THE IPPERWASH INQUIRY

REPLY SUBMISSIONS OF THE HONOURABLE MICHAEL D. HARRIS

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1. SUBMISSIONS OF THE ESTATE OF DUDLEY GEORGE AND MEMBERS OF DUDLEY GEORGE'S FAMILY

It is difficult to know where to begin.

We reply to the portions of the submissions of The Estate of Dudley George and Members of Dudley George's Family which bear directly upon events relating to Ipperwash Provincial Park (the "Park") from September 4 through 6, 1995.

There is much extravagant rhetoric in these submissions.[1] There is much hyperbole.[2] There is rank speculation.[3] Counsel can perceive the true thoughts of people when they are otherwise not in evidence.[4] Counsel can even perceive the workings of the subconscious mind.[5]

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[1] Some examples: "Harris wanted the fucking Indians out of the Park. A 9 mm bullet to the chest is one way to do that" (p. 110); "When Wright and Korosec heard Harris' wishes, it was like taking the leash off a pair of dangerous pit bulls" (p. 132); "John Carson lost the battle with the alligators. He didn't even put up a fight. He even welcomed one of the alligator's minions to the Command Post at the end of his shift" (p. 97); "The events then ran their course like a speeding runaway train that nobody could or would stop until someone died" (p. 99); "In addition to the fairy tale of a damsel's carriage being trashed by a gang of bat-wielding ogres…" (p. 115); "It was not much of a crisis yet, but there was certainly a golden opportunity for Harris and Hutton to turn it into one" (p. 67); "Not only is a policy of treating aboriginals and non-aboriginals the same wrong, but we have seen how such a policy can cause death" (p. 144).

[2] Some examples: "Harris' reckless, incendiary words" (p. 1); "Hutton's stunning intervention completely changed the tone of the IMC meeting and massively jacked up the tension" (p. 70); a "vigilante posse" (p. 122); Police "poisoned by political pressure" (p. 124); "John Carson's answer to that question is stunning" (p. 96); "Intense political pressure" (p. 8); "dire emergency" (p. 6); the Park as a "gorgeous jewel of land" (p. 65); Mike Harris "had a single-minded purpose of ending the occupation immediately, no matter what the risks" (p. 5).

[3] Some examples: "Perhaps Carson spent so much time that day on that task, and so little on trying to set up negotiations because he learned that the occupation was becoming political and that he and his men and women were being watched by the highest government official in the province. Perhaps not." (p. 73); "It was clear that the Harris government was not sympathetic to native people, and Carson must have known even before hearing it that the Premier would want the occupation terminated" (p. 72).

[4] Some examples: **"**To the senior civil servants nervously assembled in Harris' boardroom, it was all a little unsettling and strange. They waited uncomfortably for the orders from the leader of the province" (p. 1); "Given the absence of anything on the ground that justified calling the situation an emergency there is only one plausible explanation for why John Carson was willing to say on September 6, 1995 that there was urgency. He expressly wanted to support the government, and an urgent injunction is what the government wanted. Perhaps unwittingly, he had bought into Harris' emergency mindset" (p. 96); On the evening of September 6, Detective-Sergeant Mark Wright "was emboldened by the political messages he was receiving, and the meeting with angry residents firmed his resolve to do something, and to interpret events in a way that would justify his wishes" (p. 102); "Her [Deb Hutton's] frustration with the direction in which the meeting appeared to be headed mounted until she could no longer bite her tongue" (p. 69); "John Carson was already well aware that prudence and caution would not be rewarded in this situation by the Premier. The Premier had already been critical of the OPP for failing to prevent the occupation, and there was no incentive to attract further criticism

There being no objective evidence of government direction of OPP operations, reliance is placed upon alleged directions that are metaphysical in nature.[6]

Inconvenient evidence is obscured with the broad brush of allegations that witnesses lied. In making these allegations – among the most serious counsel can ever make against a witness, which carry a professional obligation of the utmost integrity and fairness - counsel have felt no obligation to put these serious accusations to the relevant witnesses in cross-examining them, so that they might have a fair opportunity to respond to the accusations.[7] Why not? In some cases

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and possible career consequences by failing to act" (p. 113); "Some police officers (particularly Korosec and Wright) saw the Premier's position as a licence to act on their own aggressive and sometimes anti-native impulses" (p. 114); "The senior OPP officers…departed from a cautious and careful approach in the face of a minor incident because they knew that the Premier wanted action, and taking a cautious and careful approach would only win criticism and political backlash…" (p. 114); "Mark Wright and Stan Korosec drew encouragement and inspiration from the Premier's views" (p. 131); "…Larry Parks did not hear gunfire. He heard firecrackers going off in rapid succession, which in his heightened state of tension he interpreted to be gunfire" (p. 78).

[5] Some examples (emphasis added): The Premier's "insistence that the matter be considered a dire emergency…put some OPP officers, particularly Mark Wright and Stan Korosec, in a position where they would consciously *or subconsciously* be looking for an emergency which they knew the Premier wanted" (p. 6; repeated at p. 114); "[Inspector Carson] busied himself for much of the day trying to acquire a Light Armoured Vehicle (LAV), should his conscious *or subconscious* expectation that force may soon be required to remove the occupiers come to pass" (pp. 72-73); "Within the context of the political pressure infecting the police operation at Ipperwash, Wright was put in a position of consciously *or subconsciously* looking for facts which would support characterizing the occupation as an emergency" (p. 103); "[I]ntense political pressure from the Premier…resulted in the senior OPP officers being unwilling or unable to step back and objectively scrutinize the escalating false stories or contain the momentum toward the mobilization of massive force, because they knew that escalation of the situation into an emergency was exactly what the Premier wanted" (p. 113; repeated at p. 114; see also p. 8).

[6] Some examples: The Premier's "insistence that the matter be considered a dire emergency…rendered Incident Commanders John Carson and Dale Linton unwilling or incapable of sticking to the OPP's traditional approach of caution and prudence because they knew the Premier wanted action" (p. 6); "Largely because of the political pressures, and the emergency mindset caused by the Premier, police intelligence was inept and caused minor incidents to be wildly distorted to the point where they became used as jusitification to deploy massive force against the occupiers" (p. 7); "Carson knew the political realities of the situation. He knew what the Premier wanted. In the face of that, he was not prepared at all to put the brakes on the runaway train that was the OPP riot squad (or CMU)" (p. 8).

[7] See the following allegations: **"**If Harris now says, as he did under oath, that everybody at that meeting consented with his decision, then he is either stupid or lying, and he is not stupid" (p. 87); "Harris and Hutton knew that there was an OPP officer in that Dining Room meeting. Ron Fox was invited to the meeting at the behest of Deb Hutton, who knew he was an OPP liaison officer from her involvement with the IMC meetings. After the IMC meeting, Deb Hutton was seething from how Ron Fox had opposed her in that meeting, and she wanted him to hear straight from the Premier how things would run. Perhaps she simply does not recall instructing that he be paged to the Dining Room meeting, but more likely she is lying 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" (pp. 87-88).

counsel do not even feel an obligation to identify the liars.[8] At times they are not prepared to say what the lie has been.[9] Why not?

