THE IPPERWASH INQUIRY

PART I

REPLY SUBMISSIONS OF DEB HUTTON

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Part I – Introduction

1. The rules of evidence which govern civil and criminal proceedings are designed to ensure that the evidence that is admitted is reasonably reliable and probative. In public inquiries, those rules of evidence are greatly relaxed and all kinds of evidence which would not normally be admissible is allowed to be introduced as evidence; however, this does not mean that the unreliability or limitations of any such evidence are or should be ignored. Public inquiries are supposed to be a fact-finding process and the deficiencies or limitations of any of the evidence admitted is supposed to be taken into account in assessing what weight, if any, to be given to such evidence.

2. Counsel for the parties are given an opportunity to make submissions to the Commissioner and give their perspectives on the evidence. Submissions should be based on the evidence before the Inquiry. We submit that the assertions made in some submissions do not reflect the evidence, even where there is evidence cited to support those assertions. On the contrary, it appears that the balder the assertions are, the less basis they have in the evidence.

3. We appreciate that the subject-matter of this Inquiry is very emotional. No one could not be moved by Maynard Sam George's words which speak to his pain and loss and to that of his family. His words speak to the common humanity of all of us and transcend all differences in gender, age, race, ethnic background and religion. We all have families and the death of a loved one is always a great loss; a needless death is particularly tragic.

4. It is precisely because human life has a value beyond price that the need to avoid death or injury is so important. That is precisely why it is so important to thoroughly review all of the evidence and carefully analyse it so as to learn what we can from what occurred. That is precisely why reason cannot give way to emotion.

5. We understand that parties may have strong feelings but that is why they are represented by counsel who have an obligation to assist the Commissioner by providing different

perspectives on the evidence. We are saddened to see that a number of the submissions ignore large amounts of the evidence which the Commission has spent so much time and effort to obtain. We are disturbed by the lack of analysis, the leaps in logic, and the internal inconsistencies of some of the arguments. Finally, we are simply shocked that some submissions cherry-pick tiny morsels of evidence out of context and without regard to any contradictory evidence, then intertwine these morsels with large amounts of malicious conjecture. This presents a grossly twisted version of events which in no way accurately reflects the totality of two years' worth of evidence and thousands of pages of documentary exhibits.

6. This Public Inquiry is supposed to be a non-adversarial fact-finding investigation. We submit that the kind of approach taken by some has more in common with a Salem witch hunt than a Public Inquiry. The most extreme submissions appear to take advantage of their immunity from liability for defamation to stand on a soap-box and simply smear the reputations of others, all the while knowing that the Commissioner will not make his findings and produce his report for months. This is grossly unfair to parties who have participated in this process in good faith and, in our submission, undermines the integrity of the entire process.

7. In the short time available to respond to the submissions of sixteen other parties it is not possible nor is it practical to address separately all of the submissions. Furthermore, in our submission the most significant weakness of the arguments of most counsel is their failure to consider the totality of the evidence: they do not "see the forest for the trees." Consequently, we focus only on some of the most unfair, misleading and unwarranted attacks that are specific to Deb Hutton by way of example. With respect to any other submissions, we rely generally on our previous submissions, which we submit present a thorough and fair review of the evidence before the Inquiry, and some reasonable inferences which can be drawn from that evidence.

Part II - The So-Called "Aggressive Approach"

A) Problems with Vague Use of Language

8. There are a number of submissions which assert that Hutton advocated an "aggressive approach", "drastic action" or was "hawkish".[1] We submit that these are vague characterizations which on their own have no specific meaning though they are very provocative. To use these sorts of characterizations at the end of a Public Inquiry, when we have the benefit of all of the evidence, is misleading.

9. We submit that many questions were asked at the Inquiry using such vague language and that notes reflecting fragments of conversations were put to witnesses without regard for the progression of conversations or the context generally. We submit that the overall effect, whether intentional or not, has been to obfuscate the truth.

10. We submit that the evidence is overwhelming that Hutton never advocated the use of weapons or of force at any of the meetings. We submit that when witnesses were asked plainly what was actually said, the evidence was clear. Patrick, who attended the IMC meeting on September 6, 1995, testified as follows:

> Q: Did -- do you recall Ms. Hutton saying at the meeting that the Premier wanted to, "get the fucking Indians out of the Park" or words to that effect?
>
> A: No, Sir.
>
> Q: Do you recall Ms. Hutton indicating to the meeting that -- in addition to the statement, to use guns if necessary?
>
> A: No, sir.
>
> Q: Was there any discussion about the use of guns or force by the Ontario Provincial Police at the meeting?
>
> A: No, sir.

[1] Submissions of the Chiefs of Ontario. pp. 21-26; Submissions of the Aazhoodena and George Family Group (the "Aazhoodena Group"), p. 87; Submissions of the Estate of Dudley George and Member's of Dudley George's Family (the "Estate"), pp. 69-71; Submissions of the Residents of Aazhoodena (the "Army Camp Residents"), pp. 65-67

Q: Was the use of force implied in any of the discussions that you heard at the meeting?

A: No, sir.[2]

11. Fox, who attended both IMC meetings in September 1995, testified as follows:

Q: There's been unconfirmed rumours regarding certain comments being made. I take it that no one at the IMC meeting on September 6th or the 5th, for that matter, stated: "Get the F'ing Indians out of the Park, even if you have to use guns to do it." Or words to that affect [sic]?

A: I don't recall those words being used at that meeting.

Q: Well, sir, I suggest that if such a comment, words like that had been used, you would remember that?

A: I would.

Q: And no one at the meeting said that they loved guns; right?

A: No.

Q: In fact, I'd suggest that the members of the Inter-Ministerial Committee were concerned about reports of guns, reports of gunfire?

A: Yes.

Q: You never spoke to Ms. Hutton outside of these two (2) meetings on September 5th and 6th; right?

A: No.[3]

12. Hipfner, who also attended both meetings, testified to the same effect:

Q: At any point in either of those meetings did you hear Hutton or anyone else saying that the Premier wanted the Committee or anyone to: "Get those fucking Indians out of the Park and use guns if [they] have to?"

[2] Testimony of Patrick on October 17, 2005 at p. 96
[3] Testimony of Fox on July 14, 2005 at pp. 50-51

A: No, I didn't.

Q: Okay. Did you hear words to that effect?

A: No, I didn't.[4]

13. Jai, the Chair of the IMC, also testified that no one said at either of the IMC meetings on September 5 and 6, 1995 that one should use force or weapons to remove the occupiers:

> Q: You testified that no on [sic] at the meetings on September 5th or 6th made the comment, "Get the F-ing Indians out of the Park even if you have to draw guns," or words to that effect, correct?
>
> A: Correct.
>
> Q: No on [sic] at either meeting said that weapons or other physical force should be used to remove the occupiers, correct?
>
> A: Correct.[5]

14. The evidence of all the other witnesses before the IMC who attended the IMC meetings in person on September 5 and 6, 1995 was to similar effect.[6]

15. We submit that, while the distinction is clear, some of the language used in questioning and therefore the evidence on this point has been blurred. Given the repeated vague and public accusations made despite the clear evidence to the contrary, we request that there be a finding that Hutton did not advocate in favour of the use of force or weapons.

B) Hutton "Comments" Taken Out of Context

16. Where submissions on behalf of a number of parties address what occurred at the IMC meetings, they focussed exclusively on comments they assert were made by Hutton. We

[4] Testimony of Hipfner on September 15, 2005 at p. 145
[5] Testimony of Jai on September 13, 2005 at p. 132
[6] Testimony of Christie on September 26, 2005 at p. 144; Testimony of Hutchison on August 29, 2005 at pp. 93-94; Testimony of Hutton on November 21, 2005 at p. 241, November 23, 2005 at p. 409; Testimony of McCabe on September 28, 2005 at p. 221; Testimony of Prodanou on September 20, 2005 at p. 186; Testimony of Spiegel on September 21, 2005 at p. 115; Testimony of Moran on November 1, 2005 at p. 19; Testimony of Hunt on November 2, 2005 at p. 66; Testimony of Bangs on November 3, 2005 at pp. 54, 91

submit that the meetings were a discussion and that comments were made in response to other things that were said. We submit that while notes which attempt to capture the gist of Hutton's comments have been parsed word by word as if a verbatim transcript existed, comments made by others are completely ignored. We submit that this is very misleading and unfair.

17. The following are some of the comments by Fox on September 5, 1995 as recorded in the contemporaneous notes or Fox's call to Carson of the same day:

> "no evidence of weapons, naïve to presume won't be"[7]
>
> "Ron: people from throughout prov may be here [more occupiers than there are Stoney Pointers] – difficult for police to secure (forest, beach access) – the longer they're there, the more familiar they become [with] surroundings [and] the more difficult it becomes to remove them"[8]
>
> [in response to a concern from MNR that warriors may show up]…"that's a possibility…it's naïve to presume that ah there's as many Stoney Pointers as there are people there now"[9]
>
> [with respect to affecting arrests for offences for which the OPP had identified perpetrators and obtained warrants] "…here's the strategy those folk will employ. The women and children will be at the forefront…And that's what the police are going to be faced with."[10]

18. We submit that these comments as recorded raise issues which would be of legitimate concern to any government.

19. Numerous other comments were made by other participants at the IMC meetings and have been ignored in the submissions of other counsel.

On September 5:

> "Peter - always poss. Mohawk warriors will move in"[11]

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[7] P-742, p. 9; This comment was not attributed to a speaker, but Hipfner testified that a comment to this effect was made by Fox: Testimony of Hipfner on September 15, 1995 at pp. 88-89
[8] P-510, p. 5; Testimony of Hipfner on September 15, 2005 at pp. 74-75
[9] P-444A, tab 16, p.123
[10] P-444A, tab 16, p. 121
[11] P-536, p. 3

"Ron Baldwin - no public safety issue in the park - but there are cottages, homes nearby, so not isolated… - each hour that passes will ↑ concern of Tom Bressette & Bosanquet FN"[12]

"Ron Baldwin - think abt rel w [relationship with] Kettle Stony Pt FN - They're likely to get frustrated if we don't take some sort of action"[13]

"Safety – public safety still a possible concern since park can't be secured" [unattributed][14]

"many Ipperwash residents have already called" [unattributed][15]

"if we don't act, munic may – they are militant" [unattributed][16]

On September 6:

Fox "3 persons ID'd by OPP as arms offence (but <u>not</u> firearms) and warrants [for] arrest have been issued"[17]

Fox "Army Camp Rd – controlled fire set – middle [of the] road – rocks [and] beer bottles thrown at OPP vehicles"[18]

"Peter Sturdy:...- park bdgs have been broken into [and] are being used
- MNR staff being peppered w calls from locals - concern, fear, anger
- groundswell of anxiety, concern
- somebody heard automatic gunfire"[19]

"Bangs: …- mun. upset b/c sit [situation] has not been contained to the military base
- gunfire, damage to park property
- are they digging trenches?
- this is quickly spiralling out of MNR's hands"[20]

"Moran: huge concern about safety of officers"[21]

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[12] P-536, p. 4
[13] P-510, p. 4; Testimony of Hipfner on September 15, 2005 at p. 74
[14] P-536, p. 5
[15] P-536, p. 7
[16] P-536, p. 7; Jai explained that the municipality was very concerned "because of safety concerns for their own residents": Testimony of Jai on August 30, 2005 at p. 255
[17] P-636, p. 1
[18] P-636, p. 1
[19] P-636, p. 2
[20] P-636, p. 3
[21] P-636, p. 3

"Julie:…- public safety is paramount, incl. safety of OPP officers"[22]

"Fox: - ongoing efforts to get people to leave the park
- but wd [would] ultimately like to have enjoining order"[23]

"Hunt: if remove them, no guarantee they won't move right back in"[24]

"Scott H: impose conditions - but enforcement issues remain"[25]

"Peter Sturdy: - rumours of gunfire
- confirmed
- I've got staff there right now accompanying OPP to serve notice – being asked to wear bullet-proof vests
- park picnic tables piled [on] road as barricades"[26]

20. We submit that when one looks at even a few of the comments of some of the other participants, it appears clear that a number of people had concerns regarding the situation which they expressed and that a number of them discussed what could be done.

21. There is evidence that MNR representatives on the ground participated quite extensively at the IMC meetings. Fox referred to Baldwin and other MNR representatives as being very "vocal" at the IMC meetings.[27] A number of comments from Baldwin and Sturdy expressing concerns are recorded in the contemporaneous notes.[28] Fox's phone call to Carson on September 5 refers at great length to discussions with MNR representatives.[29]

22. The submissions of the Chiefs of Ontario argue that the contemporaneous notes of the IMC meetings and Fox's calls to Carson represent the "best evidence"; however, they completely ignore any reference to MNR's comments at the IMC as recorded in the

[22] P-636, p. 3
[23] P-636, p. 6
[24] P-636, p. 6
[25] P-636, p. 6
[26] P-636, p. 6
[27] Testimony of Fox on July 11, 2005 at pp. 159-160; See also Testimony of Hipfner on September 15, 2005 at pp. 85-87
[28] Submissions of Hutton, Part V, para. 546-590; 694-727; See also para. 19 of these reply submissions for some examples.
[29] P-444A, tab 16, pp. 119-120, 123-125

contemporaneous notes or in Fox's calls to Carson and Wright on September 5 and 6, 1995.[30]

23. We have submitted that Fox's calls to Carson do not accurately reflect the IMC meetings. We note that there is very little overlap between the contemporaneous notes of the IMC meetings and what Fox describes in the calls. We submit that this reflects the fact that the calls represent Fox's focus on snippets of the meetings and that his overall characterizations are grossly misleading. However, we submit that if other counsel regard these calls as the "best evidence", they should consider the calls in their entirety. We submit that the calls in their entirety are evidence only of Fox's subjective impressions.

24. We note that there is evidence that MNR representatives communicated their concerns not only in words but through their tone. Hipfner testified that the MNR representatives were "shouting" and sounded "excited".[31] The submissions of other counsel focus exclusively on impressions of Hutton's demeanour but fail to take into account the demeanour of others.

25. We submit that the evidence is clear that some participants viewed the situation less seriously than MNR representatives on the ground at the August 2, 1995 IMC meeting and the September 5 and 6, 1995 meetings. We submit that if one is going to consider Hutton's comments at the IMC meetings on September 5 and 6, 1995, one should have regard for the evidence of what actually had occurred at Camp Ipperwash in July 1995 and was occurring at the park in September 1995. We submit that numerous submissions simply ignore that evidence.

26. The submissions of the Province of Ontario referred to the evidence of Jai that in the summer of 1995 there were several other emergencies brewing which appeared

[30] Submissions of the Chiefs of Ontario, pp. 18-19
[31] Testimony of Hipfner on September 12, 2005 at pp. 86-87, 143

potentially serious.[32] The submissions of the Army Camp Residents also submit that there was a broader context involving a number of other incidents in the summer of 1995 of First Nations people asserting sovereignty "over their land".[33] We agree that there was a broader context which needs to be acknowledged and note that some of the contemporaneous IMC meeting notes of Jai record unattributed references to Gustafsen Lake and other incidents.[34] Former Premier Harris also testified that he was conscious of Gustafsen Lake at the time and other witnesses testified that there were references to it at one of the IMC meetings.[35]

27. It is also clear from the evidence that the IMC participants received media clippings and, therefore, had other sources of information as to what was going on in addition to the briefings from the representatives of the MSG and MNR. For example, the IMC participants were aware that the local Mayor had issued the "Reign of Terror Continues" press release.[36]

28. We submit that all of these things are part of the broader context in which the discussions at the IMC and the dining room must be understood. However, we caution that the broader context is just that – context. We submit that the evidence overall indicates that the government's consideration of its policy position and communications on Ipperwash took into account the broader context but still focused primarily on the situation at Ipperwash.

29. We submit that, in fairness, one must consider Hutton's comments in the context of the comments of other participants, media clippings and press releases which provided further information regarding what was occurring at Ipperwash as well as the broader context. We further submit that Hutton's comments reflect the nature of the responsibilities that she had and that that too must be considered.

