in passing that the patient had some abrasions on the right side of his face, and swollen upper lip with a laceration that was not bleeding.⁸¹⁴

731. Having determined there were no immediate life threats to the patient, Ted Slomer went on to perform the second stage of the assessment, which is a more

⁸¹² Dennis Leblanc 05/23/06 at 203

⁸¹³ Dennis Leblanc 05/23/06 at 108, 178

⁸¹⁴ Ted Slomer 05/26/2006 at 194-199.

detailed survey of the ABCs. This assessment included taking vital signs, auscultating or listening to the chest for breath sounds, doing a more detailed neurological assessment using the Glasgow Coma Scale, checking circulation in each limb, and physically feeling the patient from head to toe to check for neurovascular compromise, fractures, pain, and lacerations.⁸¹⁵

732. Ted Slomer explained that the Glasgow Coma Scale is a measure of the degree of mental state, consisting of three components: eye opening, verbal response, and ability to move limbs. Each component is evaluated according to a numerical scale and the scores are added up. The maximum score in a conscious person is 15; the low end of the score for an unconscious patient that requires life support is 3. A score of 13 or above can indicate a mild head injury and a score of 9-12 can indicate a moderate head injury. The scores are based on the best response given by the patient. The initial Glasgow Coma Scale score is used to establish a base line, and the test is repeated over a period of time. The patient's neurological condition is evaluated based on the trend of the scores – whether the scores improve or decrease over time. A single score, unless it's less than 9 on initial assessment, is not as significant as the trend in scores over time. Only through the course of time can one identify whether a score improves, indicating that a head injury is resolving, or whether a score decreases, indicating something more severe. Although this is a standardized test, it is possible that different operators could obtain different scores, as there is some subjectivity on the part of the evaluator and different persons can use different stimuli. A difference in scoring of one point is not considered significant.⁸¹⁶

733. Ted Slomer proceeded to perform the secondary assessment. He took vital signs, including counting pulse and respirations, and taking a blood pressure. All vital signs were normal. He performed a Glasgow Coma Scale, scoring 13, based on a score of 3 out of 4 for eye opening as the patient opened his eyes to voice call and physical stimulus, a score of 4 out of 5 for verbal response in that he would only give one word responses to questions, and a score of 5 out of 5 for motor response. Ted Slomer

⁸¹⁵ Ted Slomer 05/26/2006 at 199-205.

⁸¹⁶ Ted Slomer 05/26/2006 at 258, 263-266; 06/06/2006 at 17-33, 93-96.

performed the head to toe hands-on assessment and noted a laceration on the back of the head that was not actively bleeding, as well as abrasions on a wrist. Other than that, there was no evidence of injury as indicated by pain or bone deformity, and no evidence of bleeding or other bodily fluids. Ted Slomer assessed the patient as being stable. However, the patient did have an altered mental state which could indicate trauma to the head.⁸¹⁷

734. Ted Slomer repeated the full assessment approximately 10 minutes after first seeing the patient. His findings were unchanged, except he noted the patient was responding more quickly verbally. The patient was also able to sit up and support his head without assistance, which Ted Slomer found reassuring.⁸¹⁸

735. Ted Slomer noted that the TOC site was unsafe, and that the patient needed to be transported to hospital so that he could be more fully assessed and monitored. The only ambulance available at the time was a St. Johns ambulance. Ted Slomer could have had the patient transported to hospital in a police cruiser but decided against it, as the light was not good in the back of a cruiser and the patient would not be able to lie down. He decided that the St. Johns ambulance would be preferable. He knew that the St. Johns ambulance was not a Ministry of Health licensed ambulance, but did have the capacity to transport patients in some form.⁸¹⁹

736. Ted Slomer went to speak with the St. Johns attendant, Karen Bakker, and advised her that the patient had a decreased level of consciousness, that the patient's vital signs were stable, and the other information obtained from his assessments. He believed, based on an earlier conversation with Karen Bakker that evening in which she identified herself as a nurse, that the transfer to hospital was within capability of the St. Johns crew. The St. Johns crew accepted the patient, and expressed no concern

⁸¹⁷ Ted Slomer 05/26/2006 at 257-278, 263-266; 06/06/2006 at 17-33, 93-96

⁸¹⁸ Ted Slomer 05/26/2006 at 268-272, 278-286.

⁸¹⁹ Ted Slomer 05/26/2006 at 287-290.

whatsoever about transferring the patient. The patient was loaded onto a stretcher, put in the St. Johns ambulance and the ambulance departed to the closest hospital.⁸²⁰

737. Karen Bakker testified that when she first saw the patient, he was sitting up, moving his limbs and looking around. The patient was able to tell her that he had been hit or he had fallen or somehow hurt himself and his abdomen was sore. He also repeatedly told her that he was not going to hurt her.⁸²¹

738. Karen Bakker palpated the patient's pulse and counted his respirations by watching his chest rise on four occasions during the transport to hospital. On one occasion, she was not able to palpate a pulse or see the chest rise, and the patient appeared unresponsive with pupils that were unresponsive to light. Shortly after, she was again able to palpate a pulse and observe respirations, and the patient's pupils reacted to light.⁸²²

739. Walter Harding, Karen Bakker's supervisor, testified that she told him that the patient had been stable during the transport, then could not obtain vital signs, and then had stable vital signs again. Walter Harding noted that Karen Bakker was inexperienced and that it is often difficult for even well trained and experienced medical personnel to assess vital signs, given the noisy conditions in ambulances. He also noted it is even more difficult to assess vital signs when one is nervous.⁸²³

740. Dr. Alison Marr reviewed Karen Bakkers' notes of the transport and indicated it was impossible for a patient to temporarily lose a pulse and respirations and have non-reactive pupils and then spontaneously recover. Dr. Marr also noted that the patient's vital signs were stable when he arrived at the Strathroy Hospital. She was of the view

⁸²⁰ Ted Slomer 05/26/2006 at 234, 286-296.

⁸²¹ Karen Bakker 04/19/2005 at 312-314, 325.

⁸²² Karen Bakker 04/19/2005 at 315.

⁸²³ Walter Harding 04/18/2005 at 199; 04/19/2005 at 27.

that Karen Bakker's findings of loss of vital signs en route to the hospital were not accurate.⁸²⁴

741. Dr. Marr testified that she assessed Cecil Bernard George when he was brought to the Emergency Department of Strathroy Hospital on September 7 at 00:08. His vital signs were normal, but he had an impaired level of consciousness, with initial Glasgow Coma Scale score of 12. Dr. Marr evaluated his condition as stable at that time but requiring observation and further investigation to ensure there were no broken bones or internal injuries. Further tests showed Cecil Bernard George had no broken bones and there was no evidence of any internal injuries.⁸²⁵

742. Cecil Bernard George became more coherent over the first half hour in the Emergency Department and began complaining of pain in the back of his head, right forearm, posterior left shoulder and abdomen. His head laceration was closed with two stitches, and, according to the Nurses Notes, his lip laceration was closed with three stitches. Dr. Marr described his course in the Emergency Department as stable. He was alert and coherent before he left the Emergency Department at 03:05 and had a Glasgow Coma Scale score of 15. He was observed overnight and was discharged from Strathroy Hospital at 16:30 on September 8, 1995 after being medically cleared.⁸²⁶

743. Dr. Marr noted Cecil Bernard George had some bruising and abrasions during her initial examination in the Emergency Department on September 7. On September 8, Dr. Marr assessed Cecil Bernard George and asked him to indicate any part of his body that was sore. Based on that information, Dr. Marr documented 23 locations where Cecil Bernard George either had bruises or abrasions, and 5 locations where he was complaining of tenderness and there were no bruises or abrasions. 5 of the bruises on his left shoulder, back, and left arm had a distinctive linear appearance which indicated to Dr. Marr that they had been caused by an object that had length to it. Dr.

⁸²⁴ Alison Marr 04/26/2005 at 50-54.

⁸²⁵ Alison Marr 04/26/2005 at 51-52, 249; P-357.

⁸²⁶ Alison Marr 04/26/2005 at 46, 116, 251; P-357; P-364; P-368; P-387.

Marr noted that Cecil Bernard George had required no medical intervention, except for the suturing of the lip and head laceration.⁸²⁷

744. Both Dr. Marr and Dr. Elizabeth Saettler, who also assessed Cecil Bernard George, believed his condition was caused solely by being beaten by police. They did not have any information about his taking part in a fight against police or actively resisting arrest.⁸²⁸

h) TRU TOC Recordings

745. It was only after the confrontation in the sandy parking lot that Cst. Zupancic discovered that the TRU team logger communication machine had not recorded the Ipperwash occurrence. After the incident, A/S/Sgt. Skinner instructed Cst. Zupancic to verify that the occurrence had been recorded. To his shock and horror, Cst. Zupancic discovered that the recording equipment had not recorded the occurrence.⁸²⁹

746. Cst. Zupancic took control of the logger tape in the recoding machine on September 6. Cst. Zupancic maintained possession of the tape, storing it in his personal locker which was secured inside the TRU team office. Later he reviewed the entire tape to confirm that the incident had not been captured.⁸³⁰ The tape was seized by the Special Investigations Unit ("SIU") on April 15, 1997.⁸³¹

i) Failure to Record Ipperwash Incident was Inadvertent

747. On April 25, 2006, the tape was delivered by the SIU to the Commission's office. It was examined by the Commission's Lead Investigator at OPP Headquarters in Orillia. The results of this examination, which are detailed in Inspector Moss' memorandum of June 14, 2006, support the conclusion that by not placing the recording equipment in the "record" mode at the time of the Ipperwash incident, the logger machine was simply

⁸²⁷ Alison Marr 04/25/2005 at 101-113; P-362.

⁸²⁸ Alison Marr 04/26/2005 at 98; Elizabeth Saettler 04/26/2005 at 322.

⁸²⁹ Rick Zupancic 04/24/2006 at 123-126, 333; Kent Skinner 04/19/2006 at 252-253, 369.

⁸³⁰ Rick Zupancic 04/24/2006 at 127-128, 131, 134.

⁸³¹ Rick Zupancic 04/24/2006 at 133.

“playing” a previous TRU incident instead of recording the Ipperwash incident. This conclusion was supported by a computer review of the TRU tape.

During the examination of the audio tape a current computer audio program was used to visually see the periods on the tape which are in “record” mode and those periods in “play” mode, as the signal on the screen graph is quite narrow during the operation in “play” mode and obviously wider in “record” mode. Given this knowledge, the gap between the end of the Simcoe incident and the eventual start of the Zupancic recording indicates a thin line on the graph. The unit was in “play” mode the entire period. If the tape had been recorded over, the graph would still indicate the recorder was in “record” mode without having any audio present on the tape. The tape could have been altered by the use of erasure heads, which requires some technical knowledge to undertake. [Emphasis added.]

748. Inspector Moss concluded:

It is my opinion as a result of my examination and observations that Sgt. Zupancic did not properly engage the records during the critical period of deployment at Ipperwash.⁸³²

⁸³² Memorandum of Inspector Rick Moss, 06/14/2006.

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10. Events After the Shooting

a) Ambulance and Arrest at Checkpoint “D”

749. Following the confrontation in the sandy parking lot Nicholas Cottrelle was brought from the Park to the built up area of the Army Camp. His mother, Gina George, was informed that he was injured and her husband, Roderick George, suggested that she go out to the police at the Checkpoint at Army Camp Rd and Highway 21 to request an ambulance.⁸³³

750. There were initially ten officers at Checkpoint “D” at Army Camp Rd and Highway 21. Two cruisers, with four officers, had left in pursuit of Marcia Simon’s vehicle and there were six officers remaining during the request for and arrival of the ambulance at the checkpoint.⁸³⁴

i) Gina George goes out to intersection

751. Gina George drove out of the Army Camp to the intersection of Army Camp Rd and Highway 21 in a red Nova. There were police cruisers on the road but Gina did not see anyone in the cruisers or standing beside the cruisers. She did a u-turn on the road and pulled up the next to a cruiser on the south side of Highway 21.⁸³⁵

752. Gina George testified that she got out of her car and walked around to the back of the vehicle. “And as soon as I got around to the back of my car, several police jumped out of the ditch, pointing guns at me and told me to get down on the ground – raise my hands in the air, but I refused to lay on the ground”.⁸³⁶

753. Sgt. Slack testified that he instructed officers to clear the car for weapons. Officers who were furthest east in the ditch got out of the ditch and looked in the car

⁸³³ Gina George 01/31/2005 at 96.

⁸³⁴ John Slack 06/05/2006 at 250.

⁸³⁵ Gina George 01/31/2005 at 96-97.

⁸³⁶ Gina George 01/31/2005 at 97.

with their flashlights.⁸³⁷ Officers had their rifles in the ready position⁸³⁸, which is the normal carry position and means that the firearms were being carried with their muzzles to the air.⁸³⁹

754. Sgt. Slack proceeded from his position in the ditch to speak with Gina George.⁸⁴⁰ Gina George told Sgt. Slack that her son had been shot. Sgt. Slack instructed her to return to the Army Base to get her son and to bring him out to the checkpoint where they would have the ambulance meet her.⁸⁴¹ Sgt. Slack testified that their conversation lasted less than a minute.⁸⁴²

755. Gina George testified that she probably swore at police and demanded an ambulance and “they finally agreed that they would get me one, but they said they were not going to send the ambulance to where my son was, that I would have to bring him out to the highway”.⁸⁴³ Gina George alleged that it took the police “maybe about five (5) minutes” to agree to bring an ambulance.⁸⁴⁴

756. Cst. Parks was in the ditch when Gina George came out to the checkpoint. He was about 50 meters away from her and could hear her conversation with officers. Gina George requested an ambulance and was instructed that the ambulance would be brought to the checkpoint and she should bring the injured party there.⁸⁴⁵

757. Gina George returned to the Army Camp and Sgt. Slack made a radio request for an ambulance. Sgt. Slack also requested that two uniform officers attend at the checkpoint to accompany the ambulance with the injured party to the hospital.⁸⁴⁶

⁸³⁷ John Slack 06/05/2006 at 241-242.

⁸³⁸ John Slack 06/05/2006 at 243.

⁸³⁹ David Boon 06/06/2006 at 80.

⁸⁴⁰ John Slack 06/05/2006 at 243.

⁸⁴¹ John Slack 06/05/2006 at 244.

⁸⁴² John Slack 06/05/2006 at 299.

⁸⁴³ Gina George 01/31/2005 at 98-99.

⁸⁴⁴ Gina George 01/31/2005 at 101.

⁸⁴⁵ Larry Parks 03/28/2006 at 285.

⁸⁴⁶ John Slack 06/05/2006 at 245 and P-1622.

758. Sgt. Slack responded, without delay, to Gina George's request for an ambulance and the ambulance arrived "in very short order".⁸⁴⁷

759. Sgt. Slack instructed Gina George to bring her son out to the checkpoint because "the situation was unstable, was uncontained, there had been some type of gunfight moments before at East Parkway and Army Camp Road, and I didn't feel it was safe for an ambulance or anyone else to go into the Army Camp".⁸⁴⁸

760. Sgt. Slack testified, at the time, it would not have been safe to send an ambulance and police officers into the Army Camp.

A: Shortly before that there had been a confrontation -

Q: Right.

A: - at East Parkway Drive and Army Camp Road. I don't know if the ambulance would have gone into the Army Camp on their own.