None of these features of counsel's submissions are consistent with the existence of a cogent case on the evidence. Throughout counsel's submissions fragments of the facts are presented without reference to further evidence that places them in a more balanced perspective.[10] In this reply, however, we propose to focus on three propositions central to

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[8] See the following statements (emphasis added): "This Inquiry has revealed much of the truth, but sadly, *not every witness* had the courage to speak the truth. *Not everyone* was able to look Sam George in the eye as they sat it that witness chair" (p. 2); "The full truth of what Mike Harris' involvement was in Ipperwash will never be known, because he and Deb Hutton (*and some other witnesses)* were obviously not completely truthful and forthcoming about the roles that they played" (p. 131); "This Inquiry…has revealed that statements made by Charles Harnick and Mike Harris *and others* in the Legislature starkly contrast with evidence that has been given in this Inquiry and that the public had been deceived about Harris' role in Ipperwash" (p. 148); "Mike Harris *and some other political witnesses* lied under oath at the Inquiry" (p. 149).

[9] See the following statements: "Mike Harris knows that his actions were inappropriate, as proven by his consciousness of guilt, which is demonstrated by his deceiving of the Legislature for many years…" (p. 131); "Mike Harris and some other political witnesses lied under oath at the Inquiry" (p. 149); "The full truth of what Mike Harris' involvement was in Ipperwash will never be known, because he and Deb Hutton (and some other witnesses) were obviously not completely truthful and forthcoming about the roles they played" (p. 131).

[10] Some examples:

Bill King at Queen's Park is presented as informing the MPP Marcel Beaubien of the government position that, "Ipperwash was an MNR issue, not an Indian issue; that the Premier is following the situation closely; that the police are there to assist MNR; and that the law will be upheld no matter who is involved".[10] No mention is made of the fact that at the same time King told Beaubien not to issue a provocative media release, on the basis that it would not assist in a constructive resolution of the situation.

It is stated that, "The Premier was interested only in removal, not about discussions" (p. 71). No mention is made of the clear evidence that at the outset of the September 6 IMC meeting Deb Hutton stated that the Premier wanted discussions to be left to the OPP and MNR staff.

It is stated that at the end of the September 6 IMC meeting, Premier Harris was unhappy "that this issue was not being treated like the emergency it wasn't" (p. 85). No mention is made of the fact that the IMC had just agreed to recommend that the government seek an injunction against the occupation as soon as possible.

It is stated that, "The message that Harris wanted "the fucking Indians out of the Park" leaked out of the Premier's meeting and made its way to Tom Bressette, Chief of the Kettle and Stony Point First Nation" (pp. 97-98). No mention is made of the fact that the testimony of the person who contacted Chief Bressette, Bob Watts, is that he was informed of the allegation at about 11:00 a.m. on September 6, well before the dining room discussion commenced. (The source of the allegation, Leslie Kohsed-Currie, placed a later time on her call to Watts, but her evidence is of doubtful credibility: see Written Submissions, 12.02 (9), "Use Guns if You Have To", pp. 253-55.)

It is stated that at the September 6 IMC meeting, "The government had a political image and ideology to uphold, and Harris did not want to project the image that he was willing to work together with First Nations." There is omission of the fact that a handwritten note of the meeting records Deb Hutton as saying, "We would like him [Chief Bressette] to be supporting our efforts, but independently."

It is stated that, "John Carson was already well aware that prudence and caution would not be rewarded in this situation by the Premier. The Premier had already been critical of the OPP for failing to prevent the occupation, and there was no incentive to attract further criticism and possible career consequences by failing to act" (p. 113; see also p. 8). No reference is made to the facts that Carson specifically denied this assertion, and that

counsel's argument: first, that Ron Fox was summoned to the Premier's dining room on the afternoon of September 6 "in order to hear the Premier's wishes and act as a messenger to the OPP";[11] second, that in his September 6 telephone conversation with Ron Fox following the dining room discussion, John Carson "bought into the emergency mindset that Harris wanted to create", and only then regarded the situation as one in which an injunction should be obtained on an urgent basis; and third, that in the evening of September 6 John Carson was "unwilling or unable" to stop the deployment of the Crowd Management Unit set in motion by other officers, because the CMU was "going to the destination the Premier wanted".

RON FOX THE MESSENGER

In counsel's submissions it is asserted that Ron Fox was summoned to the Premier's dining room on the afternoon of September 6 "in order to hear the Premier's wishes and act as a messenger to the OPP".[12] It is said that,

> Deb Hutton required Ron Fox's attendance at the Premier's Dining Room meeting, so that he would hear from the Premier himself how things would operate, and so that the Premier's instructions could be communicated to the OPP.
>
> The Premier knew that Ron Fox was a police officer and was liaising with the police on the ground, and he wanted Ron Fox to hear how things would work. The Premier knew and expected that his intentions, as communicated at that meeting and heard by Ron Fox, would be passed onto the operational police officers at Ipperwash.[13]

These assertions are wildly speculative. Counsel was not prepared to even suggest to either Mike Harris or Deb Hutton in cross-examination that these assertions - central to counsel's attack on Mike Harris, and directly contrary to the testimony of Mike Harris and Deb Hutton - might possibly be true.

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there is no evidence whatsoever that whether Carson decided to deploy the Crowd Management Unit or not could have carried any "possible career consequences".

The attribution of the statement, "I want the fucking Indians out of the Park" to Mike Harris by Charles Harnick is treated as established fact, without mention of the fact that it was not corroborated by a single witness among the many participants in the dining room discussion who testified in the Inquiry.

11 Submissions, pp. 1-2.

12 Submissions, pp. 1-2.

13 Submissions, p. 129.

These assertions are also contrary to the evidence. Ron Fox accepted in cross-examination that he was never instructed to inform John Carson of the political views of anyone on the Interministerial Committee, or what Premier Harris thought.[14] Ron Fox was outside the OPP chain of command,[15] and was not engaged in police operations.[16] The Deputy Solicitor General, Elaine Todres, accepted that it would have been contrary to protocol for Fox to have communicated to Carson political views or discussions.[17] She said such discussions were expected to be kept confidential within government.[18] The evidence is unequivocal that it was discussed in the dining room that government could not direct the operations of the OPP.[19]

Ron Fox's own testimony directly contradicts the assertion made by counsel. He testified that at the conclusion of the discussion in the dining room, "[T]he meeting had come to the

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[14] Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 41-42.

[15] Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, pp. 122-23. See also Cross-examination of Elaine Todres by Mr. Falconer, December 1, 2005, p. 185: "He operated, as I've mentioned many, many times, as a seconded staff person in the context of being a civil servant to me."

[16] Cross-examination of Ron Fox by Ms. Perschy, July 13, 2005, pp. 204-05. Ron Fox testified that he "stayed away from very direct operational information and I offered no opinions with respect to operational information, how it may be or should be acted on, to those who were in an operational role within the Ontario Provincial Police". See also Examination in chief of Ron Fox, July 11, 2005, pp. 21-22. See also Examination of Ron Fox by Mr. Sandler, July 19, 2005, pp. 90-91:

> Q: Now -- now, tell me this. Let's assume that John Carson had said to you on the phone on the evening of September the 6th, Well we're going to send the CMU down the road, and this is where we're going to go, and the observers are going to be here and the TRU is going to be over there. Would you have shared that information with Government?
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> A: I wouldn't have shared it with Government. And to be clear, he wouldn't have shared it with me. And if for some reason he felt the need to, I would have cut him off.