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[32] Submissions of the Province of Ontario, p. 56, para. 176
[33] Submissions of the Army Camp Residents, p. 7, pp. 38-39
[34] P-536, p. 6
[35] Testimony of Harris on February 14, 2006 p. 153; Testimony of Christie on September 26, 2005 at pp. 90-91; Testimony of Jai on August 30, 2005 at pp. 254-255; Testimony of Hipfner on September 15, 2005 at p. 133
[36] P-636, p. 7

30. Many of the submissions make no distinction between evidence regarding comments made at the IMC meeting on September 5, 1995 as opposed to comments made at the IMC meeting on September 6, 1995. Moreover, they completely fail to take into account at what point in either of the meetings any particular comment was made. The overall effect is to ignore the fact that there was a progression of events on the ground and what was communicated to the IMC and when.

31. Fox himself testified that there was an escalation between September 5 and 6, 1995 and the situation was "getting worse". When asked if he would have communicated his sense that the situation was getting worse to the IMC on September 6, 1995, Fox testified that it would have been "obvious by the report that I made."[37] Consequently, we submit that to ignore the timing of any comments is misleading to the public and unfair to Hutton.

32. Hutton testified that she continued to think about the situation as she obtained more information and that her sense of urgency increased between September 5 and 6, 1995.[38] We note that as of September 5, 1995 the only clear reference attributed to Hutton regarding some sort of time frame for government action was Hutton's indication that she didn't want to wait two weeks for a regular injunction and, therefore, preferred the kind which could be sought more quickly.[39]

33. Some submissions make reference to comments which they assert were attributed to Hutton as if they were verbatim quotes, even when the contemporaneous notes themselves and the testimony of the note taker is clear that they did not properly catch whatever was being said at that point. For example, the submissions of the Army Camp Residents refer to the notation "time and place to move decisively"[40] when the only person who recorded this reference, Hipfner, made clear that she did not fully catch what

[37] P-536, p. 8; Testimony of Fox on July 14, 2005 at p. 18
[38] Testimony of Hutton on November 22, 2005 at pp. 75-76
[39] P-536, p. 8; Submissions of Hutton, Part V, para. 546-590
[40] Submissions of Army Camp Residents, p. 66, para. 25

was said and that her notes were incomplete and, therefore, inaccurate.[41] We note that Hipfner's notes themselves indicate "something abt [about] how this may be the time and place to move decisively" [emphasis added].[42]

34. We submit that the phrase even as recorded incompletely is not a simple assertion as the inclusion of the phrase word "may be" makes it more equivocal and makes it a suggestion. We further submit that Hipfner acknowledged that the phrase "move decisively" can simply mean that the government will actually make a decision and do something.[43]

35. Some of the submissions seek to link Hutton to comments which were not attributed to her in the contemporaneous notes, even where the evidence was clear that she had not made the comments. For example, the submissions of the Army Camp Residents assert that "one of Premier Harris' aides likened the situation to that of having Hell's Angels show up on one's lawn."[44] The context of this comment is not clear, let alone that it was put forward as some sort of analogy; however, the only witness at the IMC meetings that recalled any such comment testified that a man made the comment.[45] As the only evidence clearly indicated that Hutton (the only aide to Premier Harris present at the IMC) did not make this comment, it is very unfair and misleading to suggest otherwise.

36. Some parties have referred to notes of witnesses who did not testify. We submit that in the absence of testimony from a note-taker, there is no evidence as to what the notes purport to record and they should not be relied upon.

37. We submit that the Commissioner should consider what was said at the IMC meetings rather than people's personal impressions as to what they inferred others meant. Accordingly, in the absence of better evidence, we do not object to referring to the contemporaneous notes as an aid to understanding the gist of what was communicated by

[41] Testimony of Hipfner on September 15, 2005 at p. 251, September 19, 2005 at pp. 96-97
[42] P-510, p. 4
[43] Testimony of Hipfner on September 19, 2005 at pp. 104-105
[44] Submissions of Army Camp Residents, p. 67, para. 127
[45] Testimony of Prodanou on September 20, 2005 at pp. 147-148

all who spoke over the course of meetings. However, we submit that, given the nature of this evidence, it is not appropriate to isolate words and phrases attributed to one person, take them out of their context, and to seek to use that to determine what occurred.

38. We submit that the best evidence is what the government actually did both prior to the IMC meetings of September 5 and 6, 1995 and following them.

C) "Political Interference with Civil Servants"

39. Some parties assert that the so-called "aggressive approach" resulted in political interference with civil servants. Aboriginal Legal Services of Toronto submit that the Premier and the political side of government exerted "inappropriate pressure" on both the police and the civil service.[46] The assumption that civil servants are the true decision-makers and should be insulated from political views permeates the submissions of a number of parties.[47]

40. We submit that while there is a principle in law regarding police independence from political interference, there is no such equivalent principle with respect to civil servants. We submit that such a concept would be fundamentally inconsistent with basic notions of representative democracy and ministerial responsibility. The job of civil "servants" is to serve the politicians, the people's elected representatives, by providing them with advice and assistance in implementing their decisions.

41. We submit that in a system of representative democracy, elected representatives have opinions on matters of policy, make decisions and may seek input on these issues from their political staff. Civil servants also provide advice through Deputy Ministers; however, their advice is in the form of providing accurate factual information and expertise in particular areas regardless of their personal opinions. We rely on the

[46] Submissions of Aboriginal Legal Services of Toronto ("ALST"), p. 26, para. 54
[47] Submissions of the Estate, pp. 81-85; Submissions of the Army Camp Residents, pp. 64-67

evidence of the evidence of the Deputy Attorney General and the Deputy Solicitor General in support.[48]

42. We submit that references to the "independence" of the civil service are a reference to the premise that civil servants are not supposed to allow their personal political views to affect their ability to serve whoever is elected. We note the evidence of the Deputy Ministers as to how they created plans based on the campaign platforms of the various political parties so that they could be ready to "serve" whoever the people elected as their government.[49] We also note that there was evidence that Ministers are entitled to, and do, at times, reject the advice of civil servants at the IMC.[50]

43. We submit that it would be difficult for civil servants to serve elected representatives if they insulate themselves from political views and have no idea with respect to what they might want or need assistance. We submit that the premise that one can draw on the concept of police independence from political interference and apply it to the civil service is fundamentally flawed.

44. The failure to recognize this important distinction between the police and the civil services is particularly evident in the submissions of the Chiefs of Ontario when they assert that the OPP strategy was seen by Hutton as a "do nothing" approach. In this respect, they rely on Fox's participation at the IMC, who they argue was a proponent of the "wait-and-see approach."[51] This position disregards the evidence that the IMC meetings discussed the government's position on the occupation. It ignores the lack of evidence in the contemporaneous notes that the OPP's position was ever discussed at the IMC meetings. Further, the Chiefs of Ontario's submissions do not refer to any evidence to support the contention that the OPP plans were discussed at the meeting. In this

[48] Submissions of Hutton, Part II, para. 29-31; Testimony of Todres on December 1, 2005 at pp. 109-110 ; Testimony of Taman on

[49] Testimony of Vrancart on October 27, 2005 at pp. 10-12; Testimony of Taman on November 14, 2005 at pp. 42-43

[50] Testimony of Hipfner on September 15, 2005 at p. 50; With reference to legal advice, see Testimony of Taman on November 14, 2005 at pp. 27-28

[51] Submissions of the Chiefs of Ontario, pp. 30-31

respect, they inappropriately confuse the OPP plans and the government position, two very different things.

45. As Scott Hutchison testified, there is no "rule book" concerning the interaction between civil servants and political staff. He suggested that it would be "inappropriate" for political staff to tell civil servants how to do their job and what advice to give. He further stated that this was his understanding in 1995.[52]

46. We submit that it would not be "inappropriate" for politicians to make decisions without seeking any advice of civil servants as they have the legitimate decision-making authority. It might not be advisable but it would not be inappropriate.

47. We submit that it is very important to distinguish between: 1) saying or doing things which are unlawful or which are outside the bounds of one's authority; and 2) saying or doing things with which some others may disagree. We submit that many submissions of other parties fail to recognize that such a distinction exists.

48. In any event, Hutchison testified that he did not recall anything that he would regard as "inappropriate" at the September 6 IMC meeting and he did not see anything in his notes that suggested that anything inappropriate occurred."[53]

49. The Estate, the Chiefs of Ontario, the Army Camp Residents and ALST portray a divide between Hutton on the one hand and the "experienced" civil servants on the other and suggest that Hutton imposed her views on the IMC.[54] The submissions of these parties frequently involve a great deal of rhetoric and hyperbole, but blatantly ignore vast amounts of evidence that completely undermine their arguments.

[52] Testimony of Hutchison on August 30, 2005 at pp. 9-11
[53] Testimony of Hutchison on August 25, 2005 at pp. 288-292
[54] Submissions of ALST, pp. 36-37; Submissions of the Chiefs of Ontario, pp. 15, 17; Submissions of the Estate, pp. 77-79, 81-84

50. The Province of Ontario, with whose submissions we otherwise generally agree, argues that the IMC was established as a "reactive" body. However, the evidence as reflected in the briefing note to Harnick and the evidence of civil servants was that the goal of the IMC was to prevent direct action such as occupations or blockades from occurring, and if they did occur, the goal was to have them come to an end as quickly and as safely as possible.[55]

51. We submit that one of the main reasons for the August 2, 1995 meeting was to address the threatened occupation of the park in keeping with the IMC's mandate. We submit that it appears that Fox's vocal and forceful participation at the IMC meeting persuaded some, including the Chair, that an occupation was unlikely. Fox was entitled to take a position, articulate it forcefully and persuade others of it. Unfortunately, his assessment was wrong.

52. We refer to all of the evidence set out in our previous submissions which make clear that the IMC participants at the August 2, 1995 meeting left the matter with MNR and the OPP.

53. We agree with the submissions of the Province of Ontario that the occupation would have been difficult to prevent. However, we submit that experienced civil servants within MNR: 1) considered the government's position and regarded any such threatened occupation as illegal; and 2) engaged in contingency planning and communicated on a number of occasions with the OPP to address the threatened occupation.[56]

54. There is a great deal of evidence about the positions and actions taken by MNR on the ground and the OPP, both prior to the occupation and after the occupation began but prior to the September 5, 1995 IMC meeting. This evidence is referred to in our submissions and, to some extent, in those of the OPP, the OPPA and the former Premier, but are completely ignored by almost all of the other parties.

[55] P-974; Testimony of Fox on July 13, 2005 at pp. 213-215; Testimony of Jai on September 12, 2005 at pp. 232-233; Testimony of Sturdy on October 18, 2005 at pp. 245-246
[56] Submissions of Hutton, Part IV, para. 214-432.

55. We submit that since MNR and the OPP could not prevent the occupation and were forced to withdraw, the goal on September 5, 1995 in accordance with the IMC's mandate was to bring about an end to the occupation "as quickly and safely as possible."

56. The Army Camp Residents seek to contrast the "uninspiring" IMC meeting of August 2, 1995 with the "far from mundane" meeting on September 5, 1995 and suggest that the difference was the presence of Hutton at the September 5 meeting.[57] However, nowhere do they acknowledge the obvious difference that an occupation, which was being dismissed as unlikely by some at the August 2, 1995, had actually taken place by September 5, 1995. Jai testified that her impression was that the meeting was tense because the occupation had occurred and so they were dealing with "a real, not just an anticipated emergency." She testified that the fact that participants had different views simply increased the tension that was already present.[58]

57. We submit that the evidence overall does not support the assertion that there was a divide between civil servants and political staff at the IMC meeting. On the contrary, the evidence is clear that there were differing views among the civil servants and that those different views were expressed before Hutton joined in the discussions at the IMC.

58. We submit that Sturdy and Baldwin, who both participated in the IMC meetings of September 5 and 6, 1995, were very experienced civil servants who had general responsibilities for the area encompassing Ipperwash Provincial Park for years.[59] We submit that Baldwin previously had extensive involvement in the threatened occupation in 1993, receiving updates from his staff on the ground directly and participating at the IMC meetings.[60] We note that the letters to Maynard T. George and Chief Tom Bressette in 1993 were in Baldwin's name.[61] We submit that the evidence is clear that Sturdy and

[57] Submissions of Army Camp Residents, pp. 64-65, para. 123-124
[58] Testimony of Jai on August 30, 2005 at pp. 220-222
[59] Testimony of Sturdy on October 18, 2005 at pp. 162-165; Submissions of Hutton, Part III, para. 93-132, 164-167
[60] Submissions of Hutton, Part III, para. 93-132, 164-167
[61] P-215; P-241

Baldwin were extensively involved in the preparations leading up to the 1995 occupation and continued to receive information directly from their staff on the ground.

59. We submit that Jai had only been at ONAS for approximately a year, had limited experience with the IMC meetings and had no experience prior to August 2, 1995 of chairing such meetings.[62] We submit that there is no evidence that any of the civil servants who attended on September 5, 1995 had any experience as a member of the IMC with an occupation (as opposed to a blockade) such as the one that occurred at Ipperwash Provincial Park.[63]

60. We submit that while Fox had a policing background, he had only recently been seconded to the Deputy Minister's Office a few months earlier and had had no experience in considering and advising on the government's position and response to occupations.[64]

61. We submit that the evidence overall does not support the assertion that the advice of experienced civil servants was rejected. We refer to our previous submissions generally and highlight some of the evidence below.

62. Jai's evidence was that prior to attending the meeting of September 5, 1995, her goal was to "reach consensus around some sort of recommendation that would result in a process to end the occupation of the Park."[65] We submit that this goal was accomplished when the committee decided to recommend that the government obtain an injunction.

63. Christie testified that the options that she presented at the meeting were options that she had previously discussed with two other senior lawyers, including McCabe who had considerable experience in dealing with blockades:

> Q: Hmm hmm. So, there was no detailed review of the statutes and how they might apply to the situation at the September 5th

[62] Testimony of Jai on August 30, 2005 at pp. 48-49, 113-114
[63] See, for example, the Testimony of Hutchison on August 25, 2005 at p. 266 and the Testimony of Prodanou on September 20, 2005 at p. 143
[64] Testimony of Fox on July 11, 2005 at pp. 10-14
[65] Testimony of Jai on August 31, 2005 at pp. 18-19

meeting, that -- that was the work of the subcommittee following the meeting?

A: That's right.

Q: And at the meet --

A: We -- well, actually to clarify that, my -- my recollection is that I -- that I had actually had discussions with Tim McCabe. And I -- and I believe I had actually talked to Scott Hutchison the criminal lawyer in advance of the September 5th meetings.

It didn't happen until later in the morning, in anticipation of -- of need to provide some preliminary advice about what our options were. So, you know, there hadn't been detailed analysis at that point, but I was speaking to people much more senior than I who knew some of those statutes like the back of their hand.

So -- so, there was some -- there had been some preliminary assessment. These -- these weren't just pulled out of a hat.

Q: So, when you referred to some of these statutes for instance, this was as a result of some of the prior communications that you'd had both with Tim McCabe and Scott Hutchison?

A: Yes and my own knowledge of them, yeah.[66]

64. Jai, the Chair of the IMC, testified that the options and views discussed at the IMC meetings were appropriate and, in fact, the purpose of the IMC was to engage in such discussions:

Q: This Committee was meeting to consider the possible legal options available to the Government regarding the occupation of the Park and to make recommendation -- recommendations regarding the Government's position, right?

A: Yes.

Q: And I take it that you regarded it as appropriate, therefore for the Committee to consider all of the options that were discussed at these meetings on August 2nd and then on -- on the 5th and 6th?

A: That it was appropriate for government --

[66] Testimony of Christie on September 27, 2005 at pp. 24-25

Q: The Committee to be reviewing these options?

A: Yes.

Q: And I take it that you regarded it as appropriate to have the participants at these meetings ask questions or articulate their perspectives and insights?

A: Yes.

Q: And no one at these meetings ever said that any of these options shouldn't be discussed in this forum, or with these participants?

A: That's correct.

Q: And discussion can help bring about a better understanding of the issues and the options. I mean that's – that's the point of having this sort of Committee meeting?