Therefore it would have been incumbent upon us to escort them for their safety. If we took an ambulance or two (2) ambulances and a police car or two (2) police cars in the main gates of CFB Ipperwash shortly after the shooting, a gun fight – I felt that would have been extremely provocative, it probably would have been interpreted the wrong way and was extremely dangerous and I didn't entertain that thought for a moment.⁸⁴⁹

761. Insp. Carson agreed that it would not be safe or appropriate for medical personnel to enter the Base or the Park after the confrontation, particularly unescorted. Insp. Carson also agreed that it would be reasonable to require someone seeking an ambulance from the Base to be brought outside the Base to meet the ambulance.⁸⁵⁰

⁸⁴⁷ John Slack 06/05/2006 at 245.

⁸⁴⁸ John Slack 06/05/2006 at 244-245.

⁸⁴⁹ John Slack 06/05/2006 at 298-299.

⁸⁵⁰ John Carson 06/01/2005 at 211-212.

ii) Nicholas Cottrelle brought out to intersection

762. Nicholas Cottrelle and Gina George observed an ambulance coming down Highway 21 from the west. The ambulance stopped at the intersection of Highway 21 and Army Camp Rd. His mother, Gina George, and his aunt, Tina George, decided to take him out to the intersection at that point.⁸⁵¹

763. Two ambulances arrived at the checkpoint at about the same time as Gina George, Tina George and Nicholas Cottrelle.⁸⁵² The uniform officers also arrived in the same time frame.⁸⁵³

764. Nicholas Cottrelle testified that when they arrived out at the intersection “just out of nowhere there’s all these cops come flying out the ditch, they had rifles, telling us to put our hands up and kept circling the car and my mother was screaming at them, don’t shoot”.⁸⁵⁴

765. The officers cleared the car to make sure that there were not any weapons in the vehicle and the ambulance attended.⁸⁵⁵ Nicholas Cottrelle testified that the police “flashed flashlights in there, looked on the floor, beside us, as best they could I guess, and a couple of them went back and then the ambulance attendant came over”.⁸⁵⁶ Gina George agreed that she could understand why the police would want to check the car for guns themselves.⁸⁵⁷

766. Gina George testified that they started to get out of the car and the police jumped out of the ditches pointing firearms at them. Gina George alleged that the police said “you bitches, put your arms in the air, put your hands in the air and get away from that car, all three (3) of you’s out of that car”.⁸⁵⁸ Gina George stated that “my sister-in-law,

⁸⁵¹ Nicholas Cottrelle 01/18/2005 at 136-137; Gina George 01/31/2005 at 103.

⁸⁵² John Slack 06/05/2006 at 245.

⁸⁵³ John Slack 06/05/2006 at 254.

⁸⁵⁴ Nicholas Cottrelle 01/18/2005 at 137-138.

⁸⁵⁵ Larry Parks 03/28/2006 at 287.

⁸⁵⁶ Nicholas Cottrelle 01/18/2005 at 138.

⁸⁵⁷ Gina George 01/31/2005 at 184-85.

⁸⁵⁸ Gina George 01/31/2005 at 104.

she just started to go off on them. She was swearing at that. And I said, we're not bitches".⁸⁵⁹

767. Tina George alleged that "you could hear voices down the road calling us bitches and wahoos".⁸⁶⁰ Tina George alleged that these comments were coming from police as there was no one else in the area.⁸⁶¹ Tina George also testified that "I'm pretty sure they told us to lay on the ground. We weren't going to lay on the ground".⁸⁶²

768. Gina George testified that throughout the time when they arrived at the intersection with Nicholas Cottrelle, until the time he was put in the ambulance, Tina George was yelling at police "telling them they were assholes".⁸⁶³

769. Sgt. Slack did not hear the conversations between Gina George, Tina George and the officers at the checkpoint.⁸⁶⁴ Sgt. Slack did not hear any officers curse at the vehicle occupants or make any racial remarks. He was standing close enough to the individual that if such comment had been made he would have heard them.⁸⁶⁵

770. Cst. Parks agreed that he heard shouting back and forth between the vehicle occupants and the officers. The two women appeared to be quite upset. Cst. Parks did not recall hearing the women called "bitches".⁸⁶⁶

771. Cst. Boon did not hear any of the officers yelling at the occupants of the vehicle. He did not hear any racial slurs made on the part of the officers.⁸⁶⁷

772. John Tedball, an ambulance driver, testified that the only thing he heard the police say to the vehicle occupants was "keep your hands up" and "don't move". John

⁸⁵⁹ Gina George 01/31/2005 at 104.

⁸⁶⁰ Tina George 01/19/2005 at 217.

⁸⁶¹ Tina George 01/19/2005 at 217.

⁸⁶² Tina George 01/19/2005 at 217.

⁸⁶³ Gina George 01/31/2005 at 104, 107 & 109.

⁸⁶⁴ John Slack 06/05/2006 at 256.

⁸⁶⁵ John Slack 06/05/2006 at 324.

⁸⁶⁶ Larry Parks 03/29/2006 at 31-32.

⁸⁶⁷ David Boon 06/06/2006 at 110.

Tedball testified that he heard the “F” word coming from the female vehicle occupants.⁸⁶⁸ The only obscenities that he heard came from the two female vehicle occupants.⁸⁶⁹

773. Cesare Dicesare, an ambulance attendant, testified that he heard the two female using vulgar language to describe what had happened. He did not hear the police say anything to the two women.⁸⁷⁰ The only obscenities or bad language that he heard came from the two women.⁸⁷¹

774. Mark Watt, an ambulance attendant who was dispatched to the intersection, testified that as he arrived in the ambulance they were directed to park behind a police cruiser. The ambulance attendants exited the ambulance and went into the ditch as the scene was not yet clear.⁸⁷²

775. Gina George testified that it appeared to her that initially the police were not allowing the ambulance attendants to come across the road to get Nicholas Cottrelle.⁸⁷³ Gina George testified that it appeared the ambulance attendants were being briefed or being warned of something.⁸⁷⁴ Gina George could not provide an estimate of the amount of time that it took before the ambulance attendants came across the road although “it seemed like it was a very long time”.⁸⁷⁵

776. The ambulance attendants arrived at the scene at 23:16, they saw the patient at 23:18, and departed at 23:39.⁸⁷⁶

777. The ambulance attendants spent approximately two minutes in the ditch while the scene was cleared.⁸⁷⁷ They collected their equipment from the ambulance and

⁸⁶⁸ John Tedball 04/25/2005 at 198-199.

⁸⁶⁹ John Tedball 04/25/2005 at 214.

⁸⁷⁰ Cesare Dicesare 04/25/2005 at 248.

⁸⁷¹ Cesare Dicesare 04/25/2005 at 302.

⁸⁷² Mark Watt 04/25/2005 at 22.

⁸⁷³ Gina George 01/31/2005 at 106.

⁸⁷⁴ Gina George 01/31/2005 at 108.

⁸⁷⁵ Gina George 01/31/2005 at 108.

⁸⁷⁶ Mark Watt 04/25/2005 at 87 and P-354.

proceeded to the vehicle where they began their assessment of Nicholas Cottrelle.⁸⁷⁸ Nicholas Cottrelle' shirt was cut off, he was stabilized on a spine board, and loaded into the ambulance.⁸⁷⁹

778. John Tedball agreed that, apart from the minor delay when they secured the scene at Highway 21 and Army Camp Road, the police did not in any way interfere with the ambulance attendants' ability to respond to and deal with the patient.⁸⁸⁰

779. Tina George testified that Gina George "asked to go with Nicholas and was told, no".⁸⁸¹ Gina George testified that when the ambulance attendants took her son across the road the police told her she could not go with him.⁸⁸²

780. Mark Watt did not recall speaking with Gina George but testified that it would have been normal course for him to make a determination about whether or not to have parent ride in the ambulance with the patient. Unless there are particular circumstances, such as the patient is very young, he would not want the parent to ride in the ambulance. In this situation he would not have wanted a parent in the ambulance.⁸⁸³

iii) Nicholas Cottrelle in ambulance

781. Sgt. Slack instructed Cst. Boon to arrest Nicholas Cottrelle for mischief and to read him his rights to counsel and caution him.⁸⁸⁴

782. Sgt. Slack testified:

A: At the time, when the young man came out, I had the belief that he was involved in the confrontation. I had the

⁸⁷⁷ Mark Watt 04/25/2005 at 26 and John Tedball 04/25/2005 at 213.

⁸⁷⁸ Mark Watt 04/25/2005 at 26-28.

⁸⁷⁹ Mark Watt 04/25/2005 at 28.

⁸⁸⁰ John Tedball 04/25/2005 at 211.

⁸⁸¹ Tina George 01/19/2005 at 221.

⁸⁸² Gina George 01/31/2005 at 110.

⁸⁸³ Mark Watt 04/29/2005 at 89-91.

⁸⁸⁴ John Slack 06/05/2006 at 255.

belief that he was not only involved in the confrontation but could potentially be armed. I also had the belief that standing on a roadway, being exposed to the Army Camp was not a safe situation.

So I needed to ensure the safety of everyone who was there. So I instructed the Officer, Constable Boon, to arrest the male.

Looking at it now, in hindsight, there was – there was probably a better way to proceed instead of issuing those instructions for him to arrest that individual. In hindsight, it probably would have been a better way to proceed if we'd detain him using investigative detention it would accomplished the same – the same goals.

Q: Okay. And those goals being?

A: To get him expedited to the hospital, to get him searched for possible weapons, and to clear the roadway as expeditiously as possible of people standing on the roadway because we were exposed. We were sitting ducks from anything from inside the Army Camp.⁸⁸⁵

783. Cst. Boon testified:

Just prior to getting into the ambulance I had a conversation with Sergeant Slack and as a result of that conversation I had grounds – had reasonable probable grounds for the arrest of Nicholas Cottrelle for the offence of mischief.⁸⁸⁶

784. Although Cst. Boon could not recall the specifics of his conversation with Sgt. Slack he recalled that he was satisfied, at the time, that reasonable and probable grounds existed for the offence of mischief.⁸⁸⁷

785. Cst. Boon got in the back of the ambulance with the ambulance attendant, Mark Watt, and Nicholas Cottrelle. Cst. Boon recorded some of Nicholas Cottrelle's personal

⁸⁸⁵ John Slack 06/05/2006 at 255-256.

⁸⁸⁶ David Boon 06/06/2006 at 26.

⁸⁸⁷ David Boon 06/06/2006 at 61.

information such as name, date of birth and family doctor, which he learned by listening to Watt interviewing Nicholas Cottrelle.⁸⁸⁸

786. Cst. Boon arrested Nicholas Cottrelle for mischief, advised him of his right to counsel and cautioned him regarding statements using the young person's caution.⁸⁸⁹

787. Nicholas Cottrelle testified that he did not recall being read his rights to counsel or the young offender's caution.⁸⁹⁰ However, Nicholas Cottrelle also testified that he believed the officer informed him of other charges at that time, one of which may have been attempted murder.⁸⁹¹

788. Cst. Boon recorded this information in his notes:

23:43 Arrested Mr. Cottrelle for mischief on grounds from Sgt. Slack. I advised him of his right to counsel. Further cautioned him – young persons. He said he understood.

When asked if he wished to call a lawyer now he replied "well obviously I can't right now – Fuck."

Because he was a young offender I also advised him further of his right to have a parent, guardian or other responsible adult during any questioning. Again he said "ya" when asked if he understood.⁸⁹²

789. Mark Watt also testified that he heard Cst. Boon read Cottrelle his rights.⁸⁹³

790. It is clear from Cst. Boon's detailed notes of the arrest, and his testimony, that he arrested Nicholas Cottrelle for mischief, read him his rights, and cautioned him. This is corroborated by Mark Watt's testimony. It is understandable that Nicholas Cottrelle's

⁸⁸⁸ David Boon 06/06/2006 at 26.

⁸⁸⁹ David Boon 06/06/2006 at 26-27.

⁸⁹⁰ Nicholas Cottrelle 01/18/2005 at 258.

⁸⁹¹ Nicholas Cottrelle 01/18/2005 at 139.

⁸⁹² P-1633 at 4-5 .

⁸⁹³ Mark Watt 04/25/2005 at 33.

recollection of the incident may be hazy and somewhat inaccurate, given the circumstances.

791. Cst. Boon has never been disciplined or spoken to, by a superior officer, regarding the propriety of the arrest.⁸⁹⁴

b) Arrest of Marcia Simon

i) Marcia Simon exits Army Camp

792. Shortly after the confrontation in the sandy parking lot officers from Checkpoint “D” were advised to move the Checkpoint to the intersection of Army Camp Road and Highway 21.⁸⁹⁵ While they were moving to the new position Cst. Lorch observed two vehicles inside the Base, towards the Provincial Park, that began heading south along the road which paralleled the fence.⁸⁹⁶

793. Cst. Lorch observed the two vehicles travel up to the Army Camp gate and proceed onto Army Camp Road. The first vehicle turned right, towards the officers at the checkpoint, and the second vehicle turned left on Highway 21.⁸⁹⁷

794. Cst. Gransden testified that he observed a vehicle exit the Army Camp onto Army Camp Road, fail to stop at the stop sign at Highway 21, and turn left onto Highway 21.⁸⁹⁸ Cst. Lorch testified that he observed the vehicle exit the Army Camp, turn onto Army Camp Road, and then turn left onto Highway 21. The vehicle did not stop at any point.⁸⁹⁹

795. Marcia Simon was driving the vehicle which the officers observed make a left hand turn onto Highway 21 towards Grand Bend. She was accompanied in the car by

⁸⁹⁴ David Boon 06/06/2006 at 72.

⁸⁹⁵ Mike Dougan 04/03/2006 at 121.

⁸⁹⁶ Steve Lorch 06/12/2006 at 94-95.

⁸⁹⁷ Steve Lorch 06/12/2006 at 96-97.

⁸⁹⁸ Mark Gransden 03/30/2006 at 141.

⁸⁹⁹ Steve Lorch 06/12/2006 at 180.

her mother, Melva George.⁹⁰⁰ Marcia Simon insisted that she stopped at the stop sign at the intersection of Army Camp Rd and Highway 21, signaled, and made a left hand turn onto Highway 21.⁹⁰¹

796. Marcia Simon clearly felt that her drive to Northville was urgent. As discussed below, she did not stop for police following her with their emergency light activated during this journey. The officers recollection that she did not stop for the stop sign should be accepted as accurate.

ii) Police pursuit of Marcia Simon

797. Csts. Lorch and Bell were in the first police cruiser which followed Marcia Simon's vehicle. They activated their emergency lights as soon as they went around the corner and got behind her vehicle.⁹⁰²

798. At 23:14 unit 2411, Csts. Lorch and Bell, communicated that they were in pursuit of a vehicle that had left the Army Camp:

Delta 2411: Delta, as we were coming up Army Camp Road, a vehicle left the Army Base. We are in low-speed pursuit. Do you wish us to continue to attempt to stop this vehicle? East on 21.

Lima 2: 10-4 to the unit pursuing. Continue to follow.

Delta 2411: 10-4. Licence 935 HHT, Ontario marker.

Lima 2: That's 10-4. Continue to follow. Do not light up.