[17] Cross-examination of Elaine Todres by Ms. Perschy, November 30, 2005, pp. 228-29. She also accepted (at p. 229) that she would expect that "discussions regarding possible government policy and specifically references to government's legal rights and/or political considerations, that those sorts of discussions would be confidential"; Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, pp. 123-25; Cross-examination of Elaine Todres by Mr. Sulman, November 30, 2005, pp. 213-14.

See Cross-examination of Deb Hutton by Mr. Downard, November 22, 2005, pp. 171-72.

[18] Cross-examination of Elaine Todres by Ms. Perschy, November 30, 2005, pp. 228-29. She accepted (at p. 229) that she would expect that "discussions regarding possible government policy and specifically references to government's legal rights and/or political considerations, that those sorts of discussions would be confidential"; Cross-examination of Elaine Todres by Mr. Downard, November 30, 2005, pp. 123-25; Cross-examination of Elaine Todres by Mr. Sulman, November 30, 2005, pp. 213-14.

[19] See Written Submissions, 13.02, "The Government's Role".

conclusion that what the police should do next was to remain in only in the purview of the police."[20] In cross-examination Fox testified:

> Q: But at this point of the day, when you're having this conversation with Inspector Carson, the decision had already been made to go for the injunction, correct?
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> A: It had.
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> Q: And this was the approach that you'd been advocating for all along, and the advice of Mr. Taman and others had already been accepted to that effect, isn't that correct?
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> A: It had.
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> […]
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> Q: And no one in the government was telling the police what to do, the matter was firmly in the hands of the Attorney General and the police, where it should be, correct?
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> A: It was.[21]

Counsel seek to further support their theory by stating:

> In case Ron Fox was not crystal clear about what the Premier wanted, Minister of Natural Resources, Chris Hodgson, made it clear in speaking to Ron Fox after the Premier had left the meeting. Ron Fox by no means embraced the hawkish message dictated by Harris and Hodgson, but they did not need him to. They just needed him to pass on the message.[22]

This assertion is also contradicted by the evidence. Ron Fox testified that after the Premier left the dining room and before Fox left it, it became clear to him, on the basis of comments made to him by Chris Hodgson, that "[T]here had been discussions with respect to how the police should manage situations and what the involvement of government should be with the police."[23] He testified that Hodgson told him that the government could "have no influence over the police doing their job".[24] This is corroborated by the transcript of the September 6 Fox/Carson telephone conversation itself.

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[20] Examination in chief of Ron Fox, July 12, 2005, p. 115. The word "prevue" is in the transcript – when Fox testified he used the word "purview". See also Cross-examination of Ron Fox by Mr. Downard, July 13, 2005, pp. 86-87.

[21] Cross-examination of Ron Fox by Mr. Fredericks, July 13, 2005, pp. 191-93.

[22] P. 88.

[23] Examination in chief of Ron Fox, July 12, 2005, p. 71.

[24] Examination in chief of Ron Fox, July 12, 2005, p. 117. See also p. 72: "Minister Hodgson…indicated to me that we have just been told that we can't direct the police, so you don't bother worrying yourselves or yourself or words to that effect, with politics." See also Cross-examination of Ron Fox by Mr. Fredericks, July 13, 2005, p. 175: Fox testified Hodgson told him, "I've been told I can't interfere with the police, don't you be bothered

If, as counsel suggests, the very purpose of the dining room discussion was to convey instructions on OPP operations from the Premier to the OPP via Ron Fox, it certainly was not organized very well for that purpose. Ron Fox testified that on September 6 he was in the same room as the Premier for three to five minutes.[25] Fox's assistant, Scott Patrick, had no recollection of the Premier speaking directly to either himself or Fox.[26] Patrick and Fox were seated in the far corner of the room, 20 to 30 feet away from the Premier.[27] Patrick said the Premier had his back to Fox and Patrick when he was speaking, which made it hard for them to hear him.[28] Patrick also said the Premier spoke in a calm and "low conversational tone", which caused further auditory difficulties.

In our submission on any balanced view the evidence flatly contradicts the allegation that the dining room discussions was held for the very purpose of conveying instructions to the OPP through Ron Fox.

JOHN CARSON "BOUGHT INTO THE EMERGENCY MINDSET THAT HARRIS WANTED TO CREATE"

In the course of his September 6 telephone conversation with Ron Fox following the dining room discussion, Inspector Carson confirmed to Fox that he thought it could be said to a court with certainty that there was a need for an emergent injunction. Counsel submits:

> Just like that, John Carson had bought into the emergency mindset that Harris wanted to create…Up until that point, Carson never said that the OPP needed or wanted an emergency order. He only agreed to support that view after being told it was what the government wanted.[29]

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worrying about political matters." See also p. 176: "I'm agreeing that he did not give me direction as to what the police should do. He told me that he was told he could not direct the police."

25 Examination in chief of Ron Fox, July 12, 2005, p. 66. See also Cross-examination of Ron Fox by Mr. Falconer, July 14, 2005, p. 110.

26 Examination in chief of Scott Patrick, October 17, 2005, p. 104.

27 Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, pp. 129-30; Examination in chief of Scott Patrick, October 17, 2005, p. 101.

28 Examination in chief of Scott Patrick, October 17, 2005, p. 107; Cross-examination of Scott Patrick by Mr. Downard, October 17, 2005, p. 130; Cross-examination of Scott Patrick by Mr. Falconer, October 17, 2005, p. 212; Re-examination of Scott Patrick, October 18, 2005, p. 160.

29 P. 92.

It is not true that up until the afternoon of September 6 Inspector Carson "never said that the OPP needed or wanted an emergency order". This assertion can only be made if the evidence is completely disregarded.

In a September 1 OPP meeting held to plan for a potential occupation of the Park, Carson stated, "[T]he best we could hope for is to see a court order 24 hours later."[30] As soon as the occupation commenced on September 4, Carson wanted a trespass notice to be served so the injunction process could proceed.[31] On September 5, in his telephone conversation with Ron Fox following the IMC meeting of that day, Carson made clear that he thought it would be "good" if an injunction was obtained on an emergency basis:

> Fox: Let me assure you that I pushed them and they are going to apply for this enjoining order.
> Carson: Okay.
> Fox: And it sounds like they'll do the emergent form.
> Carson: Good. Good.[32]

Subsequently, when Carson was informed that a government option under consideration was an injunction that could take two to three weeks to get, [33] he was concerned about the prospect of the injunction process taking an extended period of time:

> My big concern here was that we needed an injunction and I was starting to get a little anxious here when I started hearing discussion about, well, we're not sure which order we're going to get. Is it going to be – or take a longer period of time to get it? And they started using time lines like two weeks. Certainly it caught my attention very quickly and – so I started to challenge them as to, wait a minute here, what's going on? Like, are they serious about this…or are they not serious about it? [34]

In a further telephone conversation at 1:53 p.m. on September 5, Carson again expressed concern that the government might not seek an injunction on an urgent basis:

> Carson: Well there is the emergency type one they can get within a day.

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30 Exhibit P-421; Examination in chief of John Carson, May 16, 2005, p. 22.

31 Examination in chief of John Carson, May 16, 2006, p. 192.

32 Exhibit 444A, Tab 16 (Transcript).

33 Examination in chief of John Carson, May 17, 2005, p. 170.

34 Examination in chief of John Carson, May 17, 2005, p. 172. Superintendent Parkin accepted in cross-examination that he knew on September 5 that Inspector Carson was expecting the MNR to proceed to obtain an injunction in a timely way: see Cross-examination of Anthony Parkin by Ms. Perschy, February 8, 2006, p. 57.