A: Yes.[67]

65. We submit that while some participants at the IMC meetings formed no impressions of Hutton's manner, some perceived that Hutton, the representative of the Premier's Office at the meetings, was "assertive" or "forceful".[68]

66. There is no evidence that Hutton shouted, swore, pounded the table or became abusive. There is some evidence that she was matter-of-fact. We submit that much of the evidence of Hutton's "forceful" manner simply reflected the fact that she represented the Premier and made reference to his views.[69]

[67] Testimony of Jai on September 13, 2005 at pp. 132-133

[68] Testimony of McCabe on September 28, 2005 pp. 222-223; Testimony of Bangs on November 3, 2005 p. 54; Testimony of Jai on August 31, 2005 at p. 71; Testimony of Hipfner on September 15, 2005 at pp. 84-85, September 20, 2005 at pp. 30-32

[69] Testimony of Christie on September 26, 2005 at pp. 112-113; Testimony of Bangs on November 3, 2005 at pp. 214-215; Testimony of Patrick on October 17, 2005 at p. 125

67. The consensus of the IMC meeting on September 6, 1995 was to recommend seeking an injunction as soon as possible.[70] We submit that seeking an injunction before the Court, whether on notice or not, was a process for achieving a peaceful resolution.

68. The Chiefs of Ontario assert that "the use of force was an inescapable inference" of Hutton's "demands" at the IMC meeting.[71] The clear evidence of the civil servants refutes this. Hutchison testified as follows when asked if anyone advocated for the use of force:

> Q: But, no one at this meeting said that weapons or other physical force should be used to remove the --
>
> A: Yeah. I -- I don't --
>
> Q: -- occupiers.
>
> A: -- recall that at any point. And I would have recalled that if that kind of specific direction was being suggested. It would have been inconsistent with the ultimate recommendation.[72]

69. Parties have placed undue emphasis on reference to one word: "hawkish". Hutton does not dispute that she may have used the word. The evidence is clear that the comment was made in response to a question about what would the government's tolerance level be if the situation continued to escalate.[73]

70. When asked what she meant, Hutton testified as follows to what she believed were the Premier's personal views at the time:

> Q: And what did you believe it to mean?
>
> A: I'm not sure what I believed it to mean at the time. I can simply tell you what I believed the Premier's general view of this was.
>
> Q: All right.

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[70] P-636; P-742; Testimony of Christie on September 26, 2005 at pp. 142-143; Testimony of McCabe on September 28, 2005 at pp. 72-74; Testimony of Jai on August 31, 2005 at p. 113
[71] Submissions of the Chiefs of Ontario, p. 23
[72] Testimony of Hutchison on August 29, 2005 at p. 94
[73] Submissions of Hutton, Part V, para. 566-570

> A: And -- and I mean, that's the best I can -- I can help you with. Consistent with what I said earlier, I -- I think the Premier did -- was of the view that we did not need to respond; that sort of not saying anything was not an acceptable response; that we did need to make clear that we didn't condone this behaviour; that it was illegal and therefore as -- as landowner, we would take whatever steps we could to see the occupation come to an end.[74]

71. We submit that it is not unreasonable to infer that Hutton (who did not know of the previous government's position and actions in 1993)[75] likely perceived that some of the civil servants would regard any clearly communicated government policy position refusing to condone such action as a tough or "hawkish" position.

72. The evidence overall suggests that some civil servants were of the view that an *ex parte* injunction was a hard line or "hawkish" approach. Jai testified that she regarded it as "alarming".[76] However, the evidence overall is also clear that Jai continued to discount both the concerns of MNR representatives at the IMC meetings and the information they provided at the September 5 and 6, 1995 meetings just as she had in August.[77]

73. Jai's own evidence was that she had no experience in bringing applications for injunction.[78] McCabe, who was very experienced, initially thought that the government might not be successful on an *ex parte* injunction.[79] We submit that his assessment likely reflected the fact that some civil servants continued to dismiss the information provided by MNR, including the reports of gunfire; however, his evidence does not support the suggestion that he regarded the decision to proceed with one was "hard line." Furthermore, his evidence clearly refutes the suggestion that the decision was in any way inappropriate.

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[74] Testimony of Hutton on November 21, 2005 at pp. 231-232
[75] Testimony of Hutton on November 21, 2005 at pp. 128-129; Submissions of Hutton, Part III, para. 203-213
[76] Testimony of Jai on August 31, 2005 at p. 122
[77] Submissions of Hutton, Part III, para. 334; Part V, para 635, 677-679, 713-714, 825, 836
[78] Testimony of Jai on August 31, 2005 at p. 134
[79] Testimony of Jai on September 28, 2005 at pp. 68-70, 215-216

74. We submit that the evidence is clear that when McCabe obtained information directly from the Incident Commander, not filtered by others not on the ground, Carson confirmed that he regarded the situation as one which warranted an injunction, based on the events of the night of September 5, 1995.[80] When asked if he thought that an injunction should be granted on an urgent basis, Carson said: "Yes, absolutely."[81]

75. In order to maintain their attack on the former Premier, some of the parties have tried to address these facts. They do so by impugning the integrity of Carson and McCabe. The Estate suggests that McCabe sought to suggest to Carson what testimony he should give in order to justify the application for an *ex parte* injunction. The Estate blatantly asserts that Carson wanted to help the government and just bought into some fictitious "emergency mindset."[82]

76. We submit that Carson and McCabe came to the Inquiry and testified at length. They appeared candid, truthful and entirely credible. The clear evidence was that others who had worked with them had great respect for their abilities and their integrity. We submit that the record of the phone call, in its entirety, supports the testimony of Carson and McCabe, and that there is absolutely no basis for attacking their integrity in this manner. We further submit that these attacks demonstrate the desperate nature of the attempts by some parties to justify their pre-existing assumptions despite all of the evidence to the contrary.

77. In addressing the claims of the "aggressive approach", we have noted that some of the submissions of the other parties take things out of context or ignore considerable evidence. We now review some other specific examples of these deficiencies. We would like to emphasize that in our view the real problem is that there are numerous such deficiencies and that they have a cumulative effect. The overall result is that the submissions of various parties including the Estate, the Chiefs of Ontario, the

[80] Submissions of Hutton, Part V, para. 747-751
[81] P-444B, tab 39, p. 274
[82] Submissions of the Estate, pp. 92-97

Aazhoodena Group, the Army Camp Residents and ALST present a wholly misleading picture of Hutton's involvement.

Part III - Specific Examples of Problems

A) Example 1: Relying on Fragmented Comments - "Out of the Park – Nothing Else"

78. The submissions of the Estate assert that Hutton indicated on September 6, 1995 that the Premier wanted the occupiers "out of the Park - nothing else".[83] This is a reference which has been repeated out of context for years in the legislature, in the media and at this Inquiry. While the Estate attempts to rely on this reference to suggest that this was some bottom line demand for removal, when one puts this into the full context of the evidence, it dramatically changes one's understanding of what was actually said.

79. Patrick's notes of the September 6, 1995 IMC meeting are the source for the reference which, in full, is actually recorded as "OPP only maybe MNR out of Park only - nothing else".[84] When this reference was put to Patrick, who wrote it, he agreed that it was a fragmented reference to a comment by Hutton that when the OPP and MNR communicated with the occupiers at an up-coming meeting during the occupation, they should not engage in substantive negotiations on behalf of the government:

> Q: … And of the updates from Ron Fox and there's the reference to the noon hour meeting and then below that there's the reference:
>
> > "Premier doesn't want anyone involved in discussions other than OPP, possibly MNR. Doesn't want chief or others involved. Doesn't want to get into negotiations."
>
> And then there's a reference to:
> "MNR now viewing this as a police issue."
>
> Do you recall Ms. Hutton making a comment along those lines?

[83] Submissions of the Estate, p. 82; Submissions of the Aazhoodena Group, p. 92
[84] P-517

A: I believe so. I believe I have captured it in a -- somewhat of a different fashion in my notes.

Q: And I was just going to take you to that.

Q: In your notes there's again the references to the update from Ron Fox and then the notation:

> "D. Hutton. Premier last night OPP only maybe MNR. Out of Park only, nothing else.'

And I was actually just going to suggest to you that both of those notes actually refer to the same comment and that Ms. Hutton was simply indicating that OPP and MNR should not get into any substantive negotiations but only have discussions regarding ending the occupation.

Is that consistent with your recollection?

A: Yes. There -- there appeared to be some concern with the term 'negotiate'.[85]

80. Fox initially recalled that it was Jai, the Chair of the IMC, who had indicated the limitations of any discussions with the occupiers.[86] When he was provided with the more complete, though not verbatim, notes of Jai and Hipfner, Fox agreed that this concept of not getting into substantive negotiations had in fact been made by Hutton.[87]

81. When presented with Patrick's notes, Fox testified that there was only one comment at that time and that it was with respect to a concern about not getting into substantive negotiations:

Q: And then on the second page of the notes, there's a reference to Deb Hutton:
"Premier – last night – OPP only, maybe MNR out of Park only – nothing else."
And then:
"Peter – MNR view this now as an OPP issue."

A: Correct.

[85] Testimony of Patrick on October 17, 1995 at pp. 158-159
[86] Testimony of Fox on July 12, 2005 at pp. 30-31
[87] Testimony of Fox on July 14, 2005 at pp. 21-22

Q: Do you see that?

Q: Now, if you compare the reference in Mr. Scott Patrick's notes to the one in Julie Jai's notes, it appears that they're both references to the same comment.

Now, you didn't take those notes but you were at the meeting and I take it you don't recall two (2) separate comments being made at that point in the meeting?

A: At that juncture?

Q: Yes.

A: There was comment on one (1) -- one (1) aspect and that would be the comments from Ms. Hutton, yes.

Q: Right. And those are the comments that we've just reviewed in terms of adopting an approach consistent with the mandate of the IMC?

Open up some lines of communication, but don't get into substantive negotiations?

A. Substantive negotiations, yes.[88]

82. Other witnesses also provide context to this comment. Hipfner testified that on September 6, 1995 Peter Allen, Executive Assistant to the Deputy Minister, had noted very early on in the meeting that the term "negotiate" had been used in the media and had indicated that "we shouldn't use the term "negotiate" at all because it denotes certain things that are not happening and will not happen". At the Inquiry, Hipfner testified as follows:

Q: With respect to Mr. Allen's comments, was there any further discussion at that point in the meeting about the concept of negotiation or it's desirability?

A: I know that there was discussion about -- about negotiating versus discussing and not negotiating substantive matters. I don't recall

[88] Testimony of Fox on July 14, 2005 at pp. 24-26

whether that -- that discussion -- I don't think it took place at this point.[89]

83. Hipfner then went on to testify with reference to her notes that the discussion about not getting into substantive negotiations occurred when Hutton made her comment, just prior to Peter Allen's reference to MNR viewing this as a police issue:

> A: The next point that I've recorded at 8 page 2 is Hutton, Deb Hutton, saying:
>
> > "The Premier is firm that at no time should anybody but OPP/MNR be involved in the discussions despite any offers that might be made by TP's as third parties such as the Chief, et cetera..."
>
> And that would have been an example that she provided and I recorded:
>
> > "...because then you get into negotiations and we don't want that."
>
> So you asked if there had been any discussion about -- about negotiations and discussions and what could and couldn't be addressed with the occupiers and this was certainly another – another example of that.
>
> Peter Allen says:
>
> > "MNR views this as a police issue. MNR would prefer to take a back seat at this point."[90]

84. We submit that when one compares the more detailed notes of Jai and Hipfner and those of Patrick and looks at the notations both before and after the references, it is evident that Patrick's "out of the Park" notation merely refers to a warning that the OPP and MNR not get into substantive negotiations on behalf of the government while an occupation is on-going, as acknowledged by witnesses who were present.

B) Example 2: Effects of Ignoring Evidence - "Bottom Line Wants them Out"

[89] Testimony of Hipfner on September 15, 2005 at p. 104
[90] Testimony of Hipfner on September 15, 2005 at pp. 109-110

85. The submissions for the Estate quote some of what Fox told Carson in the call on September 5, 1995, including the reference to "the bottom line is wants them out", and asserts that they were the "Premier's instructions" to the Incident Commander through Hutton and Fox.[91] We submit that a careful review of the evidence simply does not support this bald assertion.

86. The contemporaneous notes do not indicate that Hutton made this comment and even Fox's language suggests that this was just his general understanding. Hutton, Harris and others have testified that the government's position at the time, given the legal advice that province had clear title to the park, was that the government wanted an end to the occupation.[92] This policy position was entirely consistent with the pre-existing mandate of the IMC, a mandate known to many civil servants, although not to Hutton.[93]

87. The policy position was also entirely consistent with the approach taken by MNR prior to the occupation and reflective of the discussion at the IMC about seeking an injunction before Hutton began to participate.[94] We submit that the fact that the first option discussed was the injunction implicitly reflects the fact that the goal was to bring about the end of the occupation.

88. Fox does not refer to any of this when he speaks to Carson, which is one of the many ways in which his comments in the call are misleading when heard out of context. However, we submit that Carson would not have been misled because he already knew from his dealings with MNR that the government had good title and had made contingency plans accordingly to prevent or, failing that, to end an occupation.

89. The evidence is clear that Hutton never advocated a specific course of action at the IMC. On September 5, 1995, Hutton indicated that the government needed to communicate its position. Over the course of September 5 and 6, Hutton also expressed concerns with

[91] P-444A, tab 16, p. 116
[92] Submissions of Hutton, Part V, para. 495-506, 567-570; Testimony of Harris on February 14, 2006 at p. 72
[93] Submissions of Hutton, Part V, para. 536; Testimony of Fox on July 13, 2005 at pp. 213-215; Testimony of Jai on September 12, 1005 at pp. 232-234; Testimony of Sturdy on October 18, 2005 at pp. 245-246
[94] Submissions of Hutton, Part IV, para. 273-287, 393-404, 427-430; Part V, para. 546-566

respect to the timing of the government's response. However, at the IMC on September 5, 1995, her only specific reference in that regard was her expressed concern that it might take two weeks for the government to go to court to seek an injunction.

90. With respect to Fox's call to Carson on September 5, 1995, we submit that if one refers to the desire of "wanting the occupiers out" to a police officer, then that different context could, hypothetically, alter how one understands the meaning of the sentiment. However, we submit that Carson did not parse every word that Fox uttered in regard to Hutton but had a general impression from the phone call in its entirety.

91. We rely on the contemporaneous evidence of the subsequent phone call between Carson and Parkin, which we submit is the best evidence of Carson's impression of the government's views at the time of that call. We note that following the phone call Carson advised Parkin of his perception that the government was "waffling".[95] The submissions of the Estate do not acknowledge that evidence.

92. Instead, the Estate elevates Fox's summary impression of a conversation at a government meeting about the government's position to an "instruction" to police. This despite the undisputed evidence of Fox and Hutton that he was not asked, let alone told, to communicate with Carson.[96] The Estate makes this assertion without in any way acknowledging the clear evidence that Fox's communication of his perception of the Premier's views was a breach of protocol and displayed very poor judgment.[97]

93. We submit that by referring to Fox's comment of his impressions out of context while ignoring considerable relevant evidence, the Estate presents a grossly misleading version of the evidence.

[95] Submissions of Hutton, Part V, para. 643-644
[96] Submissions of Hutton, Part V, para. 851, 867-868
[97] Submissions of Hutton, Part V, para. 873-875

C) Example 3: Effects of Ignoring Evidence - "No Negotiations"

94. The Chiefs of Ontario assert that Hutton rejected negotiations outright. They attack the credibility of Hutton and Harris that they did not want to get into substantive negotiations and assert (without referring to any supporting evidence whatsoever) that "they refused to accept the distinction that was offered at the time by the police". The Chiefs of Ontario specifically assert that Hutton (and Harris) rejected even "front-end communications by professional police officers".[98] This is flatly contradicted by the evidence.

95. Hutton and Harris testified that they were concerned about the government entering into substantive negotiations while the occupation was on-going as they did not want to encourage others to use such means.[99] However, their testimony is not the only evidence on this point. The contemporaneous notes of Jai and Hipfner referred to above at paragraphs 79 and 83 show that when Hutton commented on the issue of negotiations she expressly envisaged that OPP and MNR would be speaking to the occupiers.