Delta 2411: 10-4. We've deactivated our lights and we'll continue to follow...⁹⁰³

⁹⁰⁰ Marcia Simon 09/23/2004 at 165.

⁹⁰¹ Marcia Simon 09/27/2004 at 20.

⁹⁰² Steve Lorch 06/12/2006 at 97.

⁹⁰³ P-1254.

799. Cst. Gransden observed Csts. Lorch and Bell's cruiser follow the vehicle and activate its emergency lights.⁹⁰⁴

800. Tina George observed Marcia Simon drive out of the Army Camp, "I watched her go down Army Camp Road and turn left on Highway 21, and I seen a cop car following her".⁹⁰⁵

801. Marcia Simon insisted that she did not observe police officers pursuing her until she was about 2 kilometers down the Highway. However, she also testified that as soon as she turned the corner her mother, Melva George, started screaming that the police were going to shoot them.⁹⁰⁶

802. Cst. Gransden and Cst. Dougan got into their cruiser and proceeded north on Highway 21, following the lead cruiser.⁹⁰⁷ As officer safety was at issue, it was standard procedure for Cst. Gransden and Cst. Dougan to follow and offer assistance to the officers who were engaged in the pursuit.⁹⁰⁸

803. Both cruisers had their lights activated.⁹⁰⁹ The officers could not recall whether either cruiser had their sirens activated.⁹¹⁰ However, Cst. Dougan's police notes indicate that during the pursuit they "used horn and roof lights".⁹¹¹

804. When an emergency vehicle, whether it is a police car, ambulance, or fire vehicle, has its emergency lights activated other vehicles on the road are required to immediately pull to the right. Subsection 216(1) of the *Highway Traffic Act* specifically deals with the requirement to stop when directed to do so by police. The subsection stipulates:

⁹⁰⁴ Mark Gransden 03/30/2006 at 143.

⁹⁰⁵ Tina George 01/19/2005 at 213.

⁹⁰⁶ Marcia Simon 09/27/2004 at 21.

⁹⁰⁷ Mark Gransden 03/30/2006 at 144; Mike Dougan 04/03/2006 at 121.

⁹⁰⁸ Mike Dougan 04/03/2006 at 123.

⁹⁰⁹ Mark Gransden 03/30/2006 at 144; Mike Dougan 04/03/2006 at 123.

⁹¹⁰ Mark Gransden 03/30/2006 at 144; Mike Dougan 04/03/2006 at 123; Steve Lorch 06/12/2006 at 218-219.

⁹¹¹ P-1266 at 12.

216(1) A police officer, in the lawful execution of his or her duties and responsibilities, may require the driver of a motor vehicle to stop and the driver of a motor vehicle, when signalled or requested to stop by a police officer who is readily identifiable as such, shall immediately come to a safe stop.⁹¹²

805. It is an offence to fail to stop when signaled or directed by a police officer to do so.⁹¹³

806. Marcia Simon did not agree that when a police car is behind you with its lights on you are supposed to stop.⁹¹⁴

807. Cst. Lorch's notes indicate that they deactivated their lights after about 2 kilometers.⁹¹⁵ He recalled that this was about halfway to the restaurant where the vehicle eventually stopped.⁹¹⁶ Cst. Gransden and Cst. Dougan also deactivated their lights after the radio communication from Lima 2 requesting that they not light up.⁹¹⁷

808. Cst. Lorch testified that the lights had been activated for some time before the pursuit was called in over the radio.⁹¹⁸ From the time the pursuit was called in until the lights were deactivated was 1:14 seconds.⁹¹⁹ Cst. Lorch testified that, in his experience, vehicles regularly stop within 12 to 15 seconds from the time the cruiser lights are activated.⁹²⁰

809. There was sufficient time for the vehicle to pull over before the lights were deactivated. Marcia Simon had no intention of stopping for the police officers and the fact that the lights were deactivated is irrelevant.

⁹¹² *Highway Traffic Act*, R.S.O. 1990, c. H.8, s.216(1).

⁹¹³ *Highway Traffic Act*, R.S.O. 1990, c. H.8, s.216(2).

⁹¹⁴ Marcia Simon 09/27/2004 at 176.

⁹¹⁵ P-1690 at 4.

⁹¹⁶ Steve Lorch 06/12/2006 at 98.

⁹¹⁷ Mark Gransden 03/30/2006 at 154.

⁹¹⁸ Steve Lorch 06/12/2006 at 243.

⁹¹⁹ Steve Lorch 06/12/2006 at 271-272.

⁹²⁰ Steve Lorch 06/12/2006 at 243.

iii) MacPherson's parking lot

810. Marcia Simon pulled into the MacPherson's parking lot and proceeded to the payphone.⁹²¹

811. The first cruiser stopped behind the rear of Marcia Simon's vehicle. The second cruiser stopped somewhat to the side and rear of the first cruiser.⁹²² The cruisers were positioned so that the officers in both cruisers would be able to have a clear view of Marcia Simon's vehicle.⁹²³

812. Insp. Carson testified that any officer would treat the situation of Marcia Simon leaving the Army Camp shortly after the shooting and failing to stop for police in a high risk fashion.⁹²⁴ Insp. Carson testified that:

In this case, given the gunfire that had taken place, there was a potential or risk of vehicles exiting the Military Base that may have been involved in the altercation at the sandy parking lot.

So, when an officer would attempt to stop a vehicle that had the potential of being involved in that type of situation, that also would lead them to believe there is a potential of weapons being available to the occupants of that vehicle. And until such time as they were able to determine, in fact, that wasn't the case, they would have to treat it as though there was weapons until proven otherwise.⁹²⁵

813. The officers had concerns that the persons in the vehicle could be armed. Cst. Gransden testified:

My concern was that they did have weapons, that they were armed, and I based that on my observations from them leaving the – directly leaving the main entrance to the Army Camp.

⁹²¹ Marcia Simon 09/23/2004 at 169.

⁹²² Mark Gransden 03/30/2006 at 157.

⁹²³ Mike Dougan 04/03/2006 at 125.

⁹²⁴ John Carson 06/01/2005 at 212.

⁹²⁵ John Carson 06/01/2005 at 213.

And I know that the Army Camp and the Provincial Park are basically one and the same; that vehicles were travelling back and forth between both areas, through the access from the Army Camp.

I did hear the communications over the radio that the shots had been fired down at the beach area. I didn't know the circumstances around the shooting, if it was police had been shot or police were in fact the shooters.⁹²⁶

814. Although the officers did not initially know whether the occupants of the vehicle were male or female, the risk assessment of a situation does not change depending on whether the person is male or female.⁹²⁷

815. The officers exited their vehicles and took a defensive position at the rear of the cruisers.⁹²⁸ The officers were crouched down in a position of cover and had their weapons pointed at the direction of the person at the telephone.⁹²⁹

816. Marcia Simon had her back to the police while she was speaking on the telephone.⁹³⁰ The officers could not see her hands as they were in front of her.⁹³¹

817. The officers directed Marcia Simon to show her hands and step away from the phone.⁹³² Cst. Lorch issued the police challenge to her several times. He advised her "police, don't move".⁹³³

818. The call that Marcia Simon made to 911 was recorded. In the background of the 911 call officers can be heard directing her "don't make a move lady" and "get on the

⁹²⁶ Mark Gransden 03/30/2006 at 168-169.

⁹²⁷ Mark Gransden 03/30/2006 at 365.

⁹²⁸ Mark Gransden 03/30/2006 at 157; Mike Dougan 04/03/2006 at 125.

⁹²⁹ Mark Gransden 03/30/2006 at 158-159; Mike Dougan 04/03/2006 at 125-126.

⁹³⁰ Marcia Simon 09/27/2004 at 189.

⁹³¹ Mark Gransden 03/30/2006 at 159.

⁹³² Mark Gransden 03/30/2006 at 159; Mike Dougan 04/03/2006 at 126-127.

⁹³³ Steve Lorch 06/12/2006 at 102.

ground”.⁹³⁴ Cst. Lorch identified himself as the officer issuing these commands that can be heard in the background of the 911 call.⁹³⁵

819. Marcia Simon refused to comply with the officers directions.⁹³⁶ Marcia Simon’s response to the officers was, “I’m just talking on the phone, get the gun out of here”.⁹³⁷

820. Cst. Gransden testified that he did not recall Marcia Simon telling the officers that she was calling for an ambulance.⁹³⁸ From the recording of the 911 call we know that she does not tell the officers that she needs an ambulance or that she is calling for an ambulance.⁹³⁹ However Cst. Lorch testified that she indicated she was phoning for an ambulance. “I advised her that an ambulance had been called and to step away from the phone”.⁹⁴⁰

821. Cst. Gransden put down his rifle and moved towards the phone booth, while drawing his pistol. Cst. Gransden again directed Marcia Simon to show her hands and exit the phone booth.⁹⁴¹

822. She continued to refuse to comply with the officer directions. Cst. Gransden grabbed hold of her by her jacket and removed her from the phone booth.⁹⁴²

823. Marcia Simon flailed and resisted Cst. Gransden’s efforts to control her. With the assistance of Cst. Lorch he was able to gain control of her, place her on the ground, and handcuff her.⁹⁴³ Cst. Gransden described trying to gain control of Marcia Simon as a “wrestling match”. She was actively resisting, thrashing and flailing her arms.⁹⁴⁴ Cst.

⁹³⁴ P-48 at 3.

⁹³⁵ Steve Lorch 06/12/2006 at 129.

⁹³⁶ Mark Gransden 03/30/2006 at 159-161.

⁹³⁷ P-48 at 3.

⁹³⁸ Mark Gransden 03/30/2006 at 230.

⁹³⁹ P-48.

⁹⁴⁰ Steve Lorch 06/12/2006 at 106.

⁹⁴¹ Mark Gransden 03/30/2006 at 161-162.

⁹⁴² Mark Gransden 03/30/2006 at 162.

⁹⁴³ Mark Gransden 03/30/2006 at 162-163; Steve Lorch 06/12/2006 at 107-108.

⁹⁴⁴ Mark Gransden 03/30/2006 at 163.

Lorch advised her during this time that she was under arrest for failure to stop for police.⁹⁴⁵

824. The photographs which Marcia Simon submitted of her injuries sustained during her arrest show a bruise on her right upper arm. This is the only bruise visible in the photographs.⁹⁴⁶ It is clear that the officer used the least amount of force necessary to restrain Marcia Simon as she was actively resisting.

825. Cst. Lorch recorded in his notes and testified that he advised her that she was under arrest and read Marcia Simon her rights. She asked to be read them again, which Cst. Lorch did, and she requested to call a lawyer. Cst. Lorch informed her that she would be able to call a lawyer at the detachment.⁹⁴⁷

826. Cst. Gransden's notes indicate the Marcia Simon was arrested by Cst. Lorch at 23:15 and also read her Charter rights by Cst. Lorch at 23:25.⁹⁴⁸ Cst. Gransden witnessed Cst. Lorch read Marcia Simon her Charter rights in the back of the cruiser after the arrest.⁹⁴⁹

827. As described below, Cst. LeBlanc later met Cst. Gransden and Cst. Dougan to take custody of Marcia Simon and transport her to the Forest Detachment. Cst. LeBlanc's notes also indicate that he was informed by Cst. Gransden that Cst. Lorch arrested Marcia Simon for failure to stop at 23:15 and that she was read her rights at 23:30.⁹⁵⁰

⁹⁴⁵ Steve Lorch 06/12/2006 at 108-109.

⁹⁴⁶ Marcia Simon 99/28/2004 at 12-13.

⁹⁴⁷ P-1690, 5; Steve Lorch 06/12/2006 at 109, 131.

⁹⁴⁸ P-1252 at 5.

⁹⁴⁹ Mark Gransden 03/30/2006 at 173.

⁹⁵⁰ P-1554 at 12.

828. Marcia Simon testified that she was never advised of the reason for her arrest.⁹⁵¹ She disagreed that she was read her rights, or that she requested a lawyer and was told that she could call on at the detachment.⁹⁵²

829. It is clear from the detailed notes of several officers that she was provided with the reason for the arrest and read her rights. The officers evidence on this point should be accepted as accurate.

830. At some point after being detained, Marica Simon and Melva George told Cst. Dougan that someone had been shot and an ambulance was needed. They stated that they would not ask the police for help because they had never helped before.⁹⁵³ The officers were aware, from the radio communications, that an ambulance had been dispatched.⁹⁵⁴ As detailed above officers at Checkpoint "D" requested an ambulance for Nicholas Cottrelle.

831. After Marcia Simon was placed in the cruiser and Cst. Lorch had spoken to Melva George, he telephoned the operator from the payphone and asked 911 dispatch to retain the 911 recording.⁹⁵⁵

832. Cst. Lorch secured the vehicle and provided the keys to Melva George and Marcia Simon. They were advised that the vehicle would be left where it was and that it would not be towed.⁹⁵⁶

iv) Melva George

833. Marcia Simon testified that her mother was:

...right down on the ground trying to pray. She had her medicines with her and they wouldn't allow her to use them

⁹⁵¹ Marcia Simon 09/23/2004 at 179.

⁹⁵² Marcia Simon 09/27/2004 at 201-202.

⁹⁵³ P-1266, 13; Mike Dougan 04/03/2006 at 133.

⁹⁵⁴ Mike Dougan 04/03/2006 at 133.

⁹⁵⁵ Steve Lorch 06/12/2006 at 121-122.

⁹⁵⁶ Steve Lorch 06/12/2006 at 132.

and they had shotguns leveled right at her head, yelling at her to put her hands in the air and she was pleading that she couldn't because she had arthritis.⁹⁵⁷

834. Marcia Simon also testified that her mother was “hysterically screaming” and “pleading with them, that I had a wrist injury”.⁹⁵⁸

835. Marcia Simon’s account of her mother distress during this incident is clearly exaggerated. All of the officers who testified regarding their involvement in the incident did not note any reaction from Melva George during Marcia Simon’s arrest and described Melva George as calm.

836. Cst. Gransden testified that, to his knowledge, Melva George did not exit the vehicle while the officers were arresting Marcia Simon. Cst. Gransden did not note any reaction from Melva George at this time.⁹⁵⁹

837. Cst. Dougan testified that during Marcia Simon’s arrest he was observing the vehicle with the passenger still inside of it. Melva George “was seated in the vehicle, wasn't causing a problem as far as I could see”.⁹⁶⁰ He did not recall Melva George leaving the car,⁹⁶¹ although he agreed that she did as his police notes indicate that she got out of the vehicle.⁹⁶²

838. After Marcia Simon was in the police cruiser Cst. Gransden approached her vehicle and spoke to Melva George. Cst. Gransden explained to Melva George that her daughter was arrested and why she was arrested.⁹⁶³

⁹⁵⁷ Marcia Simon 09/23/2004 at 172.

⁹⁵⁸ Marcia Simon 09/27/2004 at 196.

⁹⁵⁹ Mark Gransden 03/30/2006 at 165.

⁹⁶⁰ Mike Dougan 04/03/2006 at 129.

⁹⁶¹ Mike Dougan 04/03/2006 at 129.

⁹⁶² Mike Dougan 04/03/2006 at 178.

⁹⁶³ Mark Gransden 03/30/2006 at 167-168.