Austin: Okay.

Carson: Um and if they're not prepared to do that then I have to you know we have to really look at our whole situation here.[35]

At 3:07 p.m. on September 5, after informing officers at the Command Post that it "sounds like they're going to get an emergency injunction",[36] Carson said, "[W]e're on the right track with some concern notice wasn't accepted".[37] In a conversation with Superintendent Parkin at 4:04 p.m. on September 5, Carson expressed concern about "waffling" at the IMC, and was informed that the government might pursue "the regular…injunction". Carson's response was to ask, "Are we prepared to live with that".[38] Later in the conversation he said, "[L]et's just get the emergency injunction and get on with life".[39]

The assertion that in the course of his September 6 conversation with Ron Fox, John Carson "bought into the emergency mindset that Harris wanted to create" is not true. The obtaining of an injunction by the government was a key component of John Carson's plan for responding to a takeover of the Park. Throughout the matter Carson wanted an injunction to be obtained as soon as possible.

That Carson had not "bought into" an "emergency mindset" as a result of his September 6 conversation with Ron Fox is made clear by his conduct later that afternoon. In speaking with the MPP Marcel Beaubien, Carson reassured him that, "[W]e wanted to get it resolved. We don't want anyone to get hurt. We want to do everything we can to…stress that point, nobody gets hurt."[40] Carson spoke to Beaubien about sitting down to "talk about peaceful resolution without confrontation".[41] Later, when Carson went off duty for the evening to go to dinner at a private home in Forest, his expectation for the evening was, "[I]t would be *status quo*, it would

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35 Exhibit P-444A, Tab 14 (Transcript), pp. 101-02.

36 Examination in chief of Mark Wright, February 22, 2006, p. 164.

37 Examination of John Carson by Mr. Sandler, June 29, 2005, p. 213.

38 Exhibit P-444A, Tab 21 (Transcript), p. 169.

39 Exhibit P-444A, Tab 21 (Transcript), p. 169.

40 Examination in chief of John Carson, May 19, 2005, pp. 85, 90-91.

41 Examination in chief of John Carson, May 19, 2005, p. 87.

be similar to the evening prior."[42] This conduct and this expectation of Carson flatly contradicts counsel's submission that Carson had 'bought into an emergency mindset' as a result of his telephone conversation with Ron Fox.

JOHN CARSON'S "RUNAWAY TRAIN"

In their submissions counsel assert that John Carson was "unwilling or unable" to stop the deployment of the Crowd Management Unit because the CMU was "going to the destination the Premier wanted":

> John Carson arrived back on the scene after the train had already left the station (CMU having been suited up and initially deployed to the tactical operations centre near the Park), and was unwilling or unable to stop it. He too had heard the fairy tale version of the dented fender incident and knew the political realities of the situation. The runaway train was going to the destination the Premier wanted and he was not prepared to bring it to a stop.[43]

Counsel assert that given Carson's knowledge of "the political realities of the situation", and "what the Premier wanted", Carson "was not prepared at all to put the brakes on the runaway train that was the OPP riot squad (or CMU)".[44]

The proposition that John Carson "was not prepared at all to put the brakes on the runaway train" is not true. Counsel ignore the evidence that on the evening of September 6 Carson was prepared to stand down the CMU if occupiers were only "sitting around the campfire" in the sandy parking lot, "roasting marshmallows".[45] More importantly, counsel make no mention whatsoever of the clear and uncontradicted evidence that Carson's instructions to the CMU were that they were to attempt to move the occupiers back into the Park, and that the CMU was not to enter the Park.[46] This evidence is corroborated by the fact that the CMU members

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42 Examination in chief of John Carson, May 19, 2005, p. 105. At pp. 99-100 of their submissions, counsel assert that this was indeed Carson's state of mind at the time: "Carson left for dinner by anbout 7:30 p.m., expecting that the relatively peaceful status quo would be maintained overnight."

43 P. 112.

44 P. 8.

45 Examination in chief of John Carson, May 19, 2005, p. 179. See also p. 176. See also the scribe note referred to at p. 186, attributing the following comment to Inspector Carson: "If they are just having a campfire, let's leave them. Why go in the dark?"

46 See Written Submissions 16.04, "The Deployment of the Crowd Management Unit", pp. 350-51. The assertion at p. 109 of counsel's submissions that the occupiers were faced with having to "abandon their lands and their ancestors' burial grounds" is plainly incorrect.

never did enter the Park, and began to back away once the occupiers had returned inside the Park fence.[47] The notion that Carson's intent was to dispatch an unstoppable "runaway train" is also contradicted by the evidence that immediately before the violence in the sandy parking lot erupted, Carson thought that the situation was "good" on the basis that there had been one arrest and that "was going to be the end of it, that we'd be bringing the crowd management team back to the…TOC and we'd be keeping people on point duty for the duration of the evening".[48]

In our main submissions we have made clear our view that John Carson's decision to deploy the CMU on the night of September 6 was a judgement made in good faith on the basis of information that was plainly relevant to Carson's duty to the public.[49] The assertion that in deploying the CMU John Carson sought to arrive at "the destination the Premier wanted" is not only unsupported by the evidence, it is logically absurd. The Premier wanted the occupation to be ended. The occupation could not possibly have been ended by the deployment of the CMU, because the CMU was specifically instructed not to enter the Park.

THE HARRIS GOVERNMENT AND FIRST NATIONS POLICY

It has not been part of the mandate of this Commission to inquire into the First Nations policy of Ontario during Mike Harris' two majority governments. Appropriate witnesses to ensure a full assessment on this subject have not been called. The necessary documents to carry out such an assessment have not been produced. The Commission would have exceeded its mandate if it had done entered into such a broad inquiry.

Notwithstanding these facts counsel make sweeping assertions about the Harris government's First Nations policy:

> The policy of the Harris government was that aboriginals have the same rights as everyone else. They were diametrically opposed to the notion that there was such a thing

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47 See Written Submissions 16.04, "The Deployment of the Crowd Management Unit", pp. 354-55.

48 See Written Submissions 16.04, "The Deployment of the Crowd Management Unit", pp. 355-56.

49 See Written Submissions 1.01, "Overview", p. 13; 16.04, "The Deployment of the Crowd Management Unit", pp. 347-48; and Chapter 17, "Conclusion", p. 364.

> as special rights for Aboriginal people, even though this is what the Constitution enshrined."[50]

At the time of the taking of the Park the Harris government had been in power for three months. Its platform was primarily focused on economic issues. Policy documents of the Harris government existing in 1995 were produced in the Inquiry and were the subject of testimony. These documents are not mentioned by counsel. The documents clearly show that is plainly false for counsel to assert that the Harris government's policy was "diametrically opposed to the notion that there was such a thing as special rights for Aboriginal people, even though this is what the Constitution enshrined".

The 1995 policy document "Bringing Common Sense to Community Development" contains the following clear statement:

> Native Canadians are a special group in our society, with unique recognition in the Constitution and specific needs and concerns.

This policy documents emphasizes the resolution of "ongoing conflicts over land claims and resource rights", and states an intention to "break the poverty cycle that traps so many aboriginal peoples in despair and bad health". Among the "Highlights" of this policy document is a stated intention to, "Work with native leaders to reflect aboriginal concerns and include the native viewpoint in government policies."