96. Furthermore, Jai's notes record that at the end of the IMC meeting on September 6, 1995, Hutton asked for an update in regard to the expected noon hour meeting between the OPP and MNR and the occupiers:

> Deb – how do we keep up to date on events – eg noon mtg[100]

We submit that Hutton would not ask for an update of the meeting between the OPP and the occupiers if she did not expect the OPP to have those discussions.

97. We submit that attacking the credibility and integrity of witnesses before a Public Inquiry while ignoring contemporaneous documentary evidence is highly objectionable, especially where the omitted evidence would confirm the veracity of the testimony of those witnesses.

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[98] Submissions of the Chiefs of Ontario, p. 37
[99] Testimony of Hutton on November 21, 2005 at pp. 170-174, 227-229, 235-236; Testimony of Harris on February 15, 2006 at pp. 45, 262-263, February 16, 2005 at pp. 305-306
[100] P-536, p. 7

98. We submit that the evidence is clear that it was the occupiers themselves who rejected front-end discussions. The OPP made a number of attempts to communicate, all unsuccessful. According to the OPP, on the afternoon of September 6, 1995, it was the occupiers who refused to have any discussions and who said "we'll do our talking with guns."[101] While the occupiers dispute that comment, they acknowledge that they refused to speak to police.[102] Accordingly, it is quite ironic that the submissions made on behalf of the Army Camp Residents complain about the "hard-line approach" of the government: that there would be "no negotiation" and that they would seek an ex parte injunction before the court.[103]

99. The evidence is clear that the government's position was that they would not engage in substantive negotiations and that they would seek an ex parte injunction, and they did so. We submit that whether or not that was a "hard line" position is simply a matter of personal opinion (not a fact), on which reasonable people may disagree.

100. Previous governments had shared the views of Hutton and Harris that substantive issues should not be negotiated during an occupation. Shelley Spiegel, who was a member of the IMC under the former Liberal government and under the Harris government, testified that the rationale for not engaging in substantive negotiations was, in part, to avoid encouraging illegal action. She testified that she understood that this was the case under the Harris government in 1995 and under the former Liberal government.[104]

101. Jai testified that she knew that governments do not engage in substantive negotiations until direct action has ended because they do not want to reward direct action.[105] Fox also testified to that effect:

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[101] P-426, p. 66; P-1108, pp. 1378-1379, notes, p. 43; Testimony of Wright on February 22, 2006 at pp. 227-233
[102] Testimony of Glenn George on February 1, 2005 at pp. 223-228; Testimony of Roderick George on November 23, 2004 at pp. 134-138
[103] Submissions of the Army Camp Residents, p. 79, para. 151
[104] Testimony of Spiegel on September 21, 2005 at pp. 148-149
[105] Testimony of Jai on September 13, 2005 at p. 11

Q: Now, you've testified that this approach was consistent with the mandate of the Interministerial Committee to open up some lines of communication to assist in ending the blockade, but not having any negotiations with regards to substantive issues until the blockade or occupation ended?

A: I testified to that affect, yes.

Q: And you understand that the rationale is to discourage anyone from engaging in occupations or blockades?

A: Correct.[106]

102. Like the Chiefs of Ontario, other parties ignore the evidence that Hutton never said that there could be no discussions between the OPP and the occupiers while the occupation was on-going. The submissions of the Estate assert that Hutton had indicated that the OPP and maybe MNR should "deal" with the occupiers[107] without clarifying that she expressly referred to OPP and MNR having "discussions" with the occupiers, as reflected in contemporaneous notes.[108] The Aazhoodena Group also refer to Hutton as "insisting" that there should be "no negotiations". They nowhere acknowledge the distinction made between "substantive" negotiations and "front-end" negotiations.[109]

103. The evidence does not support the submission of Hutton's "insisting" that there be no negotiations. Rather, the evidence is that other members of the IMC meeting suggested that the OPP and MNR were more appropriate than a member of ONAS to dialogue with the occupiers.

104. The contemporaneous notes of the IMC meetings on September 5, 1995 do not attribute any comments to Hutton on the issue of negotiations. With reference to her notes, Hipfner testified that another participant Christian Buhagier raised a concern about

[106] Testimony of Fox on July 14, 2005 at p. 22
[107] Submissions of the Estate, p. 82
[108] P-536, p. 2; P-636, p. 2
[109] Submissions of the Aazhoodena Group, p. 4, para 15

confirming the status or legitimacy of the Stoney Pointers (whose actions were not supported by the Kettle and Stony Point Band):

> …Christian Buhagiar [sic] was an aide to Dan Newman, who was a member of Provincial Parliament and the Parliamentary Assistant to the Minister Responsible for Native Affairs, said we need a communication plan.
>
> And then suggested that there was an issue of doing anything that confirms status or recognition or legitimacy on the Stoney Pointers. And he says:
>
> > "If we send someone from ONAS, it confirms their [meaning Stoney Pointers] legitimacy. OPP and MNR are on the ground and running. They'd be more appropriate."
>
> Now I've left a few spaces and I've not indicated who made the next points.[110]

105. Jai had similar notes about a concern with sending someone from ONAS but had not attributed the comment to anyone and could not recall who said it. She testified about her recollection using her notes:

> Q: Then there's "MNR" question mark, "OPP" question mark?
>
> A: Yeah, so we're sort of canvassing these people and then we talk about MNR as having good relationships with the First Nation, but what is their relationship with the Stoney Pointers who are the dissident group that we believe is occupying the Park?
>
> Q: And there's a question mark there and that's what that refers to?
>
> A: Right. Exactly.
>
> Q: Okay.
>
> A: And then Ron Fox says, Well, we should rely on the OPP to gather intelligence, that we can do fact finding in conjunction with MNR, that John Carson is the incident commander and has a good relationship with everyone.[111]

[110] Testimony of Hipfner on September 15, 2005 at pp. 78-79; P-510
[111] Testimony of Jai on August 30, 2005 at pp. 256-257

106. We submit that there is no evidence that anyone expressed disagreement with the concerns about sending a representative from ONAS or the view that OPP should do the fact-finding with MNR because they had a "good relationship with everyone."

107. We further submit that there is no evidence that Hutton made any comment regarding negotiations at the September 5, 1995 meeting.[112] We submit that the evidence overall is that on September 6, 1995 Hutton followed up on the conversation of the previous day about OPP and MNR conducting discussions with the occupiers because the update on September 6, 1995 referred to the upcoming meeting and there had been some comment in the media suggesting that there were "negotiations".

108. The submissions of the Aazhoodena Group submit that Hutton and Harris "precluded" the possibility that the IMC appoint a facilitator-negotiator and ask for a finding that this was one way that they "contributed to the killing of Dudley George". They rely on Jai's evidence in this regard, as does ALST, who make a similar submission. However, the evidence in no way supports such a finding.

109. No one testified that Hutton refused to allow the appointment of a facilitator-negotiator. The evidence was that the option was not suggested. Sturdy testified as follows:

> Q: Okay. Now during the course of this meeting, was there any discussion about the possibility of the Inter-ministerial Committee appointing a negotiator or facilitator to assist with resolving the physical occupation of the Park?
>
> A: Not to my recollection.[113]

110. When Hipfner was asked if anyone objected to the appointment of a negotiator, she testified that it was premature:

> Q: Did anyone at the meeting object and suggest that the Committee should recommend sending a negotiator to try and open up communications with the occupiers at this point in time?

[112] P-742; P-510; P-536
[113] Testimony of Sturdy on October 19, 2005 at p. 53

A: I don't know that it would have been framed as an objection. I don't recall whether there was any discussion about actually appointing a negotiator.
I don't think we were that far down the road yet.[114]

111. Patrick testified to similar effect and noted that, on September 6, 1995, the IMC was waiting for further information from the expected meeting between the OPP and the occupiers:

Q: And was there any discussion concerning the option of selecting a negotiator or using a third party neutral to facilitate -- to facilitate discussions?

A: I don't recall a discussion about that, no.

Q: And that was an option under the guidelines?

A: It was an option. I -- I -- my thought on that is that there wasn't a great deal of information coming from those that were on the scene. And there was to be a meeting later in the -- in the day.

Q: Between the OPP and the people on the ground?

A: That's correct. And I - - I believe that the expectation was at the Committee that there would be additional information coming back to us from that meeting.

Q: As to what the demands of the occupiers were?

A: Yes, sir.[115]

112. Dave Moran, who attended both IMC meetings, flatly rejected the premise that Hutton was the reason that the facilitator-negotiator was not appointed:

Q: I understand that. But we've heard evidence from Ms. Jai that one of the reasons why a negotiator was not appointed in this situation was, Number 1, the need to, conveyed by Ms. Hutton, to move the

[114] Testimony of Hipfner on September 15, 2005 at p. 214
[115] Testimony of Patrick on October 17, 2005 at pp. 96-97

process quickly, that's part of it; and the second part of it was the need to portray the issue as a law-enforcement issue as -- as opposed to a First Nations issue.

Is that consistent with your understanding of how the meeting progressed?

A: No, that's not what I testified to for the last day and a half.

Q: All right. Well that's the evidence that we've heard. And I'm suggesting to you that it would be --

A: Yeah, but what I testified to, was that there was a -- it was my understanding that we needed to move quickly because there was afraid -- there was a fear of -- safety within the community, Pinery Provincial Park, and that they -- the possibility that they -- the occupation could get, you know, more people could join it.

So that was the reason for the last -- [116]

113. When he was asked whether there would have been no purpose in appointing a facilitator-negotiator to enter into negotiations about the burial ground, Moran testified that there was no opposition on the Committee to the appropriate things being done with regard to a possible burial ground. The general attitude was that "let's find out for sure, and if there is, let's take the appropriate steps."[117]

114. Hutton's evidence is consistent with all of the evidence cited above. She testified that no one raised the option of a third party negotiator or a facilitator on September 5, 1995. She further testified that she raise any options except with regard to communications because she was there to learn from others.[118] Hutton further testified that she never said at either meeting that any option should not be considered or was off the table.[119]

115. As stated above, Hutton was concerned with avoiding any substantive negotiations during the course of the occupation, consistent with the policy of the IMC. Hipfner's

[116] Testimony of Moran on November 1, 2005 at pp. 358-359
[117] Testimony of Moran on November 1, 2005 at p. 249
[118] Testimony of Hutton on November 21, 2005 at p. 196
[119] Testimony of Hutton on November 23, 2005 at p. 407

contemporaneous notes from the second meeting show that Hutton mentioned a concern that involving a third party on behalf of government might get into land claims:

> Hutton: Premier is firm that at no time shd [should] anybody but OPP, MNR be involved in discussions, despite any offers that might be made by TPs (Chief etc) – b/c get into negotiations, and we don't want that.[120]

116. Jai's notes from the same meeting record a similar comment:

> PO – wld [would] like Chief to support us – but do this independently – doesn't want to go into land claims.[121]

117. The vast majority of the evidence is that the IMC simply did not get to the point where they would consider the appointment of the facilitator-negotiator. The possibility of a negotiator-facilitator was not mentioned at the IMC meeting on August 2, 1995. It was not mentioned at the beginning of the September 5 IMC meeting or during the review of the options by Christie at the same meeting.[122]

118. Once again, the submissions of other parties simply ignore much of the evidence and choose to present an incomplete picture of the evidence to the Commissioner. We appreciate that one cannot refer to all the evidence when making submissions; however, given the serious allegation that there was a failure to appoint a facilitator-negotiator which led to the death of Dudley George, we regard it is as highly objectionable to disregard relevant evidence.

119. At the Inquiry, when asked why the IMC did not appoint a facilitator-negotiator, Jai said that there were three reasons:

a) Hutton said that the Premier wanted the occupiers out in a day or two;
b) The government viewed this as an Aboriginal issue and did not want to appoint someone from ONAS because that would bring it into "land claims"; and

[120] P-636, p. 2
[121] P-536, p. 3
[122] Submissions of Hutton, Part III, para. 315-333, Part IV, para. 546-590

c) The IMC had "a lot of confidence in John Carson as the OPP person on the ground" and there was a meeting that had been set up for noon on September 6.[123]

120. The evidence is that on September 5, 1995 there was reference to a fact-finding. At that time, Christian Buhagier raised the concern about ONAS acting in that role and bringing the government into land claims and the decision was to leave fact-finding to the OPP. Two of Jai's reasons refer to this discussion on September 5, 1995. Jai's second reason expressly refers to the comments attributed to Buhagier. Jai's third reason refers to the decision of the IMC that the OPP was the appropriate party. The evidence is clear that the comment which Jai said was her first reason as to why she failed to suggest the option of the facilitator-negotiator was a comment which she attributed to Hutton. However, the evidence is clear that this comment attributed to Hutton was only made mid-way through the meeting on September 6 following reports of the situations worsening and of automatic gunfire.[124] We submit that Jai's stated reasons are something of a rationalization years after the fact. We submit that the evidence overall is that Jai thought that it was premature and did not think to raise the appointment of a facilitator-negotiator.

121. We submit that the evidence overall is clear that the issue of a facilitator-negotiator was never raised. There is nothing to support the evidence that the appointment of a facilitator-negotiator was precluded by Hutton.

D) Example 4: Effects of Ignoring Evidence - Advocating for Criminal Charges

122. The submissions of the Aazhoodena Group assert that Hutton emphasized Harris' view that the occupiers should be removed by charging them with trespass and that criminal charges should be laid against the occupiers. In support of this allegation, they rely upon Ron Fox's evidence about Scott Patrick's notes of the September 6 IMC meeting, which

[123] Testimony of Jai on September 14, 2005 at pp. 24-26
[124] Testimony of Jai on September 14, 2004 at pp. 24-25

we reviewed in section A above.[125] We submit that our previous review makes clear that Hutton only raised concerns that the OPP and MNR not get into substantive negotiations when meeting with the occupiers.

123. The Aazhoodena Group also rely on Fox's evidence about another excerpt from Patrick's notes of September 6, 1995 which indicate as follows:

> PMO – longer they occupy – major crisis
> - what about the criminal code[126]

124. However, the evidence on the cross-examination of both Patrick and Fox does not support the submission. Patrick's notes suggest that Hutton asked about the criminal code and Patrick initially testified that that was his recollection; however, when presented with the notes of Jai and Hipfner which clearly indicate that the question was raised by Tim McCabe, Patrick acknowledged that their notes contradicted his and that it appeared possible that he had failed to notice the change in speaker:

> Q: Well, in these notes there's the reference to a comment attributed to Ms. Hutton:
>
> "Premier's view that the longer the occupiers are there the greater the opportunity they have to garner support, arm selves."
>
> And then below that:
>
> "Tim, that suggests criminal code approach."
>
> And then there's some -- some notations with respect to Mr. Fox and I'm wondering if that assists you at all in terms of recalling that it was actually Mr. McCabe?
>
> A: It would appear to contradict my notes and my recollection, yes.
>
> Q: And if you could turn to, sorry, to Julie Jai's notes which are at Tab 8 of Commission Counsel's documents, the notes --- the notes with the number "three (3)" at the top of the page and the first notation is:
>
> "We are seeking the injunction …"

[125] Submissions of the Aazhoodena Group, pp. 87-88, para. 293-295; pp. 92-94, para. 315
[126] P-517; Submissions of the Aazhoodena Group, p. 93, para. 315

> And then below that, halfway down the page there's a reference to some comments attributed to Deb and then below that there's a reference to Tim:
>
> "That suggests we should proceed under code."
>
> And I'm just wondering if Ms. Jai's notes and Ms. Hipfner's notes assist you today in perhaps suggesting to you that your notes -- that in your notes you simply failed to attribute -- or failed to note that there was a change in speaker; is that possible?
>
> A: It appears to suggest that, yes.[127]

125. When shown Jai's notes, Fox testified before the Inquiry that he recalled that it was Tim McCabe who had made the suggestion regarding the Criminal Code. However, Fox immediately pointed out that he inferred that McCabe only made the comment because he would not be able to prepare materials for an injunction within a couple of days:

> Q: And then, if you can just return to Ms. Jai's notes below the comment we were just reviewing, there's a reference to:
>
> "Tim – that suggests we should proceed under code."
>
> And, do you recall, sir, that it was Tim McCabe who then suggests that proceeding under the Criminal Code might be a quicker way to resolve the situation?
>
> A: No, I don't recall him saying it in that fashion. What I do recall is that when Ms. Hutton made the comment with respect to the two (2) days, I believe Mr. McCabe was responding and saying that it would not be likely that the necessary material could be put together and it would suggest then that the way to proceed would be under the Criminal Code.[128]

126. In the passage relied upon by the Aazhoodena Group, Fox made no inferences in favour of Hutton when he was provided with Patrick's notes, notes which Patrick later acknowledged erroneously suggested that Hutton made the comment about the Criminal Code. Fox relied on Patrick's misleading notes and simply assumed that she was proposing that the Criminal Code be used.[129] We submit that Fox did not have a

[127] Testimony of Patrick on October 17, 2005 at pp. 167-168
[128] Testimony of Fox on July 14, 2005 at pp. 38-39
[129] Testimony of Fox on July 18, 2005 at pp. 192-193

recollection of who made the suggestion, but when aided by more detailed notes, Fox acknowledged that it was McCabe and not Hutton.