839. Cst. Lorch also spoke with Melva George after Marcia Simon was arrested. He described Melva George as very calm. Cst. Lorch testified that he “asked her if it would be all right if we searched the vehicle. And she said, Yes”.⁹⁶⁴

840. Cst. Gransden described Melva George as “cooperative and pleasant”.⁹⁶⁵ Melva George was not placed under arrest as she had not committed an offence – she was not the operator of the vehicle which had failed to stop for police.⁹⁶⁶

v) Marcia Simon transported to Forest Detachment

841. The officers radioed the Command Post for instructions regarding the female they had arrested and her mother. The Command Post directed the officers “Arrest the driver and make arrangements for the elderly one”.⁹⁶⁷ Sgt. Korosec testified that he directed the officers in this regard after he received instructions from a Detective Sergeant at the Command Post.⁹⁶⁸

842. Csts. Dougan and Gransden transported Marcia Simon to Ravenswood where they met Cst. LeBlanc who was driving the prisoner van. Marcia Simon was transferred to the prisoner van.⁹⁶⁹ Cst. LeBlanc asked a female officer to accompany him in transporting Marcia Simon, and they proceeded to Forest Detachment.⁹⁷⁰

843. The officers had been directed not to proceed on Highway 21. The officers traveled along concession roads to transport Marcia Simon.⁹⁷¹

vi) Melva George driven home

844. Melva George requested to be taken to her home at Kettle Point. Cst. Gransden and Cst. Dougan drove her there.⁹⁷²

⁹⁶⁴ Steve Lorch 06/12/2006 at 119.

⁹⁶⁵ Mark Gransden 03/30/2006 at 187.

⁹⁶⁶ Mark Gransden 03/30/2006 at 188.

⁹⁶⁷ P-1255 at 2.

⁹⁶⁸ Stan Korosec 04/18/2006 at 293.

⁹⁶⁹ Marcia Simon 09/23/2004 at 179.

⁹⁷⁰ Denis LeBlanc 05/23/2006 at 123-124.

⁹⁷¹ Mark Gransden 03/30/2006 at 368.

845. Cst. Gransden testified that Melva George was polite and cooperative and that on driving her home she “continued to be the same, a very nice lady”.⁹⁷³

vii) Marcia Simon at Forest Detachment

846. On arrival at Forest Detachment Cst. LeBlanc escorted Marcia Simon into the detachment garage and removed her handcuffs.⁹⁷⁴

847. At this point Cst. LeBlanc noticed that Marcia Simon was wearing a military shirt which she was using as a jacket. Cst. LeBlanc recalled previous information regarding military uniforms which had been left on the CFB Ipperwash site, and that officers had been instructed to recover these uniforms if they were presented with such an opportunity.

848. Cst. LeBlanc advised Marcia Simon that it was an offence to wear a military uniform.⁹⁷⁵ Marcia Simon replied that the military had left the uniforms in the barracks when they left. Cst. LeBlanc informed her that he would still need to take the jacket. Marcia Simon took the jacket off and gave it to Cst. LeBlanc. Cst. LeBlanc turned the jacket over to Sgt. Korosec who was also in the garage.⁹⁷⁶

849. Cst. Evans of the identification unit informed Cst. LeBlanc that he was ready to process Marcia Simon. Cst. LeBlanc turned Marcia Simon’s driver’s licence over to Cst. Evans and then left the Forest Detachment garage.⁹⁷⁷

850. Marcia Simon testified:

While I was standing with my back to the people there,
someone came up and hit me in the shoulder and was very

⁹⁷² Mark Gransden 03/30/2006 at 197.

⁹⁷³ Mark Gransden 03/30/2006 at 367.

⁹⁷⁴ Denis LeBlanc 05/23/2006 at 124.

⁹⁷⁵ Denis LeBlanc 05/23/2006 at 125; and see *Criminal Code*, R.S.C. 1985, c. C-46, s. 419.

⁹⁷⁶ Denis LeBlanc 05/23/2006 at 125.

⁹⁷⁷ Denis LeBlanc 05/23/2006 at 125.

angry that I'd had a jacket like that and told me I could be charged for impersonating a military officer.⁹⁷⁸

851. While in custody Marcia Simon requested to speak to Ron George as her legal counsel. Ron George was at the Strathroy hospital at the time. The officers at Forest Detachment arranged for Marcia Simon to speak with him by telephone, which she did.⁹⁷⁹

852. Marcia Simon raised the allegation that she was hit for the first time in her testimony at the Commission. Marcia Simon did not raise this allegation in her previous statements, or in her Statement of Claim. She did not file a complaint regarding an officer hitting her in the shoulder at Forest Detachment, even after speaking with legal counsel.

853. Cst. LeBlanc testified that he did not hit Marcia Simon. He described the exchange between himself and Marcia Simon as professional and stated that he had no reason to be angry with her. At one point she asked why she was at the detachment and Cst. LeBlanc informed her that she was under arrest for failure to stop.⁹⁸⁰

854. Cst. LeBlanc's testimony in this regard was clear. He did require her to surrender the military uniform jacket that she was wearing. He did not hit Marcia Simon. Marcia Simon's testimony that an officer hit her in the shoulder while she was at Forest Detachment should be rejected.

viii) Marcia Simon released from custody and transported home

855. Marcia Simon was released in the early morning. At 04:19 two officers drove Marcia Simon to the Indian Hills Golf Course where they met up with two Kettle Point

⁹⁷⁸ Marcia Simon 09/23/2004 at 182.

⁹⁷⁹ Marcia Simon 09/27/2004 at 207-208.

⁹⁸⁰ Denis LeBlanc 05/23/2006 at 126-127.

officers at 04:34.⁹⁸¹ The Kettle Point officers transported Marcia Simon to her mother's home in Kettle Point.⁹⁸²

c) Attempts to Locate White Car

856. Following the confrontation, Pierre George, Carolyn George and J.T. Cousins got into Pierre George's car to take Dudley George to the hospital. During her testimony Carolyn George marked a map of the route that they took to Strathroy hospital.⁹⁸³ They drove past officers at Checkpoint "D" at the intersection of Highway 21 and Army Camp Road. They did not stop or ask the officers for assistance.⁹⁸⁴

857. On Nauvoo Road the vehicle punctured a tire. They attended at a farmhouse on Nauvoo Road to ask for assistance. Carolyn and Pierre George spoke to the farmhouse residents who then called 911 to request an ambulance.⁹⁸⁵

858. The 911 call from the farmhouse on Nauvoo Road was received at 23:27:12. Three minutes later, at 23:30:40, an ambulance was dispatched to Nauvoo Road.⁹⁸⁶

859. After the 911 call had been made the vehicle occupants returned to the top of the driveway in the vehicle to wait for the ambulance. Carolyn George testified that they waited at the top of the driveway for 5 minutes. They then proceeded to the intersection of Nauvoo Road and County Road 22 to wait for the ambulance there, as they suspected that the ambulance would have to pass by that intersection on its way to the farmhouse. They waited at the intersection for an additional five minutes and then decided to continue driving to the hospital themselves.⁹⁸⁷

⁹⁸¹ Marcia Simon 09/27/2004 at 210.

⁹⁸² Marcia Simon 09/23/2004 at 184-185 & 09/27/2004 at 211.

⁹⁸³ P-150.

⁹⁸⁴ Carolyn George 02/03/2005 at 144.

⁹⁸⁵ Carolyn George 02/03/2005 at 153-156.

⁹⁸⁶ P-1333 at 11.

⁹⁸⁷ Carolyn George 02/03/2005 at 156-161.

860. 911 dispatch was advised at 23:38:46 that the vehicle had left Nauvoo Road, with the direction of travel unknown. At 23:41:18 the ambulance to Nauvoo Road was cancelled.⁹⁸⁸

861. At 23:40 D/Sgt. Richardson was advised by A/S/Sgt. Wright that a First Nations person who had been shot was at a private residence on Nauvoo Road. A white vehicle that was transporting this person had blown a tire and went to the residence for assistance. The vehicle waited at the residence for a few minutes and then left.⁹⁸⁹

862. A/S/Sgt. Wright instructed D/Sgt. Richardson to locate the vehicle and offer assistance. At 23:41 D/Sgt. Richardson and D/Cst. Bell left the Forest Detachment to proceed along Nauvoo Road. When the officers arrived at the farmhouse the vehicle was not there, so they continued along Nauvoo Road towards Strathroy Hospital.⁹⁹⁰

863. D/Sgt. Richardson and D/Cst. Bell then proceeded along Highways 402 and 81 to Strathroy Hospital. They did not see an ambulance or the white car en route.⁹⁹¹

864. D/Sgt. Richardson spoke to D/Cst. Speck and D/Cst. Dew at the hospital and informed them that the white car was expected to be arriving with a person who had been shot. D/Sgt. Richardson and D/Cst. Bell left the hospital to continue to search for the white vehicle. As they went over the 402 overpass they could see the vehicle coming. There were sparks coming from the wheel rim.⁹⁹²

865. A Strathroy Police Department cruiser pulled in behind the white vehicle and began to follow it. D/Cst. Bell and D/Sgt. Richardson followed the Strathroy cruiser. All three vehicles pulled into the Strathroy hospital at 00:08.⁹⁹³

⁹⁸⁸ P-1333 at 11.

⁹⁸⁹ Trevor Richardson 06/08/2006 at 196-197.

⁹⁹⁰ Trevor Richardson 06/08/2006 at 197-200.

⁹⁹¹ Trevor Richardson 06/08/2006 at 200; Donald Bell 06/07/2006 at 122.

⁹⁹² Trevor Richardson 06/08/2006 at 200; Donald Bell 06/07/2006 at 124.

⁹⁹³ P-1272 at 37; P-167 at 34; Trevor Richardson 06/08/2006 at 200-201.

d) Arrests at Strathroy Hospital

866. Pierre and Caroline George exited the vehicle. Caroline George saw an attendant with a stretcher and she yelled at him to bring the stretcher. She observed a police officer nod and the attendant immediately came forward towards the vehicle. At the same time officers also moved to arrest the vehicle occupants.⁹⁹⁴

867. When A/S/Sgt. Wright asked D/Sgt. Richardson to locate the white vehicle he also instructed D/Sgt. Richardson to arrest the occupants of the white vehicle for attempted murder.⁹⁹⁵ D/Sgt. Richardson testified that A/S/Sgt. Wright explained the grounds as:

the fact that shots were fired. The car appeared to be similar to the one (1) that might have been down at the sand lot that tried to run the officers over, the ERT team over.

Also I understand that this vehicle would have came out of the Camp, ran the checkpoint that was there, almost hit somebody, apparently, and took off.⁹⁹⁶

868. A/S/Sgt. Wright recalled giving instructions to arrest the individuals in the vehicle for attempted murder. A/S/Sgt. Wright testified that the reasonable and probable grounds for the arrest were based on:

...there was an altercation earlier that evening where OPP officers were almost run over and had been shot at; that was the information I had at the time.

And the OPP officers had returned fire into a vehicle and a bus as a result of being fired upon, initially. And then we have a vehicle who shows up in and around that general area, Nauvoo Road, shortly thereafter that incident with an individual complaining of a person in the vehicle suffering a gunshot wound and on their way to hospital.

⁹⁹⁴ Caroline George 02/03/2005 at 165-166.

⁹⁹⁵ Trevor Richardson 06/08/2006 at 198.

⁹⁹⁶ Trevor Richardson 06/08/2006 at 198.

So I would – in my opinion, the reasonable and probable grounds existed to draw the inference that that person who was in the vehicle and suffering from the wound was – and all the other individuals in that vehicle was involved in the, either A) attempting to run over the OPP officers or firing upon the OPP officers.⁹⁹⁷

869. Insp. Carson testified that there were reasonable and probable grounds to arrest the individuals who drove Dudley George to the hospital as “[i]t is very reasonable and probable to think that the parties involved in that vehicle were part of the incident that had just taken place”.⁹⁹⁸ It was appropriate to arrest the parties for attempted murder.⁹⁹⁹

870. Insp. Carson elaborated:

...it seems reasonable that the first person right there involved in the incident, whether it was the persons who were driving the bus, driving the car, or anybody else who may have been injured maybe were all part and parcel of this incident.

And until it could be sorted out, I don't know how you could delineate which person had which piece of involvement when they first arrived at the hospital.¹⁰⁰⁰

871. D/Sgt. Richardson directed the officers to arrest the vehicle occupants on the grounds he had received from A/S/Sgt. Wright.¹⁰⁰¹ D/Sgt. Richardson testified:

I believe at that time there was enough reasonable grounds to arrest them. And you have to understand it was pretty chaotic at the hospital; they had the one (1) ambulance in there with the one (1) person that had been allegedly shot, and we had this car coming in and then another ambulance pulled in.

⁹⁹⁷ Mark Wright 02/23/2006 at 312.

⁹⁹⁸ John Carson 06/20/2005 at 244.

⁹⁹⁹ John Carson 06/20/2005 at 253.

¹⁰⁰⁰ John Carson 06/20/2005 at 255.

¹⁰⁰¹ Trevor Richardson 06/08/2006 at 203.

And, you know, I felt that safety of the officers and the medical staff was the most important. And the public, I didn't know if there was any public inside getting treatment at the hospital as well. And certainly didn't know if guns were available or whatever.¹⁰⁰²

872. The officers informed the occupants that they were under arrest for attempted murder. Pierre George asked why, and an officer informed him that the first shot came from a white car.¹⁰⁰³

873. D/Sgt. Richardson testified that vehicle occupants were arrested and:

the medical staff were immediately there to render assistance to the person in the back seat. I remember – the gurney coming out – or the stretcher coming out of the hospital and somebody hopped in the back seat and then the injured person was taken into the hospital.¹⁰⁰⁴

874. Two female officers, Cst. Dobbin and Cst. Murphy, assisted in the arrest of Carolyn George. Cst. Dobbin took Carolyn George by the arm to try to restrain her so that she could be handcuffed. As Cst. Dobbin and Cst. Murphy were having difficulty restraining Carolyn George, they all fell into a hedge at the front of the hospital.¹⁰⁰⁵ Caroline George agreed that she was struggling with the officers who were arresting her.¹⁰⁰⁶

875. Cst. Dobbin Cst. and Murphy were able to gain control of Carolyn George. Cst. Taylor read Caroline George her rights and told her what the charge was.¹⁰⁰⁷ She was handcuffed and placed in a police cruiser to be transported to Strathroy Detachment.¹⁰⁰⁸

876. Caroline George testified that she did not tell the officers that the injured person in the vehicle was her brother.¹⁰⁰⁹

¹⁰⁰² Trevor Richardson 06/08/2006 at 204.

¹⁰⁰³ Caroline George 02/03/2005 at 166-167.

¹⁰⁰⁴ Trevor Richardson 06/08/2006 at 202-203.

¹⁰⁰⁵ Tracy Dobbin 06/12/2006 at 315.

¹⁰⁰⁶ Caroline George 02/03/2005 at 167.

¹⁰⁰⁷ Tracy Dobbin 06/12/2006 at 314.

¹⁰⁰⁸ Tracy Dobbin 06/21/2006 at 317.