A second 1995 policy document, "A Voice for the North", while emphasizing economic development in aboriginal communities and the balance of both native and non-native interests in the resolution of land claims, states, "Native rights must be respected".

Counsel's allegation is also inconsistent with the testimony of Mike Harris and former ministers Robert Runciman, Chris Hodgson and Charles Harnick, and their political aides.

Counsel go so far as to state that Mike Harris was an "ardent modern-day disciple" of "assimilating Indians and dispossessing them of their lands", who pursued a "formula" of ignoring grievances, upholding shady land deals and teaching "the Indians a lesson when they try

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[50] P. 64. See also p. 1: "This government treated natives and non-natives the same. So what if they had treaty rights and constitutionally protected rights, and so what if the sacred burial places of their ancestors had been desecrated under the government's watch decades ago?"

to take a stand".[51] As stated above, the Inquiry did not conduct an investigation of the Harris government's record with respect to native land claims, and there is nothing in the evidence that would support such wild rhetoric. In the course of his testimony, the former executive assistant to the Minister Responsible for Native Affair in fact testified as follows:

> Q: All right. And if I can just continue, at page 4 of that same document, you see underneath, "Our Commitments," at the top of the page, that is the last photocopied page of the document and it reads:
>
> "The Mike Harris government will balance the interest of Native and non Native Ontarians by ensuring that all stakeholders are represented in Native land claims negotiations. Native rights must be respected but land claim negotiations cannot be the exclusive preserve of Provincial bureaucrats and Native Band leaders."
>
> A: All right. I think that -- that an important thing to note in that is that it's my understanding, and I don't know whether it's changed since but, certainly, when -- when I left government, that Mr. Harris' government, led by Mr. Harnick in terms of land claims, had been more successful in addressing a number of land claims than any previous government before it.
>
> More land claims had been solved by Mr. Harris than had previously been attempted. So the new policy, when put into affect in terms of involving all parties in a more direct way in the dispute resolution system, seemed to work.[52]

The evidence relied upon in support of counsel's assertion that the policy of the Harris government was to "diametrically" oppose "the notion that there was such a thing as special rights for Aboriginal people, even though this is what the Constitution enshrined", consists of a comment made by Deb Hutton in the context of discussion in an IMC meeting addressing the specific situation of the takeover of the Park at Ipperwash, and uncorroborated testimony of Julie Jai regarding a comment made by an unidentified person in the course of a briefing of Premier's Office staff regarding native rights.

As to the Hutton comment, extensive testimony was given by numerous participants in the IMC meetings of the understanding of members of the committee that the takeover the Park did not constitute a valid assertion of valid native rights, and that as such differential treatment in that context was not justified. This perception was supported by accurate reports to the IMC of Chief Bressette's opposition to the takeover of the Park.[53] Hutton's comment was made in the

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[51] P. 3.

[52] Examination in chief of David Moran, October 31, 2005, pp. 127-28.

[53] See Written Submissions 8.01, "The September 5 IMC Meeting", pp. 153-54.

course of a discussion of the appropriate government response to a particular situation at the outset of the Harris government's tenure. It is not reasonable to treat such a comment as a comprehensive formal policy statement of the government.

The testimony of Julie Jai was that in a briefing she was adamant that she had been told, "there's no such thing as special rights for Aboriginal people", and that the Harris government intended to disregard the Constitution in this respect. In our respectful submission, very little weight should be given to Julie Jai's testimony on this point. Julie Jai had difficulty distinguishing between the various briefings she attended, could not recall who had been in attendance at each briefing, could not recall the exact words that were used to communicate these controversial statements, could not recall who had actually delivered the disputed remarks regarding aboriginal rights, and had no notes upon which to refresh her memory.[54]

The above considerations would be a sufficient basis upon which to discount Julie Jai's testimony on this point. In addition, however, the notion that it would be the official policy of an elected government to disregard the law and the Constitution is on its face so extraordinary as to demand corroboration. Not a single witness corroborated Jai on this point.[55] Her description of

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[54] With respect to the briefing of the Premier's office staff, Julie Jai indicated that she believed there were two briefings, but that she was only at the second. When asked who she had briefed, she replied, "Well I can't actually recall who was there, but I'm pretty - I'm pretty sure Deb Hutton was there" (Examination in chief of Julie Jai, August 30, 2005, p. 67). Jai testified that she believed Yan Lazor and Larry Taman would have attended the second briefing with her (if they were available), and that she believed someone else from ONAS would have attended. Jai testified that at the end of the briefings someone said, "the party's position and the government's position is that aboriginal people do not have special rights". She could not, however, recall who had made this statement (Examination in chief of Julie Jai, August 30, 2005, p. 93). Julie Jai also testified, "knowing my penchant for taking notes at the time I suspect I would have had notes", but she had not located any notes from those briefings (Cross-examination of Julie Jai September 12, 2005, p. 126). Jai testified that she believed there had been three briefings. She recalled one briefing for Minister Harnick and his staff, another for the MNR and another for the Premier's Office staff (Examination in chief of Julie Jai, August 30, 2005, p.69). With respect to the quote of Jai at paragraph 47 of ALST's submissions, Jai admitted that she only had a "general recollection" of what had been said to her at the three briefings and could not identify "who had said what" (Examination in chief of Julie Jai, August 30, 2005, p.69). Despite contending that statements similar in nature had been made at both her briefings of the MNR and the Premier's office staff, she could not provide any particulars with respect to who had made the statements (Examination in chief of Julie Jai August 30, 2005, p.69).

[55] Although Julie Jai testified that both Chris Hodgson and one of his political staff had been present when comments of this nature were made (August 30, 2005, p. 72), both Chris Hodgson and his executive Jeff Bangs denied having made or heard any such comments. Chris Hodgson testified that he did not recall receiving a briefing from ONAS regarding aboriginal issues over the summer of 1995, but that such a briefing might have occurred (Examination in chief of Chris Hodgson, January 11, 2006, p. 339). Hodgson testified that he was aware that aboriginal and treaty rights were protected by the Constitution and that "treaty rights had to be upheld and lived up to" (Examination in chief of Chris Hodgson, January 11, 2006, p. 340). Hodgson

the Harris government's policy is specifically contradicted by policy documents of the Harris government, reviewed above.

With respect, it is also our submission that Julie Jai's evidence should also be approached with caution on the basis that other portions of her testimony demonstrated a predisposition to advance positions critical of the Harris government in this case. For example, she was adamant that in her meeting with Attorney General Harnick on the morning of September 6, Harnick had given specific instructions that the government should not seek an injunction on an *ex parte* basis. This evidence could have given rise to an argument that Premier Harris subsequently overruled the Attorney General and thus did not afford respect to Attorney General's office. As we have stated in our main submissions, the evidence is overwhelming that Julie Jai's evidence on this point was not accurate.[56] Similarly, the course of her evidence she took it upon herself

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specifically denied having conveyed at any briefing on aboriginal issues the message, "we don't care about aboriginal people" (Cross examination of Chris Hodgson by Ms. McAleer, January 16, 2006, p. 39). He also adamantly denied that he had at any point denied that aboriginal people have special rights under section 35 of the Constitution (Cross examination of Chris Hodgson by Ms. McAleer, January 16, 2006, p. 39). Jeff Bangs confirmed that during the time he worked for Hodgson he never heard Hodgson make comments to the effect that he did not support aboriginal rights and did not care about First Nations constitutional rights (Cross examination of Jeff Bangs by Mr. Lauwers, November 3, 2005 p 171). He also testified that he had never observed Hodgson to be in any way negative about First Nations people (Cross examination of Jeff Bangs by Mr. Lauwers, November 3, 2005 p 171). Larry Taman testified that he believed he had attended an ONAS briefing with Deb Hutton and Guy Giorno in August of 1995, but he could not recall any particulars with respect to the meeting. When asked whether or not any comments had been made at the briefing that there would be no special rights for aboriginal people and that aboriginal and non-aboriginal people would be treated the same, Taman replied:

> A: No, I don't recall hearing any particular words. What I do recall was that there were indications that these people from the Premier's office were exploring differences in policy that they might like to advance. They were talking about the issues in a way different than the previous government talked about them.
>
> Q: And ---
>
> A: Which is exactly what one would expect in a change in government.