127. On September 5, 1995, Fox told Carson that it was MNR representatives who wanted criminal charges laid:

> Fox: Um MNR by the way ah kind of were against getting an adjoining order.
>
> Carson: Really.
>
> Fox: Yeah yeah referring basically to pass it over and say well you know I mean there is criminal code offences of Mischief you know, Interfere Lawful Enjoyment or Use of Property and Trespass so I very carefully explained to them that you know under the Trespass to Property an officer could go serve process escort somebody to the gate and then they can come back in.
>
> .....
>
> Fox: Okay okay now the other thing that came up at the meeting one of the MNR chaps it wasn't STURDY it was the other guy Ron
>
> Carson: BALDWIN.
>
> Fox: Yeah.
>
> Carson: Yes.
>
> Fox: And he said that he had just got information that they meaning these insurgents had an OPP car.
>
> Carson: (laughs)
>
> Fox: I said no I very much doubt that.
>
> Carson: (laughs)
>
> Fox: Well you know why can't they be charged with Mischief they're cutting our tress down and their gonna and I said I

understand they are but I said one has to be identified as the ah perpetrator for criminal offence.[130]

128. Fox did not state in the phone call that Hutton had indicated any such comments. Fox made express references to Hutton at the outset of his phone call to Carson, which we have previously submitted were taken out of context, contrary to existing protocols and not appropriate. However, we submit that since Fox had made such express references, he would have referred to her indicating that she wanted criminal charges laid, if he had had that perception at the time.

129. Before the Inquiry, Fox testified as follows:

> Q: And you also made some comments regarding the position of the MNR in this telephone call and I think you indicated -- well, let me ask you this: What was their initial position with respect to the suggestion that an injunction should be obtained?
>
> A: Again, the matter should be dealt with by virtue of substantive offences, be they provincial or under the Criminal Code.
>
> Q: All right. And do you recall who from the MNR personnel was the most vocal in -- in communicating that?
>
> A: As I recall, in reading the -- the transcript here, you asked my that question earlier --
>
> Q: Yes.
>
> A: -- and it would appear that it was Mr. Baldwin.[131]

130. The evidence of other witnesses is that Hutton did not specify a course of action, let alone one relating to criminal charges. Jai, the Chair of the IMC who attended both meetings, testified that Hutton never advocated any specific course of action:

> Q: You've indicated that you don't recall Ms. Hutton making any other comments at this point in the meeting and you made reference to a comment which we'll come to later. But I take it, from your notes

[130] P-444A, tab 16, pp. 117, 119-120
[131] Testimony of Fox on July 11, 2005 at pp. 212-213

and your recollection, Ms. Hutton didn't specify what action should be taken to bring about an early end to the occupation, correct?

A: All I recall her saying was that they wanted -- she wanted -- the Premier wanted to move as quickly as possible, but no specific action.[132]

131. Christie, who also attended both meetings, recalled that MNR had expressed concerns and that they all had concerns and agreed that Hutton had not advocated any particular course of action:

Q: Just -- just generally, do you recall concerns being expressed by some of the MNR people on the ground?

A: Sure, MNR people were concerned about the situation. Everybody was concerned about the situation.

Q: And we've heard evidence at this Inquiry that other than a reference to an injunction, Ms. Hutton didn't specify a particular course of action.
And I take it that's consistent with your recollection?

A: Yes.[133]

132. Hutchison, who attended on September 6, 1995, also testified that he did not recall a statement as to what means should be used to bring about the end of the occupation:

Q: I'm -- I'm simply asking if you recall a statement expressing a view as to what means should be used?

A: No, no. And in fairness, as I said on -- on Friday, one (1) of the things that a group like this does is option out the different means that are available.

I mean, government only has its hands on certain levers of power. What you'll get at this meeting is, here's sort of the general direction we want to go in, we'd like to move them out and in as expeditious a way as possible. Tell us what levers we can pull to make that happen.[134]

[132] Testimony of Jai on September 13, 2005 at pp. 92-93
[133] Testimony of Christie on September 27, 2005 at p. 23
[134] Testimony of Hutchison on August 29, 2005 at pp. 63-64

133. The more detailed notes of Jai and Hipfner do not record Hutton as advocating that criminal charges should be laid or advocating any course of action.[135]

134. We submit that the evidence clearly does not support the submission that Hutton advocated in favour of the laying of criminal charges or in favour of any particular course of action.

E) Example 5: Effects of Ignoring Evidence - "Against the Injunction"

135. While the submissions referred to above criticize Hutton for favouring a particular course of action, the submissions of the Chiefs of Ontario criticize Hutton for not proposing or advocating for an injunction and then argue that she did not want an injunction.[136] Those submissions assert vaguely that Hutton was in favour of more urgent, "drastic action".[137]

136. We submit that this ignores the clear evidence of numerous witnesses and is totally unfair and ridiculous. Hutton was not a decision-maker. Hutton attended the IMC meetings to be briefed and obtain advice so that she could then brief and advise her Minister, the Premier.[138]

137. The Estate goes even further and asserts that the former Premier and Hutton knew what they wanted even before the IMC meetings in September.[139] There is absolutely no evidence to support this assertion and it was flatly contradicted by the evidence of both the former Premier and Hutton that, while they had some thoughts, they wanted to obtain more information and advice.[140]

138. The submission is also patently absurd: if the Premier knew in advance what he wanted to do, he could contact the other Ministers and proceed to make decisions. Ministers do

[135] P-510, P-636, P-536
[136] Submissions of the Chiefs of Ontario, pp. 24-26
[137] Submissions of the Chiefs of Ontario, p. 26
[138] Submissions of Hutton, Part V, para. 537-539, 830-833, 837-840
[139] Submissions of the Estate, p. 68
[140] Testimony of Hutton on November 21, 2005 at pp. 170-174; Testimony of Harris on February 14, 2006 at pp. 65-67, 69-73; Submissions of Hutton, Part V, para. 537-544; 837-840

not need to seek the approval of their advisers. We submit that the fact that Hutton attended the IMC meetings on September 5 and 6, 1995 is objective evidence of the intent to seek the advice of the IMC.

139. We submit that it was not Hutton's responsibility to propose specific options or to advocate for them. However, the fact that she did not propose or advocate for an injunction is not evidence that she was opposed to one. Hutton acknowledged that she was concerned about timing when she was initially told that it could take two weeks to obtain an injunction and this is reflected in Jai's notes which indicate:

> Deb – wants an emergency inj. – doesn't want to wait two wks[141]

140. We submit that this is not evidence of wanting "drastic action" whatever that is supposed to mean. We note that there was no recommendation on September 5, 1995 as the IMC was to wait for further advice from the government lawyers following their review of the options.

141. The clear evidence is that on September 6, 1995 the participants recommended that the government seek an injunction as soon as possible.[142] Hutton's testimony is that she agreed with that recommendation and there is no evidence which disputes that.[143] On the contrary, the clear evidence is that Hutton brought the matter was brought to the attention of the Premier and the responsible cabinet Ministers then agreed to proceed with the injunction.[144]

142. There is no evidence that Hutton, or anyone, argued against the government seeking an injunction at the dining room meeting.[145] We submit that the evidence simply does not support the submission that Hutton was opposed to the injunction.[146]

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[141] P-536, p. 8
[142] Testimony of Jai on August 31, 2005 at pp. 93-94; P-636; P-742; Testimony of Christie September 26, 2005 at pp. 142-143; Testimony of McCabe on September 28, 2005 at pp. 72-74; Testimony of Jai on August 31, 2005 at p. 113; Testimony of Hunt on November 2, 2005 at p. 55
[143] Testimony of Hutton on November 22, 2005 at pp. 57-58
[144] Submissions of Hutton, Part V, para. 728, 735, 738
[145] Submissions of Hutton, Part V, para. 728-737

143. Some of the submissions of other parties attempt to link the government's decision to seek an injunction with a direction to the OPP to mobilize the CMU to march on the park to evict the occupiers.[147] It is clear from the evidence, as referred to in our submissions, that the police knew on the evening of September 6 that the government was going to court to obtain an injunction the next morning. Carson left the command post expecting that things would remain status quo and the work towards the injunction would continue.

144. We submit that it is ludicrous to suggest that the government attempting to obtain an injunction was a direction to the OPP or influenced them to mobilize the CMU. Until the situation on the ground escalated, the OPP was planning on simply monitoring the situation until the receipt of the injunction. As we argue in our submissions, when the OPP went down the road on September 6, it was responding to the situation on the ground and attempting to contain the occupation to the park.

F) Example 6: Ignoring Evidence and Sheer Conjecture – The "Dining Room"

145. There is very little evidence of who called the dining room meeting as no one could recall. Relying simply on the fact that the dining room meeting occurred in the Premier's dining room, various parties construct elaborate arguments which ignore basic evidence to the contrary.

146. The Army Camp Residents assert that the dining room meeting was called because Hutton "met with resistance from the Police, the Solicitor General and the Attorney General despite carrying the Premier's message to two separate IMC meetings." They go on to assert that the purpose of the dining room meeting was to "bring all those involved in line, including Ron Fox and Scott Patrick, members of the Police."[148] The Estate asserts even more dramatically that Hutton "was seething from how Ron Fox had

[146] Submissions of Hutton, Part V, para. 728-737
[147] Submissions of Estate, pp. 113-114, 124; Submissions of the Chiefs of Ontario, pp. 61-62
[148] Submissions of the Army Camp Residents, p. 80; Submissions of the Estate, pp. 84-85

opposed her in that meeting and wanted him to hear straight from the Premier how things would run."[149] Neither refer to any evidence to support these assertions.

147. There is no evidence that Hutton was angry because of supposed resistance at the second IMC meeting. The evidence is that the IMC recommended that the province would seek an injunction as soon as possible and that the Ministers at the dining room meeting then discussed the issue of the injunction. Furthermore, the evidence is clear that Fox had no decision-making authority for the injunction – it was up to the Ministers. We submit that there was no need to bring him or any other civil servant "in line."

148. There is some evidence about how the dining room meeting came about. There was evidence that the four political staff in attendance at the IMC each gave their Ministers a briefing following the September 5, 1995 meeting.[150] We submit that since the IMC had come to a recommendation on September 6, 1995, it is entirely logical that the relevant Ministers would again be briefed in that regard.

149. Hutton testified that she went to Cabinet following the IMC meeting.[151] She further testified that Cabinet agendas are set many days in advance and had been set prior to the commencement of the takeover of the park.[152] When asked about the premise for the dining room meeting, Hutton testified:

> As I said, I don't have a specific recall. It just seems to me to be logical that if each of us were looking for final confirmation from our individual Ministers, in my case the Premier, and that's where they were, it makes some sense that we'd come together and have one conversation instead of four (4).[153]

150. Harris testified that he informed Cabinet that there would be a meeting afterwards of the relevant Ministers. The evidence is that they met in a room just down the hall from the

[149] Submissions of the Estate, pp. 87-88
[150] Testimony of Hutton on November 21, 2005 at pp. 254-255; Testimony of Bangs on November 3, 2005 at pp. 63-64; Testimony of Hunt on November 2, 2005 at p. 63; Testimony of Moran on October 31, 2005 at pp. 222-224
[151] Testimony of Hutton on November 22, 2005 at p. 77
[152] Testimony of Hutton on November 21, 2005 at pp. 258-259
[153] Testimony of Hutton on November 22, 2005 at p. 85

Cabinet room where people were clearing papers away following Cabinet.[154] We submit that no one specifically recalls who called the dining room meeting because it was not in any way a memorable decision but an obvious next step.

151. The evidence of Vrancart was that he received a call from the Secretary of Cabinet that he attend the meeting and that he assumed that the request came from the Premier's Office.[155] When Taman was asked about this, he could not recall who asked him to attend but assumed that the request came from the Premier's office. He further testified as follows:

> It -- it wouldn't be uncommon for the Premier's office to say I want you to be sure the minister's there and for the minister then to bring along two (2) or three (3) staff people. So you -- you couldn't, in fairness, judge from the fact that a person was there exactly who had asked him to come.[156]

152. Fox did not recall who specifically paged him; however, Patrick did. Patrick testified as follows:

> Q. Now after you -- at the end of the Interministerial Committee meeting what did you do next?
>
> A: Superintendent Fox and I left the -- the 595 Bay offices and proceeded to the street at which time he was paged. A page came to him from the Deputy Solicitor General's office.
>
> Q: And what did you do as a result of his receiving the page?
>
> A: We attended to Queen's Park to a meeting that was convened in the Premier's office.[157]

153. Fox testified that he did not know why he was paged:

> Q: Thank you. Now, did you have any notice as to why you had been paged to go to this building?
>
> A: No, I did not.
>
> Q: All right. And did you go to the dining room?

[154] Testimony of Harris on February 14, 2006 at p. 114; Testimony of Hodgson on January 12, 2006 at p. 169
[155] Testimony of Vrancart on October 27, 2005 at p. 28
[156] Testimony of Taman on November 15, 2005 at pp. 243-244
[157] Testimony of Patrick on October 17, 2005 at pp. 97-98

A: That is correct.

Q: When you arrived in the dining room, generally what was going on?

A: There appeared to be a meeting in progress.[158]

154. However, in Fox's call to Carson on September 6, 1995, Fox told Carson that he got a page to go the legislative building to "meet the Deputy". The submissions of several parties, including the Estate, assert that this call is the most reliable, accurate and detailed record of the dining room meeting. We submit that they should acknowledge that according to what they regard as the "most reliable, accurate and detailed record", Fox was called to meet his Deputy Minister, Todres.[159] However, they make no reference to this.

155. Deputy Solicitor General Todres testified that she would not have decided who she wished to take with her to the meeting. She further testified that she was not clear what the content of the meeting would be about but "could imagine that it might have something to do with Ipperwash". She further testified as follows:

> So, I recall walking along with Ron, and perhaps Barbara Taylor, and Scott. We reached what we called the dining room and I walked into the room alone without Mr. Fox, Mr. Patrick, or Ms. Taylor and I'm not sure about the order in which people arrived. I don't have a recall of that.[160]

156. We submit that the evidence is clear that Fox gave an update at the dining room meeting regarding the situation at the scene and provided context for the reports of automatic gunfire. Todres did not recall his being present but the evidence overall clearly indicates that Fox gave a briefing while she was there.

157. We submit that the evidence overall does not indicate who specifically made the decision to have Fox attend; however, it strongly suggests that the reason for Fox's attendance was

[158] Testimony of Fox on July 12, 2005 at p. 63
[159] P-444A, tab 39, p. 263; Submissions of the Estate, pp. 130-131
[160] Testimony of Todres on November 30, 2005 at p. 51

simply to provide an update to the Ministers in view of the worrisome information about the worsening situation at the park.

158. The Army Camp Residents assert that Hutton "summonsed" Fox and Patrick "behind the back of the Deputy Minister, Elaine Todres, breached protocol and circumvented buffers established for the express purpose of filtering information and communications between elected officials and government workers."[161] They cite no evidence for this and it is flatly contradicted by the evidence before the Inquiry referred to above.

159. The Estate suggests that Hutton was lying when she indicated that she did not recall instructing that Fox be paged to the dining room meeting "to cover up the fact that she deliberately invited an OPP liaison officer to attend that meeting with the Premier to hear the Premier's instructions."[162] They assert that the "only other person" who could have done so was Todres but she testified that she did not.[163] They make no reference to either Patrick's evidence or the reference in Fox's call to Carson.