877. D/Cst. Bell spoke to the rear passenger and asked him to exit the vehicle.¹⁰¹⁰ D/Cst. Bell had a conversation with J.T. Cousins and then asked a uniform officer to conduct the arrest.¹⁰¹¹

878. J.T. Cousins gave startling testimony about his arrival and arrest at Strathroy Hospital. He testified that he, Carolyn, and Pierre George were all hit by police with “billy clubs” when they arrived at the hospital. In addition, he testified that the hospital doors were padlocked shut with a galvanized chain and padlock so that medical personnel could not leave the hospital to assist Dudley George.¹⁰¹² J.T. Cousins also testified that he has nightmares about this event which include the chain and lock.¹⁰¹³

879. J.T. Cousins was a young person at the time of the incident and the car ride to the hospital with Dudley George was certainly a traumatic event for him. There is no other evidence which supports J.T. Cousins’ version of events regarding either police hitting the vehicle occupants or the chain and lock around the hospital doors. Medical personnel testified that they moved freely in and out of the hospital and attended to Dudley George promptly. Carolyn George did not give any evidence about being hit by police with batons. J.T. Cousins’ “recollection” of these events may be affected by the shock he experienced with Dudley George’s death. It is not reliable. His testimony is contrary to the events of all the witnesses, police, civilian, medical staff, who were present at the Strathroy Hospital.

880. Medical personnel testified at the Inquiry about their observations of the white car arriving at Strathroy Hospital and the actions they took to assist Dudley George. Medical personnel testified that they were able to get Dudley George into the hospital quickly.

¹⁰⁰⁹ Caroline George 02/03/2005 at 168.

¹⁰¹⁰ Donald Bell 06/07/2006 at 127.

¹⁰¹¹ Donald Bell 06/07/2006 at 131.

¹⁰¹² J.T. Cousins 01/12/2006 at 73-75.

¹⁰¹³ J.T. Cousins 01/12/2006 at 77-78.

881. Robert Scott, a paramedic with Lambton Middlesex ambulance, was standing inside of Strathroy emergency when he heard a commotion outside. He went outside and observed the white vehicle coming in fairly quickly. Robert Scott saw police officers move towards the car and he backed into Emergency for 10 – 20 seconds. When he looked back outside he saw Caroline George being detained by two or three officers. Robert Scott described that Caroline George was “actually quite frantic... I guess you could say resisting arrest but I would think more so for the fact that I think she was trying to get to... Dudley George”.¹⁰¹⁴

882. Robert Scott went to the back seat of the car and looked inside. He observed Dudley George laying in the back of the car. He backed up and waited momentarily to see if the police would give him instructions. Robert Scott testified that his “number 1 priority from first day of ambulance until I retired three (3) days ago is safety of the scene. If you get hurt, you're not help to anybody else. So, you survey the scene”.¹⁰¹⁵

883. The officers did not give Robert Scott instructions so he moved to assess Dudley George. He opened the door to the vehicle. He didn't see any chest or abdominal movement. He checked for a pulse and did not find one.¹⁰¹⁶

884. Robert Scott obtained his stretcher from Emergency and began to load Dudley George onto the stretcher. Several other medical staff members assisted him.¹⁰¹⁷ Robert Scott testified that from the time he saw the vehicle coming in until the time he got Dudley George into Emergency was under two to three minutes.¹⁰¹⁸

885. Mark Watt, a medic with the Forest ambulance service, testified that he was inside Strathroy Hospital when he heard the white car pull up. He immediately went outside and observed the vehicle occupants outside of the car. One of them was yelling, “he's been shot”. Mark Watt went to the back passenger side of the vehicle,

¹⁰¹⁴ Robert Scott 04/27/2005 at 275.

¹⁰¹⁵ Robert Scott 04/27/2005 at 277.

¹⁰¹⁶ Robert Scott 04/27/2005 at 282-283.

¹⁰¹⁷ Robert Scott 04/27/2005 at 284-285.

¹⁰¹⁸ Robert Scott 04/27/2005 at 286.

Dudley George was loaded onto a stretcher and brought into the hospital. Mark Watt testified that “it was very, very fast that we got -- I looked at him, right from there under the stretcher from the stretcher into Emerge”.¹⁰¹⁹

886. Cst. Boon also provided assistance to get Dudley George into the hospital as quickly as possible. Cst. Boon assisted in steadying the stretcher, near the back door of the vehicle, to allow Dudley George to be loaded onto the stretcher and taken into the hospital.¹⁰²⁰

887. D/Sgt. Richardson recorded in his notes that he observed the white car southbound on Highway 81 at 00:08. At 00:15 the arrests had been completed, Dudley George had been brought into the hospital, and D/Sgt. Richardson had phoned A/S/Sgt. Wright to advise him of the events at the hospital.¹⁰²¹

888. After the arrests, at 01:13, D/Cst. Dew made a telephone call to the London Communications Centre. He made arrangements for Sam George to visit Carolyn and Pierre George at Strathroy Detachment.¹⁰²² This was an extremely unusual arrangement for D/Cst. Dew to facilitate. It would generally be impossible for anyone, other than a lawyer, to attend at a police detachment at night and have an opportunity to visit someone who was being detained. D/Cst. Dew made this arrangement in order to assist Sam George to see his family members.¹⁰²³

889. D/Cst. Dew also spoke to Assistant Crown Attorney Diane Foster at 01:50. D/Cst. Dew made this call to keep the Crown Attorney apprised and to make sure that the OPP was on track and on legal footing. Diane Foster advised D/Cst. Dew that the OPP should detain the people in custody.¹⁰²⁴

890. Regarding the arrests D/Sgt. Richardson stated:

¹⁰¹⁹ Mark Watt 04/25/2005 at 70.

¹⁰²⁰ Dave Boon 06/06/2006 at 32.

¹⁰²¹ P-1671 at 35.

¹⁰²² P-1283.

¹⁰²³ 04/04/2006 at 379.

¹⁰²⁴ Mark Dew 04/04/2006 at 162.

it was a sad situation, there was no doubt about that. You know, I felt bad having to arrest the people and -- and taking them away from -- from their -- it turns out their brother. And but on the same circumstances, I also had to worry about fellow officers and medical staff and the public as well...¹⁰²⁵

891. The scene at the hospital as the white car arrived was undoubtedly chaotic. The officers on the scene secured the scene as quickly as possibly for the safety of all the individuals at the hospital. The officers did not impede the medical staff in assisting Dudley George. Cst. Dew made extraordinary efforts to ensure that Sam George could speak to his family members who were in custody. The officers carried out their duties in a professional manner, in difficult circumstances.

¹⁰²⁵ Trevor Richardson 06/08/2006 at 214-215.

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11. Post September 6, 1995 Investigation

a) Contamination of the 'Crime Scene'

892. The preservation of a crime scene is a fundamental principle of all police investigations. The reasons are obvious. It is critically important to investigations to preserve, undisturbed, the physical evidence of a crime scene. It is equally important that a crime scene not be contaminated before the investigation is completed. The preservation of a crime scene normally includes the vehicles involved, in this case, the bus and the car:

You want the crime scene left in a pristine as possible shape that you can possibly have it, post incident, in order to obtain any type of evidence that might be there...and also to ensure that there's no contamination of or altering of the scene.

Normally, the first thing you would do is you would isolate that scene...and not knowing exactly what took place down there...we would have taken a rather large swath of that area and sealed the whole area off...the bus and the car...they're scenes as well; they're individual scenes...first you have to find those vehicles and then that vehicle and the area around the vehicle becomes a scene.¹⁰²⁶

893. In September 1995, the Special Investigations Unit (the "SIU") Standing Operating Procedures required:

6. (b) In every case reported to the SIU, the concerned police force shall protect and preserve the scene of the occurrence until otherwise advised by the SIU.

(i) When potential hazard to the public exists or deteriorating weather makes it advisable for the responsible officer at the scene to order the removal of vehicles or other obstructions to traffic or when evidence at the scene is perishable, as much evidence as possible shall first be secured by

¹⁰²⁶ Mark Wright 03/06/2006 at 55-57.

photographs, measurements and/or video recordings.¹⁰²⁷

894. When the CMU withdrew from the scene of the confrontation to the TOC, at the end of the confrontation on September 6, the physical crime scene in the vicinity of the sandy parking lot, and car and bus thereafter were neither protected “nor secured”.

895. According to Insp. Carson, he decided not to protect or secure the crime scene because he did not “want anyone getting hurt over it”.¹⁰²⁸

896. From September 6 until September 18, the scene remained in the exclusive control of the native occupiers, and inaccessible to the SIU and the OPP. By that time, there was little, if any, investigative value to the crime scene. It had not only been thoroughly contaminated, it had also been cleansed by the occupiers.

897. From the end of the confrontation on September 6 until September 18, “hundreds” of occupiers and their supporters moved throughout the scene. It was cleansed of sticks and stones and other articles such as shell casings and broken shields by as early as September 7.¹⁰²⁹

898. By September 8, there was no residue of the confrontation remaining in the crime scene.¹⁰³⁰

899. The occupiers built barricades within the crime scene, on East Parkway Drive west of the sandy parking lot, and on Army Camp Road, south of the sandy parking lot on September 7 or 8. These barricades were replaced by a third barricade also erected within the crime scene across the entrance to the sandy parking lot on September 9.¹⁰³¹

¹⁰²⁷ P-478, SIU Standard Operating Procedures, dated April 14, 1992.

¹⁰²⁸ John Carson 05/31/2005 at 77.

¹⁰²⁹ Harley George 01/20/2005 at 242-247; Yvonne Bresette 09/23/2004 at 60; Glen George 02/02/2005 at 198; Jeremiah George 02/08/2005 at 73-74; Ben Pouget 04/04/2005 at 156.

¹⁰³⁰ Layton Elijah 04/05/2005 at 70.

¹⁰³¹ Ben Pouget 04/04/2005 at 9; P-68; Catton video, 11/09/2005; Abraham David George 10/21/04 at 14-17.

900. On September 7, cement barricades were moved in to the sandy parking lot by a backhoe operated by Warren George. He also used the backhoe to create a sand pile on the south side of the sandy parking lot.¹⁰³²

901. From September 7 to September 18 when the bus was first examined by the SIU and OPP investigators, it was thoroughly contaminated. The bus was used to transport and house the occupiers and their supporters. For example, some 36 supporters were transported in the bus from the Army Camp to the Park on September 8, and the bus was used as sleeping quarters that night. It was also used as the kitchen and TV lounge for Layton Elijah and his supporters.¹⁰³³

902. The car that Warren George drove into the CMU officers during the September 6 confrontation was apparently used as well from September 6 to September 18. At the time it was examined and photographed in the SIU investigation on September 18, there were objects in it that Warren George did not recognize, such as a baseball bat. He explained that he had lent out his car for a couple of days to others. Although he could not recall if “people” were using his car between September 6 and 18.¹⁰³⁴

b) Scene Investigation

903. The OPP and SIU were not able to investigate the crime scene, bus and car until September 18, after they had first reached an agreement (“MOU”) with the First Nation representatives on an investigation protocol. The SIU/OPP investigation of the crime scene that occurred on September 18, 19 and 20 involved an examination of the area of the sandy parking lot, East Parkway Drive and Army Camp Road in the area of the intersection. By that time, the scene had been cleansed. A video, photographs, and measurements of the scene were made, and the scene, as well as trees, poles and the fence were visually searched, and searched with metal detector for metal objects. Nothing relevant was found. The search also included an examination of the bus and car involved in the confrontation. The joint investigation served little purpose but to

¹⁰³² Warren George 12/08/2004 at 153, 175-176, 205; 12/09/2004 at 18.

¹⁰³³ Layton Elijah 04/05/2005 at 67, 70, 74.

¹⁰³⁴ Warren George 12/09/2004 at 35.

confirm the number of bullet holes and their trajectory in the bus and car. The search did not involve an examination inside of the Park.¹⁰³⁵

c) OPP Parallel Investigations

904. The SIU was notified of the death of Dudley George in the early morning hours of September 7. Its investigators attended in the Forest area that same day and commenced the investigation.¹⁰³⁶

905. The OPP assisted the SIU in its investigation of the shooting of Dudley George and the injuries to Cecil Bernard George. The OPP also conducted parallel investigations. Its investigators collected forensic evidence, conducted interviews of ERT and TRU members individually and jointly with the SIU investigators, and furnished officers' notebooks and statements to the SIU.

906. The interviews of ERT and TRU members were split up so that the interviews could be completed quickly "so everybody had an idea of what was going on a lot faster".¹⁰³⁷ The OPP investigators interviewed every officer who was involved in the confrontation on September 6, and they provided the statements to the SIU.¹⁰³⁸

907. In the course of assisting the SIU with its investigation, the OPP collected and turned over to the SIU the firearms discharged by the OPP officers during the September 6 confrontation. The relevant firearms were examined at the Centre for Forensic Science.¹⁰³⁹

908. On September 18, 1995, the OPP received two firearms - a sawed off single-barreled 12-gage shotgun with the words "Bastard Blaster" written on it, and a .22 Cooley rifle.¹⁰⁴⁰ These firearms apparently had been "found" in a garbage can at Kettle

¹⁰³⁵ Kenneth Thompson 06/19/2006 at 37-58.

¹⁰³⁶ P-1734 at 1-5.

¹⁰³⁷ Trevor Richardson 06/08/2006 at 220.

¹⁰³⁸ Trevor Richardson 06/09/2006 at 17.

¹⁰³⁹ P-1734 at 5, 8.

¹⁰⁴⁰ P-1757 at 34.

Point on September 16, before the SIU/OPP had obtained access to the scene. They were turned over to the OPP two days later.¹⁰⁴¹

909. The sawed off shotgun was a prohibited weapon that had been purchased and used by Abraham David George while he resided at the Army Camp. He wrote the words “Bastard Blaster” on the prohibited weapon, which also had the words “kill” and “destroy” written on it.¹⁰⁴² This weapon was turned over by the OPP to the SIU for forensic examination and testing.

910. Although the barrel of the sawed off shotgun and the reduced length of the weapon was consistent with the statement and evidence of Cst. Chris Cossitt of the angle of the barrel of a 12-gage shotgun that he testified was fired close to him out of the driver’s window of the car driving by Warren George during the confrontation on September 6,¹⁰⁴³ the existence of this prohibited weapon did not arise in any of the proceedings prior the Commission.

911. From September 22, 1995, D/Sgt. Richardson was responsible for the OPP criminal investigations, and he was assigned the responsibility for the OPP coordination of the SIU investigation.¹⁰⁴⁴

912. Voluminous investigation material, including “statements of police officers and civilians, all maps charts and material, and numerous video and cassettes coming into the possession of either D/Cst. Dew or myself (D/Sgt. Richardson) were placed in 15 volumes of briefs and delivered” to the Regional Crown’s office on June 11, 1996.¹⁰⁴⁵

913. At the pre-trial meeting between Norman Peel, counsel for A/Sgt. Deane, and Crown counsel Ian Scott, it was agreed that D/Sgt. Richardson and D/Cst. Dew would assist Mr. Peel to re-interview and prepare police officers as witnesses, and that the SIU

¹⁰⁴¹ Yvonne Bressette 09/23/2004 at 17-18.

¹⁰⁴² Abraham David George 10/19/2004 at 119, 123; 11/01/2004 at 52.

¹⁰⁴³ Chris Cossitt 05/24/2006 at 81-87; P-1574, Tab 22 at 6.

¹⁰⁴⁴ Trevor Richardson, P-1680.