(Examination in chief of Larry Taman, November 14, 2005, at p. 61).

Deb Hutton testified that she did not recall having attended an internal briefing on aboriginal issues prior to September 4, 1995 (Examination in Chief of Deb Hutton, November 21, 2005, p. 144). She testified that she could not deny having attended such a briefing, because she had attended a number of briefings after the new government had been elected, and simply had no independent recall of the ONAS briefing (Examination in Chief of Deb Hutton, November 21, 2005, p. 145). Hutton did testify that prior to September 4, 1995, she certainly was aware of the fact that aboriginal rights were recognised and protected in the Constitution (Examination in Chief of Deb Hutton, November 21, 2005, p. 149). In cross-examination Hutton also specifically denied having told Julie Jai that she did not care whether aboriginal people had special rights protected by the Constitution of Canada (Cross Examination of Deb Hutton by Mr. Downard, November 22, 2005, p. 158). She also testified that to her knowledge the Harris government had no intention of disregarding aboriginal rights protected by the Constitution (Cross Examination of Deb Hutton by Mr. Downard, November 22, 2005, p. 158).

[56] Written Submissions, 12.01 (2), "Not *Ex Parte*", pp. 219-21.

that in expressing agreement with an *ex parte* injunction, John Carson was influenced by the views of her "masters", a position that was plainly adversarial and entirely beyond her knowledge.[57] These are matters which in our respectful submission, the Inquiry should properly take into account in its assessment of credibility.

COMMENT ON MALICE

It must be observed that the malice in counsel's submissions is palpable. It is said that Mike Harris' sentiments were "venomous",[58] his views "poisonous".[59] He is said to have desired escalation of the takeover of the Park into an emergency.[60] He is presented as being more concerned about his public image than public safety.[61] It is asserted that Mike Harris would have approved of "war with the Indians".[62] A veiled suggestion is made that he would have approved the very killing of Dudley George.[63]

The submissions of counsel for The Estate of Dudley George and Members of Dudley George's Family certainly reflect the depth of rage that exists among aboriginal people based upon historical oppression. Such malice is not consistent with a balanced assessment of the evidence. For the purpose of finding the facts about what happened on September 4 through 6, 1995, the submissions do not provide meaningful assistance.

2. REPLY TO OTHER SUBMISSIONS

The submissions of other parties from time to time assert some of the positions contained in the submissions of the Estate of Dudley George and Members of Dudley George's Family, to

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57 Cross Examination of Julie Jai by Mr. Downard, September 12, 2005, p. 88 and following. When objection was made and it was put to Ms. Jai that this was the substance of what she had said, she denied having done so (see p. 95). In our submission the prior transcript speaks for itself.

58 P. 86.

59 P. 74.

60 "[E]scalation of the situation into an emergency was exactly what the Premier wanted" (p. 8).

61 "There would be no aboriginal occupations on Mike Harris' watch. It was bad for his public image" (p. 85).

62 "What Mark Wright was after was information that would justify some kind of aggressive action against the occupiers. He never quite got that kind of information, so he proceeded to distort reality and interpret trivial facts on the ground in an unreasonable and prejudicial way until he had built up a version of facts (which did not resemble reality) that could justify amassing a fucking army to go to war against the Indians. Harris would have approved" (p. 103).

which we have replied above. In the submissions that follow we have generally limited our reply to other parties' submissions to new and further assertions that they make.

(1) SUBMISSIONS OF AAZHOODENA AND GEORGE FAMILY GROUP

It is submitted that Deb Hutton's "insistence that there be no negotiations and that the government wanted "to be seen as actioning" prevented the IMC from appointing a negotiator who might have helped to prevent violence."[64]

It is incorrect that Deb Hutton insisted that there be no negotiations. The evidence is clear that Deb Hutton understood discussions with the occupiers would take place. It is clear that these could include discussions with a view to ending the occupation. The only limitations were that these discussions were to be handled by the OPP and MNR representatives. It had long been established policy, embodied in the IMC guidelines and predating the Harris government, that these discussions would not extend to negotiation of substantive issues, such as an assertion of entitlement to land or the burial ground issue.

The assertion that the IMC members were "prevented" by Deb Hutton from appointing a third party negotiator is supported by retrospective statements of opinion of Julie Jai and Elizabeth Christie, who was junior litigation counsel at the time. This retrospective evidence is obviously self-serving. Deb Hutton did not state that discussions should be carried out by OPP and MNR representatives only until September 6. No one advocated the option in the course of the lengthy discussion in the prior IMC meeting on September 5. To the contrary, at the September 5 IMC meeting the opposition of Chief Bressette to the occupation was noted, as well as the Chief's concern that the government not take steps to recognize the occupying group.[65] The concern was expressed by the Parliamentary Assistant to the Minister Responsible for Native Affairs that,

> If we send someone from ONAS, it confirms their legitimacy. OPP and MNR are on the ground and running. They'd be more appropriate.[66]

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63 "Harris wanted the fucking Indians out of the Park. A 9 mm bullet to the chest is one way to do that" (p. 110).

64 Submissions of Aazhoodena and George Family Group, p. 4.

65 Written Submissions, 8.01, "The September 5 IMC Meeting", pp. 165-66.

66 Written Submissions, 8.01, "The September 5 IMC Meeting", p. 165.

The submission of counsel that Deb Hutton single-handedly prevented the appointment of a third party negotiator is also contradicted by the testimony of other participants in the IMC meeting. In cross-examination, ONAS legal counsel Eileen Hipfner testified as follows:

> Q: Did anyone at the meeting object and suggest that the Committee should recommend sending a negotiator to try and open up communications with the occupiers at this point in time?
>
> A: I don't know that it would have been framed as an objection. I don't recall whether there was any discussion about actually appointing a negotiator. I don't think we were that far down the road yet.
>
> Q: So, it was concluded, then, by the IMC that, as Mr. Buhagiar has stated, that the OPP and the MNR are on the ground running and they'd be the most appropriate people to try and communicate with the occupiers?
>
> A: I think that somebody makes the point at one of the two meetings that the Committee – that the Government has had enormous success in addressing these kinds of incidents by keeping them local and by having local OPP and local MNR staff or local Ministry of Transportation staff, if you're dealing with the highway, address those matters. That keeping it low key had proven to be a successful response, at least, until that time.[67]

Anna Prodanou, who in other respects was critical of the Harris government, testified as follows:

> Q: And you indicated there was a certain level of frustration with respect to this inability to communicate with the occupiers. Do you recall at the conclusion of the September 5th meeting a decision essentially being made that you would leave attempts at communication to the OPP and to the MNR who were already on the ground at -- in the Ipperwash area?
>
> A: It's usually done locally, yes; that was the -- the prevailing wisdom of the committee.[68]

We respectfully submit that counsel's submission, plainly focused on attacking Deb Hutton, is based on an unbalanced view of the evidence.