160. We submit that there is no absolutely no basis for finding that Hutton lied on this issue. We submit that there is no basis for suggesting sinister motives for the fact that witnesses did not specifically recall who made the various decisions about having the meeting, when and where the meeting was to take place and who was to attend. We submit that these issues were minor details and may have been made at different times and involved a number of different people. We submit that it is clear that the dining room meeting was an informal gathering so that Ministers could quickly and efficiently be updated on the situation and the IMC meeting following Cabinet, where they were already gathered.

161. The lack of evidence does not deter the Estate who request a finding that "Deb Hutton required Ron Fox's attendance at the Premier's Dining Room meeting, so that he could

[161] Submissions of the Army Camp Residents, p. 80, para. 155
[162] Submissions of the Estate, p. 88
[163] Submissions of the Estate, p. 88

hear from the Premier himself how things would run, and so that the Premier's instructions could be communicated to the OPP."[164]

162. The evidence is clear that there were no "police" at the IMC meetings or the dining room as Fox and Patrick were on secondment to the MSG.[165] Nowhere in their submissions do the Army Camp Residents, the Estate, ALST or several other parties acknowledge that undisputed and critical fact.

163. Nowhere in the submissions of the Army Camp Residents, the Estate, ALST, Aazhoodena Group do they acknowledge the clear evidence that Fox was never asked to communicate to the Incident Commander; that his spontaneous choice to communicate what he did was a breach of protocol; and that it displayed very poor judgment on his part.[166] We submit that the evidence is clear that the OPP continued to pursue their operational plans, maintaining the status quo pending an order from the court.

164. ALST argues without reference to any evidence that Hutton and Harris were not shocked to learn that Fox was a member of the OPP.[167] They also assert that Hutton and Harris took active steps to hide the existence of the dining room meeting but put forward no evidence to substantiate this allegation against Hutton.[168] Counsel for ALST did not put to Hutton that she was not surprised or shocked to learn that Fox was not an OPP officer and she did not have a chance to respond to this assertion. Again, ALST fails to acknowledge the clear evidence that Fox was seconded to the MSG and had no operational responsibilities. They also fail to acknowledge that he was <u>not</u> the government's liaison person with the OPP.

[164] Submissions of the Estate, p. 129
[165] Submissions of Hutton, Part IV, para. 300-301, 304, 427; Part V, para. 533, 860-865
[166] Submissions of Hutton, Part V, para. 639, 869-875
[167] Submissions of ALST, p. 70, para. 120
[168] Submissions of ALST, p. 70, para. 120

165. Hutton testified repeatedly that she did not know that Fox was a member of the OPP (in any sense) and there is considerable evidence to support her testimony which we refer to in our submissions, but that, too, is entirely ignored by ALST.[169]

166. We submit that the submissions of the parties on these issues simply cherry-pick what little evidence they can and ignore the considerable evidence which undermines their arguments. We submit that their submissions present a very distorted version of events that is very misleading and deliberately makes unwarranted attacks on witnesses' integrity and reputation.

G) Example 7: Effects of Ignoring the Evidence - Serpent Mounds

167. The submissions of the Army Camp Residents and those of the Kettle and Stony Point Band compare the peaceful resolution of the occupation of Serpent Mounds Provincial Park to the violent clash during the Ipperwash occupation. They argue that the occupation of Serpent Mounds was resolved peacefully because politicians were not involved.[170]

168. The Army Camp Residents assert that it is "ironic" that Hutton criticized Bangs for failing to advise the Premier's Office about Serpent Mounds given that it was resolved peacefully, but ignore the evidence of Bangs that, as a matter of protocol, the Premier's Office was to be advised of such situations.[171]

169. In suggesting that there is an irony, Army Camp Residents appear to link the lack of involvement of the Premier's Office in Serpent Mounds with its peaceful resolution.[172] However, their submissions ignore the significant differences in the circumstances of the two occupations and the impact of those differences on the occurrence of and the lack of violence.

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[169] Submissions of Hutton, Part V, para. 863-866
[170] Submissions of the Army Camp Residents, p. 42, para. 83; pp. 50-51, para. 97, 103-104; Submissions of the Kettle and Stony Point First Nation, p. 29
[171] Submissions of the Army Camp Residents, p. 68, para. 129; Testimony of Bangs on November 3, 2005 at p. 45
[172] Submissions of the Army Camp Residents, p. 68, para 129

170. Unlike the occupation of Ipperwash Provincial Park, the occupation at Serpent Mounds by the Hiawatha First Nation was a protest about a distinct political issue – the cancellation of harvesting rights for several First Nations, including the Hiawatha First Nation. Before the occupation began, the Hiawatha First Nation advised the MNR of their intention to conduct a protest in the park, indicated what they were protesting and handed out information to the public to educate them on why they were occupying the park. The protest was carried out and sanctioned by the official band. In addition, the official band actually owned, without dispute, a portion of the land comprising Serpent Mounds Provincial Park and leased it to the province, although the lease had expired. The Hiawatha First Nation had also commenced a land claim to Serpent Mounds.[173]

171. In contrast, there was no land claim regarding Ipperwash Provincial Park and the occupiers of Ipperwash Provincial Park had not raised any issue concerning the park with the provincial government in advance. The occupiers just made some bald threats to take back the land following the forcible taking over of the built up area of Camp Ipperwash only one month before the occupation. Unlike the Hiawatha First Nation, the leadership of the Kettle and Stony Point Band advised that they did not have a claim to Ipperwash Provincial Park and were unaware of any burial grounds there. The leadership of the Kettle and Stony Point Band expressly disavowed the occupiers' actions in taking over the park and the built up area of the camp.[174]

172. While the Hiawatha First Nation communicated their reason for the occupation to the MNR and the general public, the occupiers did not make any attempt to properly articulate their intentions, any demands or the basis for them after taking over the park. In fact, they deliberately avoided communication with the OPP, who were attempting to

[173] Testimony of Vrancart on October 27, 2005 at pp. 21-29, 96-98, 125-126; Testimony of Bangs on November 3, 2005 at pp. 166-168, 180-183; Testimony of Hodgson on January 12, 2006 at pp. 27-30
[174] Submissions of Hutton, Part V, para. 484-490, 560, 619, 696; Testimony of Vrancart on October 27, 2005 at pp. 21-29, 96-98, 125-126; Testimony of Bangs on November 3, 2005 at pp. 166-168, 180-183; Testimony of Hodgson on January 12, 2006 at pp. 27-30

speak to them about their demands and the occupation. The government was left to guess what the occupiers intended to do and why.[175]

173. We submit that having heard from the occupiers themselves it is clear that in contrast to the protest at Serpent Mounds, the occupiers of Ipperwash Provincial Park were not protesting a political issue, but simply physically helping themselves to property. We note that most of the submissions provided by counsel for the occupiers and the family of Dudley George state that the occupiers were "repossessing" or "taking back" the land of the park.[176]

174. Even more significantly, the Hiawatha First Nation did not engage in any violence during their occupation of Serpent Mounds Provincial Park. There is no evidence that the protestors at Serpent Mounds smashed in the window of a vehicle or threw flares at police officers. There is no evidence that the protestors at Serpent Mounds carried sticks and bats with them or threw rocks at police officers. There is no evidence that the protestors at Serpent Mounds confronted campers in the park and told them to "get off their land". As is fully explained in our submissions, all of these things occurred during the lead up to and occupation of Ipperwash Provincial Park before the evening of September 6, 1995.[177]

175. We submit that these differences, particularly the contrasting behaviour of the First Nations people occupying the respective parks, explain why the Serpent Mounds occupation ended without violence.

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[175] Submissions of Hutton, Part V, para. 472-473; 623-627; 765-766; Testimony of Vrancart on October 27, 2005 at pp. 21-29, 96-98, 125-126; Testimony of Bangs on November 3, 2005 at pp. 166-168, 180-183; Testimony of Hodgson on January 12, 2006 at pp. 27-30

[176] Submissions of the Estate, p. 65; Submissions of the Army Camp Resident, p. 41; Submissions of the Aazhoodena Group, pp. 116-117

[177] Submissions of Hutton, Part V, para. 438-450, 655-662; Testimony of Bangs on November 3, 2005 at pp. 182-183

H) Example 8: Effects of Ignoring the Evidence – Changes to the IMC

176. The submissions of the Army Camp Residents argue that the comments of political staff at the IMC meetings flagged concerns for the Deputy Solicitor General Todres and the Deputy Attorney General Taman resulting in the elimination of political staff at these meetings after September 6, 1995.[178] However, the evidence overall does not support the argument.

177. We submit that the evidence is clear that as a result of the confrontation outside Ipperwash Provincial Park and the death of Dudley George the night of September 6, 1995, the Deputy Ministers became directly and intensively involved in addressing the government's handling of the matter.

178. The evidence of a number of witnesses is that there were meetings in boardrooms at the MSG beginning on September 7, 1995 to deal with the aftermath of what had occurred. Jai, Hipfner and others testified about the series of meetings to identify other "hotspots" and to consider the potential reactions to what had occurred as well as to continue to consider how to deal with the on-going occupation.[179] We submit that it is clear that the matter was no longer a "watching brief" for MSG in view of the shooting and the consequent commencement of an investigation by the Special Investigations Unit.

179. The Deputy Ministers, particularly Taman, took steps to create a nerve centre and a working group. The nerve centre, composed of the three Deputy Ministers and political staff, would handle policy issues relating to the occupation, while the working group would handle what Taman described as "operational" matters (not to be confused with the OPP's operations).[180]

180. Taman testified that he met with a large group of both civil servants and political staff on September 7, 1995 and explained how he saw the situation and how they should proceed:

[178] Submissions of the Army Camp Residents, p. 65
[179] Testimony of Hipfner on September 15, 2005 at pp. 169, 176-177; Testimony of Jai on August 31, 2005 at pp. 165, 177-189; Testimony of Patrick on October 17, 2005 at pp. 113-115
[180] Testimony of Taman on November 14, 2005 at pp. 145-147

> A: Well, what I said to the meeting was that I thought the tests of our work would be; Number 1, were we serious about the facts. In the course of the previous couple of days we'd had people say there were guns in the Park, there were no guns in the Park, there were women and children in the Park, there were no women and children in the Park; that it was important to know what was going on.
>
> Secondly, that it was important to be serious about our communications. That we couldn't have everybody in government talking to the First Nations or talking to the people of Ontario. So, that there should be a single spokesperson. And that we also had to have some order in the interaction between the public servants and the political staff, because if we didn't, we were going to be vulnerable to the fact or the appearance or both that the political staff were interfering in the operations or that the operations people were making government policy. And those were both equal risks in my mind.[181]

181. At the time, Taman did not have direct knowledge either of what had occurred on the ground at Ipperwash or at the IMC meetings.[182] We submit that the evidence indicates that there were women and children at the park until the evening of September 6, 1995 when they left, so it was not an instance of information being incorrect, but rather of the situation having changed. The evidence also indicates that at the IMC Fox had indicated that just because firearms had not been seen was not determinative. It is also clear that he advised the IMC participants that the occupiers had access to the camp raising concerns that they might access weapons that way.[183]

182. The evidence is that Taman understood from Jai that Hutton was pressing to move quickly for an injunction; however, he did not know that the OPP saw the injunction as a priority and also wanted the MNR to obtain it quickly. Taman's understanding from Jai was that the matter was not particularly urgent and the occupation was peaceful. However, the evidence overall is clear that Taman did not speak with MNR representatives on the ground regarding their concerns about the occupiers' actions.

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[181] Testimony of Taman on November 14, 2005 at p. 144
[182] Submissions of Hutton, Part V, para. 689
[183] Testimony of Todres on November 30, 2005 at p. 225

183. Like Taman, Todres was not present at the IMC meetings and her information in that regard would have come from Fox. Todres testified that she did not know that, the OPP had requested that MNR obtain an injunction and stated that it was a priority item. Likewise, she did not know that the OPP had told the MNR before the occupation that they would regard an occupation as a policing matter.[184]

184. We submit that neither Taman nor Todres had a complete and accurate understanding at the time of the situation on the ground or what had been communicated at the IMC meetings. We submit that the evidence is clear that it is entirely appropriate for the political arm of government to express a point of view about a policy discussion such as an injunction. Todres was very reluctant to suggest otherwise without a good understanding of the context of the communications.[185]

185. Hutchison testified that if a member of political staff communicated inappropriately with a civil servant, then a Deputy Minister would speak to the political staff about the problem:

> Q: …But, the bottom line is, if it affected you directly in terms of direction you were getting, that was something that you were going to –
>
> A: Sure, if -- if for example, some political staff had said to me, you know, go back and, you know, say 'X'. I would have said, okay. I would have gone back and I would have talked to Murray Segal or Michael Code –
>
> Q: Yes.
>
> A: -- about it and would have had them go up through the Deputy and have the Deputy go over and shout at whoever had tried to do that.
>
> Q: All right. Now --
>
> A: And that, in my experience, whenever anything like that, sort of, you know, sort of, starts to happen, that's how it gets played out.

[184] Testimony of Todres on November 30, 2005 at pp. 223-226
[185] Testimony of Todres on November 30, 2005 at pp. 224-225

Q: That's from your perspective how it worked within the Attorney General's office.

A: Yes.[186]

186. Both Taman and Todres testified that they did not speak to Hutton about the IMC meetings in September 1995.[187] In addition, Hutchison testified that he never witnessed political staff saying anything that he regarded as inappropriate at the IMC meeting he attended on September 6, 1995.[188]

187. Taman testified that one of his concerns was that of civil servants inappropriately attempting to advise the government on political matters, or the appearance thereof, and he testified that his concern in that regard was equal to his other concern regarding political staff. He indicated that either concern might be about appearance.[189]

188. Taman and Todres testified that they did not recall an exchange between Hodgson and Fox at the dining room and there is some dispute as to where Fox and Hodgson spoke.[190] However, both Fox and Hodgson acknowledge that they had an exchange of views. Furthermore, Hodgson testified that Fox made comments about political optics and this appears to be supported by Fox's impressions as he communicated them to Carson in the September 6, 1995 phone call.[191] We submit that the evidence overall is that wherever the exchange took place and what else was said, it is clear that Fox purported to advise a Minister about issues of politics. We submit that it is reasonable to infer that Fox's conduct was the basis for Taman's concerns about civil servants.[192]

189. In the subsequent months, the government reviewed the purpose, composition and guidelines for the IMC. The final version of a document setting out the proposed

[186] Testimony of Hutchison on August 30, 2005 at pp. 19-20
[187] Testimony of Todres on November 30, 2005 at pp. 249-250; Testimony of Taman on November 15, 2005 at pp. 75-76
[188] Testimony of Hutchison on August 25, 2005 at pp. 290, 312-313, August 29, 2005 at pp. 18-21
[189] Testimony of Taman on November 14, 2005 at p.144
[190] Submissions of Hutton, Part V, para. 728-737
[191] Testimony of Hodgson on January 12, 2006 at p. 154
[192] Testimony of Taman on November 14, 2005 at p. 144; P-444A, tab 37, pp. 265-267

procedures for aboriginal emergencies is dated February 27, 1996.[193] The revisions, decided upon after consultation with the Secretary of Cabinet, the most senior civil servant, did not eliminate the presence of political staff on the IMC.[194]

190. The revisions provided for streamlining membership in the IMC and included the following specific comments:

> - An ad hoc committee to be chaired by the Secretary of ONAS or her delegate and consist of public servants and political staff who have direct access to deputies and ministers;
> - Meetings to be attended only by PO [Premier's Office], CO [Cabinet Office], and ministries with direct involvement in the emergency
> - Committee membership to be kept to a minimum[195]

191. The procedures provided that the IMC would "seek advice of PO/CO re: appropriate lead Minister and Ministry for a particular emergency" and that "Lead ministry to have primary responsibility for government communications on substantive issues."[196] The procedures further provided in part regarding communications as follows:

> In consultation with PO/CO committee to advise on developing communication strategy for government setting out:
>
> - lead ministry (or lead for each issue)
> - primary spokesperson
> - means of communicating (e.g. press releases, statements, bulletins or updates to distribute locally etc.)[197]

192. Under the heading "Potential Legal Action" the procedures provided in part as follows:

> - Committee to consider and made recommendations regarding possible legal action, such as:
>   - Injunctions

[193] P-708
[194] P-708, p. 1; Testimony of Jai on August 31, 2005 at pp. 277-283, September 13, 2005 at pp. 141-145
[195] P-708, p. 6
[196] P-708, p. 9
[197] P-708, p. 11

- Other *Provincial Offences Act* charges (e.g. *Trespass to Property Act*)

- Ministry of the Attorney General, in consultation with lead ministry, to make decision re: appropriateness and utility of seeking civil injunction[198]

193. The procedures set out various proposals for preventing imminent occupations and blockades including the following:

- responsible ministry to address the underlying issues, which may be legitimate
- work with moderates in Aboriginal communities, organizations
- support Aboriginal leadership (Chiefs, etc)[199]

194. The procedures also set out provisions as to how to end illegal occupations and blockades once they were in place and reaffirmed the position regarding substantive negotiations:

- do not negotiate substantive issues while a blockade or occupation is underway as it encourages:
  - illegal action
  - queue-jumping [emphasis in the original][200]

195. The Army Camp Residents make no reference to the documentary evidence regarding these procedures.

196. We submit that the evidence overall makes clear that a temporary governance structure for managing Ipperwash was put in place on September 7, 1995 because of the events at the scene. We submit that the evidence overall indicates that the senior civil service

[198] P-708, p. 12
[199] P-708, p. 14
[200] P-708, p. 15

reviewed the general guidelines for the IMC and considered the issue of eliminating political staff from the IMC but decided not to do so.