¹⁰⁴⁵ 2001457.

would assist Mr. Scott to re-interview and prepare the native persons as witnesses. “If any discrepancy or need for information arose” as a result of the re-interview and preparation process, “new statements were to be taken from that person and disclosed to the other party”.¹⁰⁴⁶

914. The role assigned to the officers was not unusual. D/Sgt. Richardson testified that it was consistent with the role that he had played in other trials in which he was involved, in order to provide assistance, whether the assistance is to defence counsel or to Crown counsel.¹⁰⁴⁷

915. Although such assistance by an investigating officer was not unusual, OPP management decided that, because of appearances, its investigators should not be seen to be assisting Deane’s defence counsel. D/Sgt. Richardson was informed on February 7, 1997, that Commissioner O’Grady had directed that he and D/Cst. Dew not provide investigation assistance to Norman Peel.¹⁰⁴⁸

916. The Deane trial commenced on April 1, 1997. Judge Fraser found A/Sgt. Deane guilty on April 28, 1997.¹⁰⁴⁹

917. In March 1997, prior to the start of the Deane trial, D/Sgt. Richardson received information and took a statement from a person who saw firearms stockpiled at the Army Camp at the end of August, 1995.¹⁰⁵⁰ The person stated that “in a white building back towards 21 Highway” on the Army Base he saw “long guns. There were six or more rifles there, I remember them as sporting rifles or hunting rifles”.¹⁰⁵¹

918. In May 1997, following the Deane trial, D/Sgt. Richardson was contacted about DND employees who had worked at Camp Ipperwash and who were prepared to give

¹⁰⁴⁶ Trevor Richardson 06/08/2006 at 224; 06/09/2006 at 97; P-1676.

¹⁰⁴⁷ Trevor Richardson 06/09/2006 at 95-96.

¹⁰⁴⁸ Trevor Richardson 06/08/2005 at 272.

¹⁰⁴⁹ P-484.

¹⁰⁵⁰ Trevor Richardson 06/09/2006 at 101-102; P-1677 at 151.

¹⁰⁵¹ P-1499 at 122.

statements of their observations while they were employed at the Camp prior to September 1995.

919. D/Sgt. Richardson and D/Cst. Dew interviewed 38 DND personnel who provided statements. According to the statements given by these “DND witnesses”, in the period from 1993 to 1995 many of them heard gun fire from the Native encampment at Camp Ipperwash, and some heard automatic weapons fire. A number of them saw Dudley George in possession of a long gun or a shotgun.¹⁰⁵² Three of the DND witnesses saw Dudley George pointing a long gun at them on separate occasions.¹⁰⁵³ One DND witness observed Dudley George firing a gun across Highway 21 from the Army Camp.¹⁰⁵⁴ This is also detailed in Chapter 2 in the section “Guns in the Army Base”.

920. None of these facts were put in evidence at the Deane trial.

921. In February 1997, prior to the start of the Deane trial, a citizen contacted the OPP to provide information about guns at Camp Ipperwash. A statement was taken from the individual about guns that had been delivered to the occupiers at the Army Camp in March and April, 1995. This statement was given to the Crown.¹⁰⁵⁵

922. The investigation by D/Sgt. Richardson and D/Cst. Dew and the cooperation they provided to the SIU, and to both the crown and the defence, was in the best tradition of the proper investigative role of the police. The police officers who were re-interviewed, and who swore affidavits, did so upon request by the defence. Their cooperation served the administration of justice by allowing the defence to put relevant facts before the Court of Appeal.

¹⁰⁵² 2003888; P-1499 at 114, 119, 126, 131, 133, 137.

¹⁰⁵³ 2003888; P-1499 at 119, 122, 137.

¹⁰⁵⁴ Trevor Richardson 06/09/2006 at 102-107; P-1677 at 164(c2)k; P-1499 at 131.

¹⁰⁵⁵ P-1677 at 148-149; 2003749

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12. Officer Conduct after September 6, 1995, and Inappropriate Recorded Remarks

a) Officer Notebook Entries and Interview Statements

923. All of the OPP officers who were witnesses at the Inquiry had copies of their notebooks entered into evidence. The officers who were involved in the confrontation on September 6 were interviewed on September 7 or September 8. Many of the interviews were conducted by OPP investigators. Some of the interviews were jointly conducted by SIU and OPP investigators. All of the interview statements that were prepared as a result of the interviews were given to the SIU. Statements given by police officers who testified at the Inquiry were entered into evidence as exhibits at the Inquiry.

924. For the most part, the notebook entries of the officers were made by them at or close to the events recorded in their notebooks. As for the events of the confrontation of September 6, most of the officers involved in the confrontation recorded their notebook entries after the confrontation, sometime on September 7. Most of the officers made their notes before they were interviewed, but a few officers made their notebook entries after they had been interviewed on September 7.

925. For example, Cst. Jacklin gave an interview statement on September 7,¹⁰⁵⁶ and then made a brief entry in his notebook, referring to the statement.¹⁰⁵⁷

926. Cst. Poole did not make any notebook entries of the events of the confrontation on September 6 because he gave a statement on the morning of September 7¹⁰⁵⁸ before he made any notebook entries. He testified he was too exhausted on September 7 to make notebook entries.¹⁰⁵⁹

¹⁰⁵⁶ P-1415.

¹⁰⁵⁷ Wayde Jacklin 04/26/2006 at 362.

¹⁰⁵⁸ P-1509.

¹⁰⁵⁹ Sheldon Poole 05/16/2006 at 166.

927. Some of the officers testified that they made notebook entries in the late morning or during the afternoon of September 7 because they were busy, or because they were exhausted from the events of September 6 and 7, or because of the stressfulness of the events.¹⁰⁶⁰

928. The notebook entries made and the statements given by the officers of the September 6 confrontation, made or given on September 7, were their best recollections of the events. The notebook entries and statements were made in the context of a very stressful and exhausting situation and, as a consequence, the notebook entries and statements were, in some cases, less than optimal. As well, many of the officers remained on duty through some or much of September 7.

b) Officers' Meeting with Counsel following the Confrontation

929. On September 7, the principal SIU investigation concerned the shooting of Dudley George although, from the outset, SIU also investigated the injuries to Cecil Bernard George.

930. On September 7, the OPP identified the officers who had discharged their firearms during the confrontation, these being TRU team members A/Sgt. Deane, Cst. Beaushesne, and Cst. Klym; and CMU members, S/Sgt. Lacroix, Sgt. Hebblethwaite, Cst. York, and Cst. Sharp. Initially, before it was determined late on September 8 that the bullet that killed Dudley George came from the firearm of A/Sgt. Deane,¹⁰⁶¹ all seven OPP officers were potentially "subject officers" in the SIU investigation.

931. In September 1995, the SIU Standing Operating Procedures stated:

10. As required by law, the Unit will respect the Charter and Common law rights of all police officers, including the rights of a subject officer to remain silent and the right to

¹⁰⁶⁰ Kent Skinner 04/19/2006 at 170; Rob Huntley 04/27/2006 at 94; George Hebblethwaite 05/11/2006 at 93-96; Sheldon Poole 05/16/2006 at 166.

¹⁰⁶¹ P-1735 (anticipated evidence of S. Thompson).

counsel. The preference of an officer for a particular counsel may not be permitted to delay an investigation unduly.¹⁰⁶²

932. The Detachment Commander, S/Sgt. Lacroix, took the responsibility to call the “Duty Officer” of the OPPA to inform him that there had been an SIU incident and that “we’ll need legal counsel for the members of the Association”.¹⁰⁶³

933. S/Sgt. Lacroix made arrangements for the members who had discharged their firearms to meet with a lawyer, Norman Peel, at 08:30 on September 7, at Pinery Provincial Park (the “Pinery”).

934. Mr. Peel was briefed at the Pinery by S/Sgt. Lacroix and S/Sgt. Skinner at 08:30 on September 7, when he was introduced to the TRU and CMU members. The officers and Mr. Peel then went to the Pinedale Motel in Grand Bend. Mr. Peel’s role was to advise the officers who had discharged their firearms, and who wished to receive legal advice. He did so at the Pinedale Motel on September 7, meeting with each of them privately, as well as with some other TRU team officers.¹⁰⁶⁴

935. Norman Peel also met with some of the officers prior to their interviews with the SIU investigators on September 8.

936. There was nothing unusual or out of the ordinary about the meetings between Norman Peel and the police officers who were involved in the confrontation, and who were interviewed by the SIU in the course of its investigation. The officers were simply exercising their right to consult legal counsel.

c) Officers’ Participation in the Deane Trial and Appeal

937. As a result of an agreement between Norman Peel, counsel for A/Sgt. Deane, and Crown counsel Ian Scott, reached at a pre-trial conference on January 9, 1997,

¹⁰⁶² P-478, para. 10.

¹⁰⁶³ Wayde Lacroix 05/09/2006 at 59.

¹⁰⁶⁴ Wayde Lacroix 05/10/2006 at 188-189; P-1471; Peel Affidavit 09/08/1998; Kent Skinner 04/19/2006 at 357-358; Rick Zupancic 04/24/2006 at 134.

D/Sgt. Richardson and D/Cst. Dew were assigned to assist Mr. Peel with his preparation for trial. Mr. Peel had received voluminous disclosure consisting of “14 volumes of statements from police officers, civilians and First Nation People . . . there were statements of more than 160 potential witnesses”¹⁰⁶⁵

938. As it turned out, the assignment of D/Sgt. Richardson and D/Cst. Dew to assist Mr. Peel to prepare for trial lasted only about two weeks, from January 23, 1997 to February 7, 1997.¹⁰⁶⁶ The assignment was terminated by Commissioner O’Grady.

939. On March 31, 1997, immediately prior to the start of the A/Sgt. Deane trial which began on April 1, 1997, D/Sgt. Richardson assisted Mr. Peel to organize and sort the files to get them set up in court and, as he was familiar with the files, to assist Crown counsel Ian Scott if he “needed something from Mr. Peel’s file . . . original statement or whatever.”¹⁰⁶⁷ D/Sgt. Richardson testified that this was the kind of assistance that would be normal and usual in his role at any trial, but because of the particular sensitivities of the A/Sgt. Deane trial, he first checked with Insp. Goodall.¹⁰⁶⁸

940. On June 10, 1997, following the A/Sgt. Deane trial, D/Sgt. Richardson and D/Cst. Dew were assigned by D/Insp. Goodall to coordinate the re-interview of OPP officers by Ron Piers, an investigator retained by Norman Peel to assist him with an appeal by A/Sgt. Deane of his conviction. The officers had originally been interviewed by the SIU and/or OPP.¹⁰⁶⁹

941. The re-interviews by Ron Piers, or the person assisting him, Frank Debresser, were for the purpose of gathering evidence to tender to the Court of Appeal on an application on behalf of A/Sgt. Deane to file fresh evidence. Ron Piers provided the officers “with copies of their original statements and asked them questions for clarification . . . In particular, (Ron Piers) sought to clarify whether the officers had seen

¹⁰⁶⁵ P-1471, Peel Affidavit 09/08/1998, para 4.

¹⁰⁶⁶ P-1677, Notes of Trevor Richardson at 144, 148.

¹⁰⁶⁷ P-1677, Notes of Trevor Richardson at 153; Trevor Richardson 06/09/2006 at 30-32, 99-100.

¹⁰⁶⁸ Trevor Richardson 06/09/2006 at 31.

¹⁰⁶⁹ Mark Dew 04/04/2006 at 250; P-1499 at 2.

or heard gun shots on the evening of September 6, 1995, and if so, where the shots had seemed to come from”.¹⁰⁷⁰

942. Ron Piers also sought to determine from the officers whether they “had seen any First Nations people in possession of firearms on September 6, 1995 or at any time prior to that date”.¹⁰⁷¹

943. In conducting the re-interviews, Ron Piers “told each officer that he wanted him/her to tell (him) the truth and put aside any upset about the outcome of the Appellant’s trial, or any desire to help the Appellant given the outcome of the trial”.¹⁰⁷²

944. A number of the officers were requested by counsel for A/Sgt. Deane to, and did, swear affidavits to support the fresh evidence application. Each affidavit set out the officer’s knowledge, if any, of guns in the possession of the occupiers prior to September 6, and recounted the officer’s involvement in the events of September 6. The officers’ earlier statements or interviews were attached to the affidavits. During the course of the evidence of OPP officers at the Inquiry, seven of the “fresh evidence” affidavits were marked as exhibits.¹⁰⁷³

d) The SIU Investigation of the Injuries to Cecil Bernard George

945. The *Director’s Report* authored by Peter Tinsley, Director, Special Investigations Unit, dated February 8, 1999, sets out the history of the SIU Investigation into the injuries sustained by Cecil Bernard George on September 6, and the Director’s conclusions for what can be described as an exhaustive investigation.

946. The initial investigation of Cecil Bernard George’s injuries are summarized in the initial July 11, 1996, *Director’s Report* authored by then Acting Director of the SIU, James Stewart. Mr. Stewart stated in that *Report*:

¹⁰⁷⁰ P-1499, Ron Piers Affidavit at 2.

¹⁰⁷¹ P-1499 at 3.

¹⁰⁷² P-1499 at 3.

¹⁰⁷³ P-1164, P-1400, P-1507, P-1556, P-1582, P-1583, and P-1605.

I am of the view that the injuries suffered by Cecil Bernard George were the result of a violent confrontation between Mr. George and the OPP, where some officers apparently applied excessive force. Unfortunately, the investigation into this event is frustrated by the fact that neither Mr. George, nor any other protester, can identify the officers involved.¹⁰⁷⁴

947. The SIU conducted a re-investigation of the injuries sustained by Cecil Bernard George during the confrontation as a consequence of a request by OPP Commissioner Thomas O'Grady that it do so, following "comments made by Judge Alexander Graham in the judgment at the conclusion of the trial of the native protesters who had been charged for his role during the confrontation. In acquitting the accused, the Judge noted that members of the OPP may not have acted appropriately in arresting Cecil Bernard George".¹⁰⁷⁵

948. The exhaustive re-investigation included "re-interview of First Nations persons who were involved in the confrontation on September 6, 1995".¹⁰⁷⁶

949. The SIU also re-interviewed over 50 OPP officers "narrowly focused on the circumstances surrounding the injuries sustained by Cecil Bernard George during the confrontation",¹⁰⁷⁷ and interviewed several civilian witnesses. The SIU re-investigation also had the "unique investigative avenue" of "the opportunity to review the testimony of witnesses given under oath in various judicial proceedings . . . The information provided by the transcripts received has greatly assisted SIU investigators at arriving at a more comprehensive picture of the events that transpired during the confrontation."¹⁰⁷⁸

950. The SIU investigators also reviewed medical records and obtain further medical opinion from physicians who had treated Cecil Bernard George. In his *Report*, the

¹⁰⁷⁴ P-626 at 1.

¹⁰⁷⁵ P-626 at 2.

¹⁰⁷⁶ P-626 at 3.

¹⁰⁷⁷ P-626 at 3.

¹⁰⁷⁸ P-626 at 3.

Director concluded that “these medical reports were of great value to me in arriving at the decision in this case”.¹⁰⁷⁹

951. The *Report* of Director Peter Tinsley, like the re-investigation itself, is comprehensive and detailed. Director Tinsley concluded, first, that the evidence was insufficient to disclose the identity of the officers “whom the protesters *allege* unnecessarily or excessive assaulted Cecil Bernard George on the night of the confrontation”.