(2) RESIDENTS OF AAZHOODENA (ARMY CAMP)

It is submitted (at para. 155) that the "message delivered" to Ron Fox and Scott Patrick in the dining room discussion was "loud and clear: 'I want the fucking Indians out of the Park.' Ron Fox and Scott Patrick never testified that they heard any such words.

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[67] Cross-examination of Eileen Hipfner by Ms. McAleer, September 15, 2005, p. 214. See also p. 234.

[68] Cross examination of Anna Prodanou by Ms. McAleer, September 20, 2005, p. 217.

(3) CHIEFS OF ONTARIO

The Chiefs of Ontario ("CO") state unequivocally that four "realities", or sets of "objective facts", "lead to the ultimate conclusion that Premier Mike Harris and his government were responsible for the shooting death of Dudley George." Boiled down, CO's contention is that these "realities" or "objective facts" are as follows:

1) Mike Harris and his party were elected on a platform, hostile to First Nation People and their rights;

2) The Mike Harris Government saw the Ipperwash occupation as an "opportunity" to impose their "anti-native" policies;

3) Mike Harris ignored the advice of experienced civil servants, and declared "I want the fucking Indians out of the Park"; and

4) Rox Fox communicated this message to John Carson who then abandoned the OPP's operational plan and policy and deployed the CMU and TRU.

The CO submissions completely ignore: (1) the historical context of the Camp Ipperwash dispute; (2) the alienation and frustration of the Stoney Point people; (3) the breakdown in relations between the occupiers and the Kettle and Stony Point First Nation; (4) the inability of the OPP to communicate with the occupiers; (5) the escalation of events over September 4, 5 and 6; (5) the miscommunications among the OPP on the evening of September 6; and (6) the violent response of the occupiers when confronted by the CMU.

Instead, CO assert that it is all Mike Harris' fault.

We will address each of the four "objective facts".

1. Mike Harris and his conservative Party were elected on a platform hostile to First Nations people and their rights.[69]

The Chiefs of Ontario ("CO") have submitted that the Harris government campaigned on policies that were "hostile" to First Nations people in order to appease other constituencies.[70]

They assert, "The anti-native policies advanced by the Harris Campaign and subsequent government were couched in the cynical rhetoric of 'equality'".[71]

In our submission the only rhetoric at play is the use of terms such as "hostile" and "anti-native" to describe a campaign platform that sought more participation for non-native people in land claims negotiations and a commitment to conservation principles.

CO further argues that the Harris campaign policy "was aimed at restricting the rights of some of the poorest communities in the province".[72] As stated above in response to other submissions, Progressive Conservative policy documents specifically recognized the special rights afforded to First Nations people. In "Bringing Common Sense to Community Development" it is stated:

> Native Canadians are a special group in our society with unique recognition in the Constitution and specific needs and concerns. As the federal government moves closer to recognising self-government among native peoples, aboriginals' relationship with the Ontario government will continue to change.
>
> It would take thousands of pages to deal with all of the issues that changing relationship will raise. Here, we are only discussing some of the most important of the current issues facing Ontario's native population.
>
> Native Canadians have told us they want to resolve the ongoing conflicts over land claims and resource rights. But what is more important they want to break the poverty cycle that traps so many aboriginal people in despair and bad health.
>
> Our plan to provide new opportunities for Native Canadian communities is explained in this session…
>
> - Working with Native Peoples. That means helping aboriginal groups become economically independent and co-operating with all interested groups in resolving land claim and resource disputes.
>
> While Canadian history and law both mark this group as unique, we are committed to integrating the rights and needs of all Ontarians in our policies in this area.
>
> That's what The Common Sense Revolution is all about.

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69 CO Submissions, p. 2.

70 CO Submissions, p. 4.

71 CO Submissions, p. 5.

72 CO Submissions, p. 6.

As previously stated, this document also identifies the objective to "Work with native leaders to reflect aboriginal concerns and include native viewpoint in government policies."[73] An additional document, "A Voice for the North' A Report of the Mike Harris 'Northern Focus' Tour, January 1995", specifically states, "Native rights must be respected".[74]

CO asserts that following the death of Dudley George, "the Harris Government continued apace with its anti-native policies" when "Premier Harris's cabinet formally, but secretly, decided that the SPR [Statement of Political Relationship] would be ignored." CO then quotes particular excerpts from cabinet minutes of December 13, 1995[75] in which the Conservative Government set out its new Aboriginal Policy Framework. We would encourage the Commission to review the cabinet minutes in detail. They do not depict a "hostile" or "anti-native" agenda.

The Statement of Political Relationship was, as its name denotes, a political document prepared by the NDP government. The NDP government was the first provincial government in Canada to adopt such a policy. The new Progressive Conservative government brought in its own policy, The Aboriginal Policy Framework. According to the cabinet minutes relied upon by the CO, Cabinet agreed that:

> 1.The following goal, which will provide overall direction for addressing aboriginal matters, be approved:
>
> To achieve balance and stability in relations between aboriginal and other residents in the province while building the capacity within aboriginal communities to develop stronger economies, become more self-reliant and exercise greater responsibility for their well being.
>
> 2. The following principles, which will provide overall direction for addressing aboriginal matters, be approved, […]
> A. Equality
> B. Legal Obligations
> C. Responsibility
> D. Openness
> E. Affordability
> F. Accountability

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73 P. 3.

74 Exhibit P-925, p. 4.

75 Exhibit P-1080.

G. Effective Management
H. Self-Reliance
I. Stability.

CO contend that, "The cabinet minutes also withdrew the Harris Government from the previous government's commitment to the concept of aboriginal self-government, stating there would be no commitment to the inherent right and that any responsibility for self-government was a federal matter" (p. 14). The cabinet minutes actually state the following:

> D. Comprehensive self-government:
>
> i) Do not commit on the inherent right;
>
> ii) Declare self-government to be a federal responsibility;
>
> iii) Limit participation in comprehensive self government negotiations as required to protect Ontario's interests; and
>
> iv) Develop policy on self-government and the inherent right by Fall of 1996.

Having labelled Harris's campaign policies and Aboriginal Policy Framework as "hostile" and "anti-native", CO argues, "Given the Harris Government's consistently anti-native position both before and after the Ipperwash incident, there is no reason to believe that the policy would have changed over the course of those 3 days in September of 1995. In fact, the evidence indicates that the events of those days were tragically marked by the implementation of that policy."[76] To suggest that campaigning on "equality" principles and subsequently refusing to commit on the inherent right to aboriginal self-government is probative that Harris directed OPP operations at Ipperwash, and in particular caused the shooting of Dudley George, is extremist rhetoric and nothing else.

> *2. With the takeover of the Ipperwash Provincial Park on the evening of September 4, 1995, The Harris Government was faced with an important opportunity to put its First Nations policy into practice.*[77]

The theory that Mike Harris welcomed the Ipperwash Park take-over as an opportunity to assert his will over First Nations people has already been addressed and dismissed elsewhere in our

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[76] CO Submissions, p. 14.