197. We submit that this is advisable as any policy decision or direction and any public communication would require the involvement of Ministers (and/or their political staff, as decided by the Ministers). In other words, our democratic system of government requires the involvement and/or direction of duly elected officials and the IMC is an expeditious and effective process to ensure this.

Part III: Unfounded Malicious Assertions

A) "Anti-Native" and "Racist" Policies and Comments

198. Several of the parties argue that the Harris government was elected on an anti-native platform. Despite a lack of evidence, they attempt to tie this alleged platform to the occupation of Ipperwash Provincial Park, and more offensively still, to the death of Dudley George. The day after the shooting, Chief Gordon Peters publicly stated that the occupation occurred because of the failure of governments to address First Nations rights through negotiation and referred to the provincial government's "lack of understanding of First Nations issues".[201] On September 8, 1995, Chief Peters wrote to the Minister of Indian and Northern Affairs Canada and stated his opinion that "his [Harris] government's anti-native policies are at least partially responsible for what happened."[202]

199. Since Chief Peters did not take part in the occupation, when he made these statements he could not have known the occupiers' motivations and intentions in occupying the park. In our submissions, we refer to the evidence of the occupiers themselves concerning their intention in occupying the park. In particular, we refer to the testimony of Glenn George, Roderick George, Kevin Simon, Marlin Simon, David George and Mike Cloud, among others. None of the occupiers stated that they took over the park because of the Harris

[201] P-296
[202] P-297

government's anti-native policies.[203] Further, none of the submissions of counsel representing parties who took part in the occupation of the park argue that the occupation occurred because of the provincial government's policies.

200. Other parties cite Chief Gordon Peters' testimony that he believed that the government had anti-native policies in support of their contention that the Harris government was elected on an anti-native platform.[204] While Chief Gord Peters is certainly entitled to his opinion about the Harris government's policies, that opinion is not a fact. Chief Peters stating that he regards these policies as "anti-native" does not make it so.

201. In any event, there is no evidence that the policies of the Harris government were what led the occupiers to take control of Ipperwash Provincial Park. The evidence of the occupiers was that they had entirely different reasons.[205] The Chiefs of Ontario and other parties ignore that evidence and continue to assert that the park was occupied because of the policies of the government.

202. The Aazhoodena Group submit that Deb Hutton and others made racist statements.[206] In our view, these submissions are inflammatory and could be regarded as defamatory if expressed in any other forum, and should never have been made.

203. Not a single person who was present at the IMC meetings testified that Hutton made a racist comment or that they had the impression that she was racist against First Nations people. The submissions of the Aazhoodena Group do not cite any evidence in support of this seriously offensive allegation. In fact, their submissions do not even point to the particular statements that they allege to be racist.[207]

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[203] Part V, para. 466-481
[204] Submissions of the Chiefs of Ontario, pp. 5-6; Submissions of the Estate, pp. 63-64; Submissions of ALST, pp. 22-23, para. 46
[205] Submissions of Hutton, Part V, para. 466-481
[206] Submissions of the Aazhoodena Group, p. 102, para. 353
[207] Submissions of the Aazhoodena Group, p. 102, para. 353

204. Hutton testified for three days before the Inquiry and counsel for the Aazhoodena Group cross-examined her for several hours. At no time during this cross-examination or the cross-examination of other parties did any counsel put to Hutton that she made racist statements and provide her a chance to respond under oath before the Commissioner. We submit that to make this kind of submission without first putting it to Hutton and without outlining the particular "racist" statement is patently unfair.

205. We submit that there is no evidence before the Commission to in any way warrant such an offensive allegation.

206. These types of allegations are an attempt to label the legitimate position of the Progressive Conservative government at the time as racist and anti-native. The preponderance of the evidence is that the election campaign of the Progressive Conservative party focused on economic issues in light of the serious economic recession facing Ontario at the time.

207. Former Premier Harris and others testified that the Progressive Conservative's main policy document was focused on economic issues.[208] Taman, the Deputy Attorney General, testified that in the summer of 1995, the provincial government had not developed a policy towards First Nations.[209]

208. When the Progressive Conservatives were elected to government in June 1995 they had expected to have to address a $9 billion deficit in that year's budget; however, when the new government took office, they learned that there was a further $2 billion deficit in that year's budget. Hutton testified as to how a lot of her time in the first few weeks of the new government's mandate was spent in assisting with efforts to address that additional $2 billion shortfall.[210]

[208] Testimony of Harris on February 14, 2006 at pp. 14-15
[209] Testimony of Taman on November 14, 2005 at p. 66
[210] Testimony of Hutton on November 21, 2005 at pp. 84-85, 122-124

209. Jai's evidence was relied upon by other parties to argue that Hutton did not recognize the constitutional status of Aboriginal rights.[211] Jai testified that she attended one of two briefings of the Premier's Office on Aboriginal issues. She did not have a clear recollection, but believed that she would have attended the first briefing. The submissions of other parties quote her testimony that the response to her briefing was that Aboriginal people have no special rights, but they neglect to include Jai's testimony to the next two questions where Jai explained she did not recall who made the statement:

> Q: Can you give us some more specificity? Did someone say that?
>
> A: Someone said to me that, at this briefing, that their position -- the party's position and the Government position was that Aboriginal people do not have special rights.
>
> Q: And do you recall who that person was?
>
> A: I can't recall.[212]

210. Jai conceded under cross-examination that the Premier's Office requested a second briefing because, in her understanding, they wanted to understand the legal position of First Nations people. She acknowledged that her recollection of the first briefing was unaided by any of her notes and that it was "the impression that [she] had at the time."[213]

211. Hutton testified that she received many briefings in the weeks following the election and could not specifically recall receiving a briefing on First Nations issues prior to September 4, 1995. However, she testified that she had a general knowledge about Aboriginal rights and knew and accepted that these rights were recognized and protected in the Constitution.[214] She did not recall asking for further material or briefing with respect to Aboriginal affairs for the Premier's Office, but acknowledged that it was

[211] Submissions of the Chiefs of Ontario, p. 12; Submissions of the Estate, p. 64; Submissions of ALST, pp. 23-24, para. 47
[212] Testimony of Jai on August 30, 2005 at pp. 73, 93
[213] Testimony of Jai on September 12, 2005 at pp. 126, 128, 142
[214] Testimony of Hutton on November 21, 2005 at pp. 106-107, 124, 145-149

possible that some of the information was used as briefings for attendance at the Premier's Conference which occurred around the same time.[215]

212. Hutton testified that she never told Jai that she did not care whether Aboriginal people had certain special rights protected by the Constitution. She testified that the government had no intention of disregarding the constitutional or other legal rights of Aboriginal people.[216] Harris testified that in the summer of 1995, his government was well aware of section 35 of the Constitution and its recognition of Aboriginal and treaty rights.[217]

213. Shelley Spiegel, a member of Cabinet Office, attended one of the briefings of the Premier's Office staff and did not recall Hutton in attendance. Spiegel recalled that this government was going to change the direction on Aboriginal issues, but did not recall anything further, including anything that would support Jai's "impressions".[218]

214. Deputy Attorney General Taman recalled attending the first briefing of the Premier's Office. When Jai's impression was put to Taman, he did not recall hearing anyone say that there would be no special rights for Aboriginal people. He recalled that there were indications that the Premier's Office was "exploring differences in policy that they might like to advance…[and] talking about the issues in a way different than the previous government talked about them...[w]hich is exactly what one would expect in a change in government."[219]

215. We submit that the evidence overall simply does not support the assertions made by some of the other parties. We submit that these are very specific and serious accusations and that they ought not to be asserted as if they were fact in this forum when they are not properly founded in evidence despite months and years of hearings. We submit that these

[215] Testimony of Hutton on November 21, 2005 at pp. 152-154
[216] Testimony of Hutton on November 22, 2005 at pp. 157-158
[217] Testimony of Harris on February 14, 2006 at p. 29
[218] Testimony of Spiegel on September 21, 2005 at pp. 86-88
[219] Testimony of Taman on November 14, 2005 at pp. 60-61

assertions are nothing more than ugly name-calling that prevents the kind of legitimate debate on policy issues that is so important in a democratic society such as Canada.

216. Two senior civil servants, Deputy Attorney General Taman and Deputy Solicitor General Todres, acknowledged the right and responsibility of Ministers to make policy and to have discussions with their advisers. As Taman stated: "The Premier is elected by the people of the province to make policy. It was up to the Premier to decided what the policy was. He decided what the policy was and – and to that extent it was appropriate." Under cross-examination, he said: "[T]he political side of government needs to be able to discuss its policies, its problems, its reservations, without having the discussion find its way to the Incident Commander." Todres noted that "political staff have the right along with the Ministers to shape a decision."[220]

217. A comment to the effect that "the occupiers should be treated like everyone else" has been attributed to Hutton at the September 5, 1995 meeting. Hutton does not recall making this particular statement, but she does not deny it because it was in keeping with her understanding (based on what she had been advised) that it was an illegal occupation.[221] We note that contemporaneous notes indicate that advice had been given that the province had clear title. At the outset of the meeting, the IMC participants had also been advised that the occupiers had used violence and intimidation to force MNR and the OPP to withdraw from the park, had refused service of MNR's notice of trespass and had refused to communicate.

218. There is also evidence that at the same meeting, someone made a broader, more general comment that this government treats Aboriginal and non-Aboriginal people the same. There is no documentary evidence attributing this comment to Hutton.[222] Hutton does not recall the statement, but said that if it related to this specific situation, then it was consistent with their view of this situation. If the statement were a more general

[220] Testimony of Taman on November 14, 2004 at p. 117, November 16, 2005 at p. 140; Testimony of Todres on November 30, 2005 at p. 78
[221] Testimony of Hutton on November 22, 2005 at pp. 47-48; 280-281
[222] P-730, p. 4; P-742, p. 11

statement, then she did not believe that she made the statement as it was not a feeling that she had at that time.[223]

219. In the context of the Inquiry, much was made of these comments. However, both of these comments were not significant enough for Jai to include them in her lengthy notes of the meetings.[224]

220. The more narrow comment is the only comment which has been attributed to Hutton in contemporaneous notes. Only one person recorded it. Hutton was asked about the statement in examination-in-chief and again in cross-examination by counsel for the Estate and, each time, she gave the same explanation that the government focused on the actions taken by the occupiers not their possible motivations or who they were:

> Q: Well, I have two (2) questions, and the first one is, do you recall making a statement similar to the one at the top of the page which refers to the Premier wanting to deal with this particular group as if they were non-Aboriginals?
>
> A: I don't, but given the illegal nature of the occupation, it was our view, as I think I've expressed, that this was not a land claim or not about who the occupiers were in particular. It was about the occupation itself.[225]

221. As though it were fact, the Estate asserts that the comment was made because Hutton did not like what she was hearing that there may be burial grounds and that they needed to consider the full implications of that.[226] Although counsel for the Estate asked Hutton about the statement, he did not put to her that she made the statement because "she did not like what she was hearing" about the burial ground. We submit that it is unfair to ask for Hutton to comment on a statement, have her explain, then ignore her evidence and assert something else out of line with the evidence and that was not put to her.

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[223] Testimony of Hutton on November 22, 2005 at pp. 281-286
[224] P-536
[225] Testimony of Hutton on November 22, 2004 at pp. 47-48, 280-281
[226] Submissions of the Estate, p. 70

222. We submit that the Estate's assertion is sheer conjecture based on a misstatement of Prodanou's notes. Those notes indicate that Peter Allen had commented that there was no evidence of a burial ground and that it would be very expensive to determine the issue.[227] We submit that the comment attributed to Hutton on its face is not responsive to Allen's comment. We submit that Prodanou's notes are not verbatim and should not be treated such.

223. We submit that the only thing that appears clear is that Hutton made some comment to this effect at some point following Christie's review of the several statutes such as the *Trespass to Property Act* and the *Criminal Code* whose provisions appeared to have been violated as a result of the occupiers' actions.[228]

224. We submit that Hutton's evidence referred to above is the only evidence as to what she intended by the comment. We submit that there is simply no basis for the kind of inferences that the Estate purports to draw.

225. The context of the more general comment is also revealing. The evidence is that that comment followed a discussion of communications messages and what MNR should say. There are numerous articles and media reports on and before September 5, 1995 expressing the concern that the law was not being enforced without regard to race. For example, the Town of Bosanquet issued a press release stating:

> The Town is demanding that the Provincial and Federal Governments initiate appropriate action to remove the illegal occupiers from the land. "The laws of Canada and Ontario must be enforced equally for all Canadians. This reign of terror must stop", Thomas said.[229]

226. While the IMC participants had not seen that particular press release as of the September 5, 1995 meeting, there is evidence that they were told of the local community's concerns. We submit that this comment (which was not verbatim) ought to be understood in context. The evidence overall indicates that the IMC was considering the concerns in the

[227] P-730, pp. 3-4
[228] P-730, pp. 3-4
[229] P-460

community and what the provincial government needed to communicate to calm down the situation. [230]

227. Christie, a very junior lawyer at the time, was very critical of Hutton (who is not a lawyer) and testified that her recollection of what Hutton had said demonstrated an ignorance of constitutional law. However, we submit that in context, the narrow comment about the illegal occupation does not demonstrate an ignorance of constitutional law, but in fact reflects the information provided at the meeting.

228. We submit that in the circumstances, no Aboriginal rights or treaties are at play in the context of breaking of the law. As Jai, Acting Director of ONAS, acknowledged, the statutes referred by Christie at the meeting applied to First Nations people as well as everyone else. Like everyone else, First Nations people are entitled to raise any possible defences that might apply, such as colour of right, assuming that the facts bear out the defence.[231] Christie testified that the meeting acknowledged that the OPP would deal with these sort of circumstances the same, regardless of whether it involved a First Nations person or not.[232]

229. We submit that Christie, the only witness who thought that Hutton made the more general comment, is mistaken. Her own contemporaneous notes do not attribute that comment to Hutton. We further submit that Christie appears to have interpreted the comment as some sort of general policy statement when the evidence is clear that the IMC meeting on September 5, 1995 was concerned with addressing a particular occupation. It was not a meeting about long-term general policy issues.