In all the circumstances, and based upon my review of the entirety of the evidence acquired during the SIU’s re-investigation of this incident, I have concluded that there are no reasonable grounds to believe, nor do I believe, that the evidence discloses the identity of the officers whom the protesters *allege* unnecessarily and excessively assaulted Cecil Bernard George on the night of the confrontation. I must therefore confirm the SIU’s earlier finding on this issue as stated in the *Director’s Report* at the conclusion of the initial investigation of this confrontation.

In the absence of sufficient evidence establishing identity, I find that there are no reasonable grounds upon which to proceed with the criminal charge with respect to the events surrounding the altercation with, and arrest of, Cecil Bernard George during the confrontation.¹⁰⁸⁰ (emphasizes added)

952. In his first conclusion, Director Tinsley makes it clear that the officers who had physical contact with Cecil Bernard George cannot be identified. He was careful to indicate that this is with respect to what the protesters “allege” as an unnecessary or excessive assault of Cecil Bernard George. Mr. Tinsley then goes on to conclude that the force used by the officers on Cecil Bernard George was not excessive in the circumstances. This second conclusion of the SIU Director is extremely significant, because it rejects the allegation of the protesters that Cecil Bernard George was “unnecessarily and excessively assaulted”.

¹⁰⁷⁹ P-626 at 4.

¹⁰⁸⁰ P-626 at 41.

In the alternative, I arrive at the same conclusion “that there are no reasonable grounds upon which to proceed with the criminal charge” by also finding, based upon the available evidence, that there are no reasonable grounds upon which to believe that excessive, and therefore criminal, force was applied against Cecil Bernard George on the night of the confrontation.¹⁰⁸¹

953. The balance of Director Tinsley’s *Report* sets out, in some detail, how he reached this second or alternative conclusion. Set out below are excerpts from Director Tinsley’s Report that are particularly noteworthy:

The evidence firmly establishes that some C.M.U. officers kicked, struck and clubbed Cecil Bernard George at various points during his arrest. The only substantive issue for me to consider is whether the force applied by the officers was excessive in all the circumstances. . .

I conclude that in all the circumstances, the C.M.U. officers specifically involved in the events surrounding Cecil Bernard George were acting lawfully in attempting to arrest him. In so doing I have preferred depicting Cecil Bernard George as a willing participant in the confrontation over the evidence suggesting his role as a peacemaker. The implausibility of the latter suggestion is pivotal in this determination. The suggestion that Cecil Bernard George ventured out onto the sandy parking lot area after the C.M.U.’s retreat from Park boundary fence to diffuse the volatility of the situation does not, in my view, accord with common sense, nor does it bear the ring of truth . . .

Moreover, even if Cecil Bernard George’s intentions were in fact peaceful, as against the weight of the evidence, I have concluded that the C.M.U. officers were justified in *interpreting* his actions as threatening in nature. . . The officers who attempted the warrantless arrest of Cecil Bernard George were therefore in the lawful execution of their duties at the time.¹⁰⁸²

¹⁰⁸¹ P-626 at 41.

¹⁰⁸² P-626 at 42-43.

954. In turning to the injuries that were actually sustained by Cecil Bernard George, as a measure of the level of force that was applied to him, Director Tinsley's stated:

I note that despite what is described as a beating of extreme magnitude and severity, there is no evidence of broken bones suffered by Cecil Bernard George as a result of the confrontation. . . While a review of the medical evidence alone might lead one to conclude that the force used was *apparently* excessive, I must consider the entirety of the evidence. This evidence includes the accounts of the officers whose version of events, while not as probative as that of protesters on this matter, must be accorded some weight. This is particularly the case where their versions of the altercation with Cecil Bernard George find common ground with the evidence of some of the protesters.

. . . it seems clear that Cecil Bernard George resisted his arrest, especially in light of his apparently belligerent disposition just prior to the altercation, his own admission of physical resistance and the accounts of several C.M.U. officers who described in various terms the resistance they observed. It is clear to me, therefore, that the officers who made contact with Cecil Bernard George and attempted to arrest him were met with a degree of physical resistance.

In the end, the following question presents itself: did the level of resistance offered by Cecil Bernard George to his arrest justify the application of force by C.M.U. officers upon his person which caused the injuries documented above?¹⁰⁸³

955. Director Tinsley answered the question by stating:

(T)here are *no reasonable grounds* discernible in the evidence capable of supporting a belief that the application of force upon Cecil Bernard George's person was unjustified in the circumstances.

(T)he evidence clearly suggests that Cecil Bernard George physically resisted his arrest *for some time*. Whether to escape or merely for the purpose of protecting himself, the physical resistance offered by Cecil Bernard George justified

¹⁰⁸³ P-626 at 44-45.

at least some of the force applied against him.¹⁰⁸⁴ (emphasis added)

956. In his *Report* Director Tinsley contextualized the application of force by CMU officers to Cecil Bernard George in the course of his arrest.

The moment was an intensely hostile one, for all of the participants involved. At the time of his arrest, there was a violent battle raging between members of the C.M.U. and various protesters. Rocks and other projectiles were being hurled at the C.M.U. officers and, specifically, in the direction of the area of Cecil Bernard George's arrest.¹⁰⁸⁵

957. Director Tinsley concluded his analysis of the investigation of Cecil Bernard George's injuries by setting out the legal context in which he reached the conclusion that there was not excessive force used by the CMU officers to affect his arrest.

I am mindful of *R. v. Baxter* (1975), 27 C.C.C. (2d) 96 wherein the Ontario Court of Appeal held that the protection accorded to police officers in their use of force is not lost where a police officer under attack fails to measure to a nicety the exact measure of defensive force required in the circumstances. The officers who made contact with Cecil Bernard George during the confrontation were under attack from several protesters and, more specifically and perhaps to a more limited extent, from Cecil Bernard George. In these circumstances, the law affords some latitude to the officers in their application of force; their response need not be exacting in relation to the treat confronted. I am of the view that the evidence discloses no reasonable grounds upon which to find that the force used by the C.M.U. officers against Cecil Bernard George was so disproportional in relation to the threat as to render it excessive, and therefore criminal, in the circumstances.¹⁰⁸⁶

¹⁰⁸⁴ P-626 at 45.

¹⁰⁸⁵ P-626 at 45-46.

¹⁰⁸⁶ P-626 at 46.

e) Memorabilia

958. In the Commissioner's June 5, 2006, ruling on a motion concerning memorabilia, brought by ALST and the Aazhoodena and George Family Group, he identified the "memorabilia" in issue as:

a t-shirt with a horizontal feather;
a mug with an OPP crest;
a mug with an arrow through the crest, and the other mug without an arrow;
a beer can with a feather and OPP tape;
a bulls eye and arrow;
certain cartoons; and
a second version of a t-shirt with the TRU crest and an anvil with the letters "ERT" and a broken arrow between the TRU crest and the anvil.¹⁰⁸⁷

959. The Commissioner went on in his ruling to make the following finding:

In my view the creation of memorabilia, whether racist or not, arising from an incident when someone had died, is inappropriate, where the memorabilia is insulting and offensive to the community involved it is even more troubling.¹⁰⁸⁸

960. The Commissioner also acknowledged the existence of a "pin which had on it the TRU Team crest and the badge number of Kenneth Deane", and "a T-shirt . . . with the words, I support Ken Deane or similar word on it".¹⁰⁸⁹

961. The Commissioner found, with respect to the pin and the "I support Ken Deane" t-shirt,

While the Kenneth Deane defence fund pin and the "I support Ken Deane" t-shirt may have been in bad taste giving the death that gave rise to the charge of criminal negligence, in my view these items do not fall within the

¹⁰⁸⁷ 06/05/2006 at 173.

¹⁰⁸⁸ 06/05/2006 at 173.

¹⁰⁸⁹ P-1051, Tab 17 at 12 and 20 (Appendix C).

same category as the memorabilia that was directly related to the events of Ipperwash on September 6th, '95.

These items are not something that commemorate the events of September 6, at Ipperwash Provincial Park
¹⁰⁹⁰

962. About the memorabilia, the Commissioner stated:

In my report I intend to deal with the allegations of racist souvenirs and what was done by the OPP in response to these souvenirs as well as other memorabilia.

. . . . this is not an inquiry into the adequacy of the OPP complaint and discipline processes, nor the investigation carried out by the OPP as outlined in Exhibits 1051, 1052 and 1053.¹⁰⁹¹

963. As the Commissioner made clear in his ruling, his mandate extends neither to an examination “into the adequacy of the OPP complaint and discipline process” nor into “the investigation carried out by the OPP as outlined in Exhibits 1051, 1052 and 1053”. These three exhibits address, respectively, the OPP complaint investigations into:

- (1) the recorded comments of D/Sgt. Whitehead and Cst. Dyke;
- (2) the memorabilia, other than the “second version of a t-shirt”;
- (3) Cst. Cossitt’s testimony at the A/Sgt. Deane trial.

964. In summary, in his June 5, 2006, ruling the Commissioner has determined:

- (4) that “the creation of memorabilia whether racist or not, arising from an incident where someone has died, is inappropriate”;

¹⁰⁹⁰ 06/05/2006 at 175-176.

¹⁰⁹¹ 06/05/2006 at 174-175.

- (5) that, “where the memorabilia is insulting and offensive to the community involved, it is even more troubling”;
- (6) that “this is not an inquiry into systemic racism in the OPP or the justice system. As well this is not an inquiry into the adequacy of the OPP complaint and discipline process, nor the investigation carried out by the OPP” into the memorabilia; and
- (7) that he intends “to deal with the allegations of racist souvenirs and what was done by the OPP in response to these souvenirs as well as other memorabilia”.

965. In his ruling, the Commissioner has already expressed his opinion of the action that the OPP should take concerning the “memorabilia”. He stated:

I would hope that the Commissioner of the OPP having expressed her view that she was shocked and appalled by the existence of the second t-shirt, will take measures to ensure that there is a complete and thorough investigation with respect to the t-shirt.

Further, I would hope that the Commissioner of the OPP will do whatever she can to ensure that there are no other offensive t-shirts or other memorabilia in existence commemorating the events of September 6.

And if there are, she will use her best efforts to ensure that they are destroyed and not displayed in any way.¹⁰⁹²

966. The Commissioner has already found that “the creation of any memorabilia . . . arising from an incident where someone has died, is inappropriate”. In his view there should not be any “memorabilia in existence commemorating the events of September 6”.

967. There is no doubt that the death of Dudley George on September 6 was a tragedy. Any loss of human life, especially in violent circumstances, is a tragedy, no less so the life of Dudley George. As A/Sgt. Deane expressed himself,

¹⁰⁹² 06/05/2206 at 175.

I profoundly regret this tragic incident that has caused so much pain and anguish for Mr. George's family, friends and his community. I sincerely apologize to the family and friends of Dudley George and to his community for causing the terrible loss that they have been forced to endure.¹⁰⁹³

968. However, there is no evidence that the "memorabilia" commemorated, or that it was intended to commemorate the death of Dudley George. Unfortunately, it was not appreciated by those who created the memorabilia at the time that any memorabilia of the events of September 6 would be taken as "insulting and offensive to the (native) community involved" because, at the least, it is seen as insensitive to their loss.

969. Of the "memorabilia" identified by Commissioner Linden, "certain cartoons" had nothing whatsoever to do with the OPP or its members.

i) The beer can and the bullseye and suction cup arrow

970. The beer can, and the suction cup arrow and bullseye on the side of the police cruiser were not really "memorabilia", but rather inappropriate symbolic objects that were offensive to Stan Cloud, who observed both of them at Pinery Park where he worked for the Ministry of Natural Resources.

971. The Investigation Report submitted by S/Sgt. Adkin into complaints concerning the "memorabilia" found that the beer can,

. . . was assembled during a presentation to the female workers at the (Pinery) park for their hospitality. The can represented the incident, the sand inside represented Ipperwash, feathers symbolized the First Nations, yellow tape represented the OPP involvement and the beer can itself represented comradery shared by the participants. . . the hole in the can represented the shots that were fired. The entire can symbolized the Ipperwash Incident and was not intended to show disrespect for Native people.

¹⁰⁹³ P-1781 at 2.

972. But, the Investigation Report concluded, even though the intentions of the officers who created the can “were valid from their prospective their actions were inappropriate”.¹⁰⁹⁴

973. The two officers who created the beer can received disciplinary admonishments as a result of the investigation by the OPP and the determination that their actions were inappropriate.

974. The bullseye and arrow with a suction cup were purchased by two officers, who were first assigned to Ipperwash after September 6, from a variety store in Forest. They placed the bullseye and arrow on the side of an OPP cruiser, “as a joke and to relieve stress” in the context of tensions in the Ipperwash area immediately following September 6, in which the “Forest Detachment was a fortress and the situation was extremely stressful with potential of escalation”.¹⁰⁹⁵

975. The Investigation Report observed that, “Both officers indicate that the articles were not openly displayed to the public and there was never any intention to project a negative or derogatory attitude towards First Nations persons, but as a relief of stress through humour. They indicated there was no intention to slander or slur First Nations persons”.¹⁰⁹⁶

976. The Investigation Report concluded:

Regardless of the design or intent of (the officers), and I found no evidence in the investigation to doubt their intentions, the result was that Mr. Cloud was made to feel uncomfortable by what had occurred. Although their intentions may have been harmless in their eyes and their purpose was to relieve stress and raise awareness, the result was Mr. Cloud was offended and in hindsight the actions were inappropriate.

¹⁰⁹⁴ P-1051, Tab 17 at 7.

¹⁰⁹⁵ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹⁰⁹⁶ P-1051, Tab 17 at 12 and 20 (Appendix C).

977. The two OPP officers who created and displayed the bullseye and suction cup arrow received disciplinary admonishments for their inappropriate conduct.

ii) The creation of memorabilia

978. In 1995 unofficial mementos of major events were a common place in the police community. These were generally produced by officers involved in the event, rather than by the police service.

Historically in the OPP as well many other police services, it has been a tradition to produce a memento of the event. Shirts, mugs, plaques and photographs are only a few of the forms of mementos that have been distributed as a result of major events.

Major strikes, the Pope's Visit, Olympics in 1976, Summer Postings and the Economic Summit are but a few of the types of events where articles are produced in recognition of the event.

When joint operations are organized or a massing of personnel occurs, a memento is invariably produced. The article produced is something officers keep as a reminder of that portion of their career, it deals with the comradery and esprit de-corps of the people involved, not the incident itself.¹⁰⁹⁷

979. As Commissioner O'Grady said:

. . . over the years, that when OPP forces gathers in any place for a project or any large gathering with respect to activities, it was the usual thing that some type of memorabilia to commemorate that was made.¹⁰⁹⁸

iii) Mugs

¹⁰⁹⁷ P-1051, Tab 17 at 14.

¹⁰⁹⁸ Commissioner O'Grady 06/15/2006 at 318.