[77] CO Submissions, p. 15.

reply submissions. In particular, see our response to the submissions by the Estate of Dudley George.

3. *Premier Harris stated in a loud voice, "I want the fucking Indians out of the park."*[78]

CO suggests that Charles Harnick's evidence that the premier stated, " I want the fucking Indians out of the park" should be preferred over the evidence of all of the other witnesses who attended the dining room meeting but did not recall the Premier making any such statement. CO engages in rank and insulting speculation that "the chilling truth is that the comment may have seemed quite unremarkable to others in the room at the time".[79] This insulting assertion is entirely without foundation. In fact, numerous witnesses specifically testified to the contrary, stating that they would have remembered any such statement if it had been made.

With respect to the fact that Mike Harris did not even realize Ron Fox was an OPP officer, CO submits:

> In the end it is irrelevant whether Mike Harris knew that Ron Fox was an OPP officer. He was well aware that all of the persons required to carry out his instructions were present. The instructions of Premier Harris were that the occupiers of the park be removed. Nothing turns on whether he anticipated the precise means by which that would be accomplished.[80]

According to this line of argument, Mike Harris would be responsible for the tragic events of September 6, simply as a result of expressing a desire that the occupation come to an end. As a logical theory of causation this is nonsense. There certainly can be nothing improper with respect to the Premier expressing a desire that the occupation come to an end. The government had every right to seek relief in the courts by way of an immediate *ex parte* injunction. That is entirely different from the Premier directing the tactical operations of the OPP. That did not occur, and it is implicit in the CO's submission that the CO knows full well that did not occur. Further, to suggest that the Premier's ministers and advisors would then set about to achieve this end by whatever means necessary is simply unsupported by the facts and inconsistent with the

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78 CO Submissions, p. 32.

79 CO Submissions, p. 32.

80 CO Submissions, p. 33.

modern workings of government. A central subject of the dining room meeting was in fact the options that government could or could not appropriately pursue to end the occupation. Many participants in the discussion testified to this and the overwhelming thrust of the evidence is that the option chosen by government was legitimate.

> 4. *The only remaining logical explanation for John Carson's decision [to deploy CMU and TRU] is that he was influenced, either consciously or subconsciously by the Harris Government's clearly expressed desire to take swift affirmative action against the occupiers.*[81]

The case against Mike Harris being unproven on objective evidence, counsel resorts to inexpert psychoanalysis. The "realistic explanation" for the decision to deploy the CMU and TRU has previously been explained by John Carson and has absolutely nothing to do with Premier Harris or his Government. The basis for the OPP's decision to deploy the CMU and TRU has been clearly articulated by counsel for the OPP.[82] John Carson and every other OPP witness who testified were clear that the Premier's views on the Ipperwash situation had nothing to do with the operational decisions that were made by the OPP on September 6. On this point, we rely on our original submissions, and the submissions of the OPP.[83]

(4) ABORIGINAL LEGAL SERVICES OF TORONTO

In paragraph 64 of the submissions of Aboriginal Legal Services of Toronto ("ALST") it is asserted that, "Ms Hutton repeatedly pressed the attendees at the meeting on what the police response to the occupation should be, and conveyed dissatisfaction at the responses she received." That is false. There is no evidence that Ms. Hutton, "repeatedly pressed the attendees at the meeting on what the police response should be." The evidence cited by ALST does not support this assertion.

In paragraph 66 of the submissions of ALST it is stated that, "While the IMC process contemplated that political staffers would attend the committee meetings, they were to have a limited role. Their presence on the IMC facilitate their respective ministers obtaining a preview of the options as they developed, and before they were presented for decisions." There was in

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81 CO Submissions, p. 61.

82 Pp. 118 to 161.

fact no authoritative definition of the role of political staff. Scott Hutchison, a lawyer with extensive experience in government, testified to the contrary. He testified, "Normally you would expect political staff to perhaps indicate what the Minister's thinking was on a particular issue in the sense of where they wanted options to come from."[84]

At paragraph 81 of ALST's submissions reliance is placed on the assertion that OPP Commissioner Gwen Boniface "had no hesitation in condemning the dining room meeting as inappropriate". This assertion of "condemnation" is a clear exaggeration. In any event, it is based upon fragmentary and incomplete information about the circumstances of the dining room discussion put to Commissioner Boniface in cross-examination. In particular, counsel excluded from that information the uncontroverted evidence that at the dining room meeting, the appropriate role of government regarding police operations, and the principle of non-interference of government in police operations was clearly and plainly discussed, without dissension. ALST's cross-examination of Commissioner Boniface on this point is the product of a plainly biased and adversarial presentation of the circumstances, and can as such has no weight.

At paragraph 94 of ALST's submissions it is stated that Mike Harris "purposefully concealed the convening of the dining room meeting from members of the House." This allegation is groundless. Premier Harris did not conceal the dining room meeting from the House. He had no reason to conceal the meeting. The discussion in the dining room was not about any inappropriate matter. To the contrary, the very purpose of the meeting was to finalize the government's position as to how it would respond to the takeover of the Park in a manner that was legitimate and appropriate to government's role. The evidence is overwhelming that this is so.

The questions that were posed to the Premier in the House on May 29, 1996 related to a newspaper article in the *Toronto Star*[85] in which it had been alleged that there had been a "secret meeting" between Deb Hutton and Ron Fox on September 5. It was alleged that the government

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83 See pp. 79 to 117.

84 Examination in chief of Scott Hutchison, August 25, 2005, p. 289 ("that would be consistent with the mandate for the group"). See also generally, Written Submissions, 8.01 (6), "The Presence of Political Staff", pp. 168-69.

85 Exhibit P-1081.

had been informed of an OPP "build-up" in the area, and that the government had directed the tactical operations of the OPP. Premier Harris' answers were directed to addressing these allegations.

As a formality, it is also respectfully submitted that the finding requested by ALST is plainly beyond the scope of this Inquiry's terms of reference.

At paragraph 105 of ALST's submissions, it is asserted that Mike Harris "admitted that he was briefed, by Superintendent Fox" in the dining room. This assertion once again exaggerates the evidence. Mike Harris never testified that he was briefed by Ron Fox in the dining room. All that he testified to was that somebody provided an update on the OPP's perspective on what was happening on the ground.[86]

3. CONCLUSION

Direct action strikes at the foundations of civil order in society. Many people view the primary role of government as being the protection of those foundations. In a democracy different political perspectives may result in different government responses to direct action. Persons viewing direct action from a left perspective may be more permissive. Persons viewing it from a conservative perspective may feel a stronger need to affirm civil order. This Inquiry has no more prospect of eliminating those differences than it does of stopping the sun from coming up tomorrow morning.

Mike Harris was not a king. He was not a dictator. He did not have mystical powers of mind control. He was the Premier or Ontario, a politician in a democratic society. The Premier had the right to establish the government's policy. The government had the right to oppose the taking of the Park. The government had the right to submit the matter to the courts by applying for an immediate injunction. What the government could not do was direct the operations of the Ontario Provincial Police on the ground. The government knew that, and neither Premier Harris nor anyone else in the government did so. There is no evidence that this was done.

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[86] Cross examination of Mike Harris by Mr. Sandler, February 15, 2006, p. 21-22.