230. We submit that the contemporaneous notes make clear that the context of the broader comment was a discussion about 1) community concerns following the takeover of first the Army Camp and then a few weeks later the provincial park; and 2) communications issues in that regard. We submit that as a civil servant at MAG, Christie had no expertise

[230] P-730, pp. 3-4; P-742, pp. 9-10
[231] Testimony of Jai on September 13, 2005 at pp. 136-137
[232] Testimony of Christie on September 26, 2005 at pp. 110-112

or responsibility for communication issues and therefore did not appreciate this context. Accordingly, we submit that the evidence overall suggests that she misconstrued what was said.[233]

231. The submissions of the Estate also state (as though it were a fact) that treating natives and non-natives the same means "disregarding treaty relationships" and ignoring the "historical relationships that First Nations have with the Crown, and the constitutional rights of First Nations people."[234] In support of this, the submissions do not cite the evidence of Hutton or anyone else in the government regarding the meaning of this alleged policy statement. The evidence cited is that of Chief Peters who was not even present at the time that the comment was made. He does not know the circumstances or context of the statement.

232. When counsel for the Estate put the broader comment to Deputy Attorney General Taman, the most senior civil servant responsible for Native Affairs, Taman emphasized that the meaning of such a statement would depend on its context:

> Q: A witness has said that Ms. Hutton said that the strategic imperative of the government was to treat Aboriginal and non-Aboriginal people the same. Would you agree with me that's problematic, given the legal framework that is summarized in the briefing notes that you oversaw?
>
> A: I mean all I can say is that, you know, they're not the words that I would use to describe the situation, but I don't honestly know what's meant by that. If -- if the sense of the assertion was that everybody's bound by the rule of law, yes, everybody's bound by the rule of law and in that sense everybody's the same. Is the law the same for everybody? Well, no, the law is not the same for everybody. So if you try to stretch the -- or if the speaker tried to stretch the proposition that far, then I would say it was -- it was in in error.
>
> Q: And when you say "in error" this isn't a case where you say different elected governments can differ on policy. It's actually a fundamental legal error; is that fair?

[233] Testimony of Christie on September 26, 2005 at pp. 110-112
[234] Submissions of the Estate, p. 64

> A: Again, I'm trying to say that I -- I -- I can't speak for the speaker's intent in saying that it is plainly the case Aboriginal peoples have different rights, entitlements and obligations than other Canadians. And to that extent, are not the same as everyone else. But it is also true that, in other ways of speaking, one could talk about how they are the same.[235]

233. Counsel to the Estate asked a similar question of Christie. She testified that she did not perceive that Hutton or the Harris government was politically opposed to native rights:

> Q: And why did you think that it was ignorance as opposed to political opposition to native rights?
>
> A: Because -- I guess because -- because at the time, in the meeting no one had said anything that would make me believe at that moment that -- that it was a matter of opposition of Aboriginal rights.[236]

234. None of this evidence was mentioned or cited in the submissions of the Estate who choose to attribute the broad comment to Hutton as though it were fact. The submissions simply assert that Hutton did not care about Aboriginal issues (despite the contemporaneous documentary evidence that she and others within the Premier's Office cared enough to expressly ask ONAS for further briefing materials) and go on to make other bald damming assertions about the anti-native government of the former Premier.

B) Accusations of "Bad Faith"

235. The submissions of the Estate repeatedly make assertions about the feelings, intent, and motivation of Hutton, Harris and others, without citing any evidence, such as the following:

> a) the "government was eager to show its toughness, and put its so-called "law and order" agenda on display"[237]

[235] Testimony of Taman on November 15, 2005 at pp. 146-147
[236] Testimony of Christie on September 27, 2005 at p. 172
[237] Submissions of the Estate, p. 1

b) [the occupation on September 4, 1995] was not much of a crisis yet, but there was a golden opportunity for Harris and Hutton to turn it into one"[238]

c) [before the IMC met on September 5, 1995], "Mike Harris and Deb Hutton already knew what they wanted"[239]

d) "Deb Hutton did not like what she was hearing" [at the IMC meeting of September 5, 1995][240]

e) Deb Hutton was not happy [following the IMC meeting on September 6, 1995][241]

f) "He [Harris] was even less happy that this issue was not being treated like the emergency it wasn't"[242]

g) This government wanted to be seen as "actioning" no matter what the risk"[243]

h) Deb Hutton was seething from how Ron Fox had opposed her in that meeting".[244]

236. The submissions of ALST and the Chiefs of Ontario also purport to speak to the intent and motivation of Hutton, the Premier or the government when asserting:

a) "the political side of government consistently placed 'messaging' and short-term political advantage above a concern for human life"[245]

b) "the shooting death of Dudley George on the evening of September 6, 1995 was the result of a multitude of individuals events and acts. Those events and acts were the inevitable risk created by a government, led by Premier Mike Harris, that was anti-native and was willing to exploit anti-native sentiments among members of the public to derive political benefit"[246]

[238] Submissions of the Estate, p. 67
[239] Submissions of the Estate, p. 68
[240] Submissions of the Estate, p. 70
[241] Submissions of the Estate, p. 84
[242] Submissions of the Estate, p. 84-85
[243] Submissions of the Estate, p. 85
[244] Submissions of the Estate, p. 88
[245] Submissions of ALST, p. 56
[246] Submissions of the Chiefs of Ontario, p. 1

c) Deb Hutton and Premier Harris' desire to remove the occupiers as soon as possible was not merely an erroneous exercise in judgment by a relatively inexperienced government. The decision to take precipitous action to have the occupiers removed without delay was seen as a political opportunity."[247]

237. These horrendous and malicious accusations represent a deliberately perverted and fictitious account of what occurred. The totality of the evidence in no way supports the view that Hutton, the Premier or anyone else were seeking political benefit or saw the occupation as an "opportunity".

238. These accusations misrepresent so much of the evidence that it is impossible to respond adequately and set out the evidence to the contrary. We refer to a few basic facts and rely on the totality of our previous submissions:

a) the government was elected on an economic platform not a law and order one;

b) the occupiers made no attempt to raise any issues with respect to the park using legitimate means;

c) the government's legal advice was that the provincial Crown had valid title having bought the lands on the open market more than fifty years earlier;

d) the occupiers took over the park using violence and intimidation;

e) the occupiers stole and destroyed park property;

f) local residents were afraid and concerned; and

g) there were reports of automatic gunfire.

239. We simply do not understand how anyone can purport to assert that this was a manufactured crisis after hearing the evidence of some of the OPP and MNR representatives on the ground regarding their concerns and fears when the occupation began on September 4, 1994.[248]

[247] Submissions of the Chiefs of Ontario, p. 2
[248] Submissions of Hutton, Part V, para. 443-450, 556

240. In the circumstances summarized above, the government decided to seek an injunction and were preparing to bring it the following day when Dudley George was shot in an confrontation with police outside of the park.[249] We submit that the decision taken in no way supports the accusations of putting political advantage over public safety.

241. We submit that the OPP and provincial government have different responsibilities. The provincial government's responsibilities in this situation included a general responsibility for public safety, as well as a specific responsibility as landowner for a provincial park. Accordingly, while they may both be concerned about issues of public safety, they have to consider such issues in light of their respective responsibilities. In addressing a particular situation, the OPP will focus on policing it on the ground; however, the government will have to consider broader implications for public safety of a government's position and response.

242. The evidence of civil servants was that they understood that direct actions, such as blockades and occupations are not predictable. Jai testified as follows:

> Q: Did you understand that a situation like this was not entirely predictable and could escalate and that the OPP had to be ready to deal with whatever may occur?
>
> You understood that in a general way?
>
> A: Yes, in a general way.
>
> Q: And for the same reasons that these sorts of situations are not entirely predictable, it would be prudent for the Inter-ministerial Committee to have looked at all of the available legal options, right?
>
> A: Yes, we looked at all -- all the available legal options.[250]

[249] Submissions of Hutton, Part V, para. 694-761
[250] Testimony of Jai on September 13, 2005 pp. 99-100

243. We submit that in addition to not being "entirely predictable", it is obvious that these sorts of actions can, and do, raise issues of public safety. We note that, even prior to the occupation, Jai had indicated at the IMC meeting on August 2, 1995, as recorded in her own notes, that all the participants agreed that "safety will be the foremost" and that the OPP and MNR could take whatever action they felt was "necessary".[251] We submit that this is one significant and self-evident reason why governments would not want to reward such action: it may encourage others to engage in conduct which can, and does, raise issues of public safety.

244. We submit that the evidence overall is clear that the situation at Ipperwash Provincial Park raised concerns for public safety. Even the few excerpts from the contemporaneous notes of the IMC meetings of September 5 and 6, 1995 (referred to previously in Part II (B) above) reflect that people had concerns about safety and expressed them at the time. We further submit that McCabe expressly told Carson that people within the government had concerns about safety on the afternoon of September 6, 1995 in a taped phone call and that Carson confirmed that he too was concerned:

> MCCABE: Um ah we we there were I think the thing that has gotten people particularly concerned here is that reports of gunfire last night.
>
> CARSON: Yes.
>
> MCCABE: And and the fire.
>
> CARSON: Yes.
>
> MCCABE: And the alcohol and those sorts of things. Um are I mean ah does that worry you?
>
> CARSON: Yes.[252]

245. "Justice must not only be done but seen to be done" is a principle well understood within the legal community. We submit that the same is true of government leadership: there must not only be leadership but there must be a perception that there is leadership. We

[251] P-507
[252] P-444B, tab 39 pp. 271-272

further submit that if there is a perception of a vacuum of leadership on the government, people may take matters into their own hands with serious implications. We submit that the evidence is clear that this was no mere academic concern in this instance.

246. We submit that considering what government should communicate to the public, when and how are primarily issues within the expertise and responsibility of political staff. We submit that as of September 5, 1995, Hutton had had considerable experience in advising elected representatives and considering communication issues.[253]

247. We submit that there is no evidence that the government sought out the media on this issue. On the contrary, the evidence is that the Minister Hodgson was scrummed after the local Mayor issued the "Reign of Terror Continues."[254] We submit that Minister Hodgson's comments to the media reflect a clear policy position that the park was the property of the provincial government who would not condone the actions of the occupiers but would exercise their legal options to protect the property held in trust for the public.[255] We further submit that the comments in no way warrant the accusations asserted by some parties. We note that the evidence is clear that the government made no other public comment prior to the night of September 6, 1995.

248. The evidence of the civil servants and the minutes of the IMC indicate that the recommendations of the IMC were on consensus.[256] The evidence of those who attended the dining room meeting is that there was agreement to seek an injunction as soon as possible.[257] We submit that when some parties seek to impugn the integrity of the former Premier, Hutton and the "political side" of government by accusing them of placing political advantage over human life, they also implicitly attack the integrity of the civil servants who were involved in making recommendations or present when decisions were taken.

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[253] Testimony of Hutton on November 21, 2005 at pp. 76-83; Submissions of Hutton, Part V, para. 529-545
[254] P-727; Testimony of Hodgson on January 12, 2006 at pp. 110-115
[255] P-727; Submissions of Hutton, Part V, para. 609-611
[256] Submissions of Hutton, Part V, para. 694-727
[257] Submissions of Hutton, Part V, para. 728-737

249. We submit that in view of the evidence overall including clear contemporaneous evidence, it is simply shocking that some parties would claim that Hutton, the former Premier and other representatives of the government acted in bad faith and that their testimony before the Inquiry were attempts to "reconstruct their actions at the time as being responsive to particular exigencies on the ground."[258]

250. When Hutton testified before the Inquiry, she was subjected to repetitive, gruelling and frequently offensive questions during which she was cross-examined about her age, her political beliefs and associations and those of her spouse.[259] She was repeatedly asked about her thinking and her comments at the IMC and she made clear her understanding of the situation and her concerns for public safety in a narrow sense and in terms of the broader implications of encouraging such conduct:

> Q: Now, would you agree that you at the time regarded this situation as a test of how the Government would respond to any group which took illegal action to pressure the Government to further its own goals?
>
> A: Yes. This, as I believe we've discussed previously, was the first action I will say, outside of the bounds of, sort of, the normal democratic processes that we're used to in government to convince any government, but our government in this case, to do something or to think a particular way.
>
> And as such, given my responsibilities to keep the broader government perspective in mind, I was concerned that if we had no response to this situation and by that I mean an illegal activity as you've described it that in of itself was a response that would say to the general public, this is a good way to get the Government to do something.
>
> That to me was a broader public safety concern. The idea that you're sending a signal that you condone this type of behaviour may in fact be seen as, for some, who wanted to see it that way, encouragement; that this was the way to act.
>
> Q: And so from that perspective this became fortuitous for -- for your government. Namely, it was an opportunity to put a message out

[258] Submissions of the Chiefs of Ontario, p. 3
[259] Testimony of Hutton on November 23, pp. 143-218

not only to Aboriginal people but the whole people in Ontario that they had better not do occupations of this type if they wanted to catch the attention of this particular government, right?

A: To say that this fortuitous is – is completely and utterly wrong from my perspective.

Q: Well, in any event you wanted to convey that message.

A: We were faced with an issue that we needed to deal with.

Q: Yes.

A: And in the face of that issue, yes, that is the message that I thought was important for the greater public safety in the long term to communicate.

Q: And that's part of what one might call a law and order sort of attitude of the Harris government; is that fair to say?

A: No. I -- I think it is a prudent handling of an issue that could well have broader implications for the public in the course of our government's mandate.[260]

251. She testified about and was cross-examined on the government's policy position and the communication themes that were agreed upon at the IMC. Some of that cross-examination was as follows:

Q: But my understanding from the evidence – your evidence –

A: My evidence. Hmm hmm.

Q: -- as well as from the evidence of others, correct me if I'm wrong, is that before the death of Dudley George the Government wanted to be seen as controlling the situation; is that fair?

A: Yeah. I think there was an expectation, a reasonable one, on the part of the public, as I think I said in my evidence, I would suspect on the part of the media, that the Government would have a response. And if by control you mean we're on top of the situation,

[260] Testimony of Hutton on November 23, 2005 at pp. 16-17

give some comfort that we were addressing the situation, then I would agree with you.[261]

. . .

A: Well as I said, on -- on the Tuesday and the Wednesday, when the occupation first occurred, I believe we sent exactly the message –

Q: Hmm hmm.

A: -- that we've been discussing. The tragedy occurred on the evening of September the 6th --

Q: Hmm hmm.

A: -- and I do think that while the occupation in itself, as we continue to indicate, was illegal and -- and we would not have substantive negotiations while it was underway, I think you do have to cast the Government's continued response in that important light.

Q: Are you saying it was the killing of Dudley George that ended up sending the message so you didn't have to do anything else? Is that what you're saying?

A: That is such a mis-characterization of what I'm trying to say. I -- I can't, quite frankly, believe you said that to me.[262]

. . .

Q: -- it had -- it had nothing to do with the underlying facts. It had to do with how the Harris Government wished to be perceived; isn't that right?

A: That is incorrect.

Q: And the reason I suggest that to you, and I invite you to disagree with me about that, was that nothing changed after the killing of Dudley George, other than the political situation; isn't that correct?

A: I'm not sure what you mean by that.

[261] Testimony on Hutton on November 23, 2005 at p. 207
[262] Testimony of Hutton on November 23, 2005 at p. 216

Q: Well, the occupation continued.

A: Yes.

Q: All of the concerns that supposedly led to the positions that were taken by your government or the Government in which you were involved, continued, correct?

A: Yes.

Q: So all that changed was the fact that Dudley George had been killed; isn't that right?

A: As I indicated, I hope, clearly, in managing any issue there is an evolution of thinking and an evolution of facts. And I think, as I've tried my best to explain, my evolution of thinking on the 4th and the 5th and the 6th, and to the best of my ability going forward, at least for the first few days following September 6th, I think that you -- you do your best, in government, to respond to the facts and to evolve your thinking according to those facts.

Q: I'm suggesting to you, Ms. Hutton, it's my last question, that the -- after the killing of Dudley George saving the Ipperwash Park became less important than saving Premier Harris' political reputation; isn't that correct?

A: It's ridiculous and offensive.[263]

252. We submit that in the face of such cross-examination that went on for hours and days, Hutton continued to answer the questions honestly and accurately to try and assist the Commissioner in this Inquiry. We submit that it is ridiculous and offensive to submit that the intentions of Hutton, the former Premier or the government generally were not in good faith. The totally unwarranted attacks and smears continue.

253. We respectfully request that the Commissioner consider the totality of the evidence. We further request that he weigh the reliability of people's recollections, not impressions, and compare that with people's actions at the time.

[263] Testimony of Hutton on November 23, 2005 at pp. 217-219

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 16th DAY OF August, 2006

Anna Perschy

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