The coffee mugs that have been produced were of two varieties. The first, of which only 12 were made, showed the OPP shoulder flash with an arrow placed behind it and the words “Ipperwash 95”. The second version removed the arrow¹⁰⁹⁹

980. The two officers who designed the mugs as a memento of the Ipperwash incident showed the first design with the arrow to an OPP Inspector. The Inspector felt the arrow should be removed. The officers removed the arrow and “purchased the mugs and distributed them to MNR staff as a gesture of their helping and assistance”.¹¹⁰⁰

981. Stan Cloud objected to the mugs as “offensive towards First Nations persons”. For him the arrow represented a cowboy and Indian mentality and the mug itself represented the death of a person. Members of the Dudley George family also objected to the mugs because they “were offensive simply because they were a reminder of Dudley George’s death and who would want a memento of that occurrence”.¹¹⁰¹

982. It is apparent from the Investigation Report that the officers who made the mugs neither intended to insult anyone nor to make a “political or racial statement”.¹¹⁰²

The officers were careful to be professional in dealing with the community while producing the mugs and took the initiative to discuss the logo with the senior officer involved in Project Maple. On his suggestion they removed the arrow.¹¹⁰³

983. The Investigation Report concluded that the officers only wanted “to provide people with mementos to take home with them”.¹¹⁰⁴

984. The investigation disclosed that, on one occasion when the two officers were in the store where the mugs were made, a relative of Dudley George came into the store

¹⁰⁹⁹ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹⁰⁰ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹⁰¹ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹⁰² P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹⁰³ P-1051, Tab 17 at 14.

¹¹⁰⁴ P-1051, Tab 17 at 12 and 20 (Appendix C).

and “both officers expressed sympathy to (him) and his family over the loss of Dudley”.

¹¹⁰⁵

985. The officers who made the mugs regretted that the mugs had caused any offence to the Dudley George family or members of the native community. They said that, in making the mugs, “we had no intention of causing any person any unnecessary grief in doing so”. ¹¹⁰⁶ “If I had thought for one second that these coffee mugs would have hurt anyone’s feeling the idea would have been disbanded immediately”. ¹¹⁰⁷

986. The same officer expressed the following:

I have never, in my professional or personal life tolerated racism. I have just been transferred as of September, 1995 from Sioux Lookout where I policed (a) predominately native community and never once stooped to racism or discriminatory comments in my dealings with the locals. I was a member of the District Crime Unit, and I was involved in homicides and other sensitive investigations on the northern reservations. I have a firm understanding of many current native issues and also understand the sensitivity that is required for a peaceful successful resolve to all matters. ¹¹⁰⁸

987. The two officers who were responsible for the mugs were counselled about placing the OPP in a “potentially embarrassing position”. ¹¹⁰⁹

iv) The feather t-shirts

The t-shirts (see Appendix D) are black in colour and on the left side, chest area is an OPP shoulder insignia with ERT written on one side and TRU on the other. The top has writings “Ipperwash” and at the bottom is a white feather. Mr. CLOUD’s objection is that the feather on its side indicates a fallen warrior and is disrespectful to Dudley

¹¹⁰⁵ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹⁰⁶ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹⁰⁷ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹⁰⁸ P-1051, Tab 29 at 5.

¹¹⁰⁹ P-1052 at Tab 99.

George. The OPP insignia over top indicates that the OPP considered themselves superior to First Nations People.

Again the George family was made aware of the existence of the shirts and feel the same way.¹¹¹⁰

988. The OPP officer who was responsible for the design of the logo did so following in the tradition of most major events for which “there has been t-shirts or mementos that the guys have made as a keepsake”.¹¹¹¹

989. He wanted to “make the t-shirt with a tasteful logo” and he checked the logo with “two people who I knew had close ties to the native community and the situation at hand. Upon their advice I chose a logo that they felt was tasteful, not offensive and projected a positive image”.¹¹¹²

990. The feedback to the officer from command staff was that the “feather was a nice touch” and that the t-shirt “was good for esprit de-corps”.¹¹¹³ About 150 t-shirts were distributed. In his statement found in the Investigation Report, the officer who created the t-shirt stated:

This was a keepsake for the members involved, was not a profit making scheme and at no time was it intended to offend anyone especially since I was aware of the sensitivity of the situation.¹¹¹⁴

991. In the Investigation Report, S/Sgt. Adkin comments that the symbolism of a horizontal feather has “many interpretations”, ranging from a “fallen warrior” to a “peace symbol”, to “a soothing spirit to balance today’s frustrations”.¹¹¹⁵

¹¹¹⁰ P-1051, Tab 17 at 15.

¹¹¹¹ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹¹² P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹¹³ P-1051, Tab 28 at 3.

¹¹¹⁴ P-1051, Tab 28.

¹¹¹⁵ P-1051, Tab 17 at 12 and 20 (Appendix C).

992. Whatever the symbolism, Sam George saw any “Team Ipperwash” souvenirs “as a way of boasting, of claiming victory over the whole incident that took place at Ipperwash”.¹¹¹⁶

993. Whatever the interpretation of the symbolism, the “sensitivities” of the situation “in which a person has died” make any memorabilia unacceptable to many of the persons affected by the tragedy. The OPP recognized this fact. It not only investigated the creation of the mugs and t-shirt memorabilia, Commissioner O’Grady also publicly apologized to Sam George and his family “for the inappropriate memorabilia created during the incident at Ipperwash. While I am assured that it was never intended to offend anyone, it ought never to have been created and is not represented of the professionalism of the Ontario Provincial Police”.¹¹¹⁷

v) The second t-shirt

994. The existence of a second t-shirt created shortly after the events of September 6 first came into evidence at the Inquiry on May 11, 2006, through the testimony of Sgt. Hebblethwaite. There is no evidence that the t-shirt was ever worn or displayed publicly to anyone and it is apparent that there was no public knowledge at all of the existence of the t-shirt.

995. The logo on the t-shirt has the words “Project Maple ‘95”. Underneath the words is depicted the TRU team symbol which includes a “T”. The letter has a pointed end at the bottom of the “T”. This pointed end is immediately above an anvil that has the letters ERT superimposed over it. Between the bottom of the “T” and the anvil is depicted a broken arrow.¹¹¹⁸

996. Cst. Klym was one of the TRU Team members who was deployed at the confrontation of September 6. He testified that he created the t-shirt logo, together with between 20 and 30 t-shirts, in the latter part of September, 1995.

¹¹¹⁶ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹¹⁷ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹¹⁸ P-1051, Tab 17 at 12 and 20 (Appendix C).

997. The t-shirt was sold to TRU and ERT officers who were present at the confrontation on September 6, and whose lives were threatened.

998. The logo was intended by him to represent the co-operative effort between the TRU team and the ERT during the confrontation on September 6.¹¹¹⁹

999. The broken arrow was selected as a weapon that symbolized the occupiers who violently clashed with the officers that night.¹¹²⁰

1000. Cst. Klym acknowledged that he made a poor choice of symbols for the logo.

. . . in retrospect it was a poor choice of symbology obviously and I deeply regret any hurt that has been taken by the George family or by the First Nations community in general. The symbol was not meant to signify the death of Dudley George or breaking of the First Nations Community but in fact was somehow trying to show the co-operative efforts of the two (2) significant programs involved that night between TRU and ERT.¹¹²¹

1001. Cst. Klym made it clear that his apology extended to all First Nations people who were offended by the t-shirt logo, including those who protested at Ipperwash Provincial Park on September 6.¹¹²²

1002. There is no evidence that the existence of the second t-shirt was known to anyone other than the 20 to 30 officers who purchased it. There is no evidence that it was ever worn or displayed publicly by any of them. Certainly no member of the public, including a First Nations person, was aware of the existence of the t-shirt until it was disclosed at the Inquiry.

¹¹¹⁹ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹²⁰ P-1051, Tab 17 at 12 and 20 (Appendix C).

¹¹²¹ Bill Klym 06/06/2006 at 130-131.

¹¹²² P-1051, Tab 17 at 12 and 20 (Appendix C).

vi) Conclusion

1003. Every OPP officer who testified at the Inquiry recognized, on reflection or when the issue was raised, that memorabilia of the Ipperwash incident was inappropriate or offensive, especially to First Nations persons. Almost all of the officers who had acquired memorabilia (mugs and t-shirts) discarded the memorabilia when they realized that it could be or was viewed as inappropriate, insensitive or offensive.¹¹²³

1004. From the individual perspective of those officers who created the memorabilia, it was apparent that they did not perceive that they were acting inappropriately at the time that they created it. When the inappropriateness of the memorabilia became an issue, they immediately expressed regret for their role in creating the memorabilia that was identified as insensitive and offensive to the George family and First Nations persons.

1005. In the June 5, 2006 ruling Commissioner Linden expressed that the creation that any memorabilia “arising from an incident where someone has died, is inappropriate”.

1006. We do not dispute this assertion. However, it makes “inappropriate” a vast array of memorabilia that commemorates current and historical incidents where there has been a loss of life.

1007. As for the symbolism found on the memorabilia, it cannot be fairly asserted that the design of the memorabilia was intended to express racial superiority or antagonism towards First Nations communities, even though some members of the First Nations communities unfortunately may have perceived the memorabilia as a racial expression.

1008. The police officers who were assigned to the Ipperwash Incident in September 1995, found themselves involved in a major police operation involving hundreds of police officers over an extended period of time. It included a very violent confrontation on September 6, within the context, both before and after September 6, of a highly volatile and potentially physically dangerous situation for all the participants. For the

¹¹²³ P-1051, Tab 17 at 12 and 20 (Appendix C).

police officers involved, this was not a “racial” incident. Rather, from the perspective of the police officers, it was a public safety and a law enforcement incident that happened to involve First Nation protestors, members of a distinct cultural or racial group.

1009. The controversy around the symbolism of a feather and arrows makes apparent the heightened sensitivity of cultural symbols, and the unintended effect that may result from the use of symbols that may be associated with a particular cultural or racial group.

1010. The experience of the “memorabilia” of Ipperwash has brought home to the police officers involved, and all those officers and others who have followed the Inquiry, the sensitivities associated both with the use of symbols, and with the creation of memorabilia of any kind following a police incident at which a death has occurred.

f) Inappropriate (Impugned) Recorded Remarks/Comments

1011. During the Inquiry the issue arose of inappropriate recorded remarks or comments by police officers. The inappropriate remarks or comments came to the attention of the Commission from the thousands of hours of logger tapes of radio transmissions and telephone conversations. Almost all of the instances of inappropriate remarks surfaced when the OPP assigned officers, after November 2003, to listen to the tapes. The inappropriate comments were discovered prior to the start of the Inquiry hearings. All of the audio tape recordings were turned over to the Inquiry by the OPP.

1012. When the OPP discovered the recorded impugned remarks, its Professional Standards branch conducted an internal discipline investigation. The investigators interviewed those OPP members who were identified on the tape recordings to have made inappropriate remarks. The OPP then informally disciplined or counselled its officers and civilian members who made inappropriate remarks. Most of the OPP members made the remarks or comments were neither present at the Ipperwash Incident from September 4 to 6, nor were they called as witnesses at the Inquiry.¹¹²⁴

¹¹²⁴ Gwen Boniface 06/14/2006 at 172-175; P-1727.

1013. As is apparent from P-1727, the number of recordings and conversations that contain inappropriate or impugned remarks are very few in number by comparison to the thousands of hours of tape recorded conversation that were reviewed. The impugned remarks involve few OPP members in comparison to the hundreds of OPP members whose radio and telephone conversations were recorded on the logger tapes.

1014. Those few officers who testified at the Inquiry and whose recorded conversations were identified to contain inappropriate comments, acknowledge the inappropriateness of the comment recorded and expressed regret for it.

1015. For example, Sgt. Huntley was recorded on the logger tape to have made an inappropriate remark in response to a question about what he would do with all the overtime he was earning at Ipperwash. He remarked that he would “give it to the government . . . so they can give the Indians more stuff . . . all this stuff we keep giving them doesn’t come cheap. Somebody’s got to pay for it”.¹¹²⁵

1016. Sgt. Huntley testified:

That statement I made, I don’t recall it. When I heard this transcription I was quite surprised, even shocked. It is an unfair statement, it’s an inappropriate statement. It is an unprofessional statement and all I can do is apologize for it. I shouldn’t have made that statement.¹¹²⁶

1017. Sgt. Huntley made a similar inappropriate remark in a recorded conversation with the dispatcher, for which he also apologized. He was counselled by the OPP for his inappropriate remarks.¹¹²⁷

1018. Sgt. Korosec was recorded in a telephone conversation with Cst. Jacklin at about 23:32 on September 5/95 as follows:

¹¹²⁵ Robert Huntley 04/27/2006 at 70-71.

¹¹²⁶ Robert Huntley 04/27/2006 at 71.

¹¹²⁷ Robert Huntley 04/27/2006 at 73.

. . . we want to amass a fucking army . . . a real fucking army and do this – do these fuckers big time. But I don't want to talk about it because I will get all hyped up.¹¹²⁸

1019. Sgt. Korosec testified that he did not recall the conversation. He contextualized the remark:

- the expression to “do” someone, in police parlance, means to charge or arrest someone, not to assault someone;¹¹²⁹
- he had been up for a couple of days and maybe had two hours sleep in the last couple of days;¹¹³⁰
- he was exhausted physically, mentally and emotionally;¹¹³¹
- he was frustrated by the discussion about batteries for night vision goggles;¹¹³²
- he was awakened from sleep that he was “dying to get”, which made him “grumpy” and upset;¹¹³³ and
- his entire approach to the Ipperwash incident was the opposite to the recorded conversation.

1020. He testified:

I tried to avoid confrontation on many occasions when there was the fire, and when Gransden and Dougan dealt with individuals drinking on the beach, certainly with Judas and the confronta -- verbal confrontation we had there, when the Park was entered.

And more importantly that night in the Park when we were gathered by the front kiosk there, I did everything I could,

¹¹²⁸ Stan Korosec 04/06/2006 at 133.

¹¹²⁹ Stan Korosec 04/18/2006 at 98-99.

¹¹³⁰ Stan Korosec 04/06/2006 at 134.

¹¹³¹ Stan Korosec 04/06/2006 at 134.

¹¹³² Stan Korosec 04/06/2006 at 135.

¹¹³³ Stan Korosec 04/06/2006 at 135-136.

even to negotiate there at the last minute at the gate when they come in.

So confrontation and -- and stirring up trouble and going and arresting people was -- was not my philosophy, not in my philosophy in my policing career and -- and -- and even at this time.

So I -- I demonstrated that that's the approach I wanted to take in the support of Inspector Carson's mission of containing and negotiating a peaceful resolution.

I didn't want to see any -- any -- trouble or fights break out or confrontation. I tried to do the opposite. It bothers me to hear this tape, every time I hear it, because even though it's my voice, it's not me.¹¹³⁴

1021. Sgt. Korosec had known Cst. Jacklin well for many years. It was apparent to Sgt. Korosec that Cst. Jacklin understood the context of the comments, and that nothing would occur as a result of the remarks.¹¹³⁵

1022. Cst. Jacklin testified that he interpreted the comment by Sgt. Korosec as made "just out of frustration . . . I didn't put any significance on it . . . I put absolutely no interpretation of any sort of malice coming from Stan". According to Cst. Jacklin, Sgt. Korosec was just venting and needed sleep. He didn't take the comment seriously or believe that Sgt. Korosec meant what he said.¹¹³⁶

1023. Sgt. Korosec had retired from the OPP before the taped comments were discovered, and before he could be counselled for his remarks.

¹¹³⁴ Stan Korosec 04/06/2006 at 138.

¹¹³⁵ Stan Korosec 04/06/2006 at 137; 04/18/2006 at 281.

¹¹³⁶ Wayde Jacklin 04/25/2006 at 162-163; 04/26/2006 at 98, 101, 111.