

THE IPPERWASH INQUIRY

THE HONOURABLE SIDNEY B. LINDEN, COMMISSIONER

PART I

REPLY SUBMISSIONS OF THE ONTARIO PROVINCIAL POLICE ASSOCIATION AND ITS MEMBERS

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1. Picnic Table Incident

1. Counsel for the Residents of Aazhoodena, and other parties, submit that Cst. Whelan's evidence "bordered on the absurd" and contained inconsistencies. It is conceded that Cst. Whelan, like other witnesses, did not have a perfect recollection of the events which occurred nearly eleven years ago. However, Cst. Whelan made his best attempt to recount events as he recollected them to assist the Inquiry and he referred to his police notes, which were made contemporaneously with the events, to assist him.

2. Counsel for Aazhoodena and the George Family Group submit that Cst. Whelan's police notes "contain no reference to striking picnic tables with his cruiser". This is not accurate. Cst. Whelan's notes state "we pushed over the barricade and made a hole to enter the parking lot access to the beach area".¹ There is no question that Cst. Whelan reported that he used his cruiser to push the tables, as this information was reported back to the Command Post by Sgt. Graham shortly after the incident.² There has never been any issue about whether Cst. Whelan pushed a picnic table using his cruiser. All witnesses, who were in a position to make such observations, agreed that a cruiser was used to push a picnic table.

3. It is suggested by counsel for the Residents of Aazhoodena that Cst. Whelan's use of his cruiser to push the picnic tables showed "either a certain level of frustration, a desire to make a show of force or both". However, it is evident from listening to the radio calls Cst. Whelan made at the time, reporting the situation to the Command Post and requesting assistance of other officers, that he was calm and collected, not frustrated, or in anyway inappropriate.³

4. Cst. Whelan had a statutory and common law duty to enforce the law. The picnic tables were used to create an unlawful obstruction to the public beach access area of

¹ P-1237 at 9.

² P-1372 at 1.

³ Audio for P-1241.

the sandy parking lot. He carried out his duty in a careful and cautious manner, in an attempt to clear an unlawful obstruction of public property. Consistent with his conduct, no occupier was hurt or injured, and no damage was caused to any private property.

2. Sgt. Korosec

5. It is suggested by ALST and others that Sgt. Korosec was motivated to “take back the park” because of embarrassment that the OPP had not been able to contain the Park or resist the occupation on September 4. It is submitted by ALST and others that as a result of the Park takeover on September 4, Sgt. Korosec harboured a desire to “get back at” the occupiers. It has further been suggested by ALST and others that the decision to deploy the CMU on September 6 was made by A/S/Sgt. Wright and Sgt. Korosec at a time when Insp. Carson was off duty at dinner at a private residence.⁴

6. None of these submissions are supported by the evidence lead at the Inquiry. To the contrary, the evidence establishes the following:

- Sgt. Korosec was not aware of any criticism being leveled at the OPP as a result of a perceived failure to maintain control of the Park⁵. Although he was present in the Command Post on September 6, 1995, Sgt. Korosec was not aware of any of the communication between Insp. Carson, Supt. Fox or any members of the government, including local MPP Marcel Beaubien.⁶
- The actions of Sgt. Korosec following the occupation of the Park are indicative of nothing but restraint, ongoing attempts at de-escalation, and prevention of conflict with the occupiers.
- Sgt. Korosec’s role at Ipperwash – both in the planning stages and following the occupation – was administrative and not operational in nature.

⁴ Submissions of Aboriginal Legal Services of Toronto; Submissions of The Estate of Dudley George and Members of Dudley George’s Family; Submissions on Behalf of the Aazhoodena and George Family Group.

⁵ Stan Korosec 04/18/2006 at 111, 205, 211.

⁶ Stan Korosec 04/06/2006 at 87, 93, 110.

- The comments made by Sgt. Korosec to Cst. Jacklin represented an unfortunate choice of words at a moment of extreme fatigue and were not intended as an expression of racism or of a personal vendetta.

a) Limited Role in Project Maple

7. In 1995, Sgt. Korosec was the Team Leader for the #1 District ERT, which included Forest and Ipperwash. Following his attendance at the planning meetings prior to the Park occupation, Sgt. Korosec was assigned a variety of responsibilities which can only be characterized as administrative in nature. Sgt. Korosec understood that pursuant to Project Maple, his role was administrative and logistical in nature, his job being to report activity to the Incident Commander.

For -- for different -- for different duties or different responsibilities, I guess. I had the more administrative role with -- with the ERT teams. The ERT leaders were more, since there was two (2) ERT teams working at a time, there -- there could be four (4) ERT lead -- oh, two (2) leaders and two (2) assistants on the ground as we say, they would be more in charge of -- of maybe moving personnel around or what was happening on the ground. My duties were -- were somewhat different, non-operational, in this plan.⁷

8. Sgt. Korosec complied with his mandate throughout his involvement at Ipperwash.

I was no longer a -- in the ERT team leader role. Sergeant Graham had taken that role over for the number 1 district ERT team. So I was no longer in that capacity; I assumed this role that was laid out in the plan.⁸

⁷ Stan Korosec 04/05/2006 at 305, 314; Stan Korosec 04/06/2006 at 78.

⁸ Stan Korosec 04/06/2006 at 81, 137, 158, Stan Korosec 04/18/2006 at 175.

b) Attempts at De-escalation of Events on September 4 and 5

9. Prior to his involvement at Ipperwash, Sgt. Korosec was extremely experienced in matters involving First Nations communities.⁹ At the start of his career with the OPP, Sgt. Korosec spent eight years at the Forest Detachment where he became familiar with the community and worked closely with the Kettle Point Police.¹⁰ In addition to undergoing First Nations Awareness Training in 1993, Sgt. Korosec was posted to the Sombra Detachment and acted as the First Nations liaison officer to the Walpole Island First Nation where he worked closely with the community and the Chief of Police.¹¹

10. The actions of Sgt. Korosec at the time of and following the occupation of the Park are characterized by restraint and indicative of ongoing attempts to de-escalate conflict with the occupiers. Sgt. Korosec testified that throughout his involvement at Ipperwash – up until and including the moment when the Park was taken over - he did everything within his power to negotiate and resolve potentially violent situations peacefully, in accordance with the dictates of Project Maple.¹² Sgt. Korosec applauded the efforts of officers to avoid confrontation and he attempted to ensure the maintenance of peaceful co-existence.¹³ For example:

- Following the confrontation between Dudley George and Csts. Dougan and Grandsen on September 2, 1995, Sgt. Korosec advised ERT members to stay off of Matheson Drive. Sgt. Korosec testified, “I didn't want things to escalate at all. I – I wanted to ensure that we were not the cause of – of anything escalating and -- and anything getting out of hand”.¹⁴
- On September 3, 1995, Sgt. Korosec deliberately refrained from sending uniformed officers into the Park to deal with events at the boat launch for fear that “sometimes

⁹ Stan Korosec 04/05/2006 at 248

¹⁰ Stan Korosec 04/05/2006 at 259.

¹¹ Stan Korosec 04/05/2006 at 247.

¹² Stan Korosec 04/06/2006 at 134.

¹³ Stan Korosec 04/05/2006 at 322; Stan Korosec 04/06/2006 at 16.

¹⁴ Stan Korosec 04/05/2006 at 322.

a uniform presence can cause more problems than solve it and we certainly didn't want that to happen".¹⁵

- On September 4, 1995, Sgt. Korosec attempted to engage in discussions with Roderick George, who he knew from his time as an officer at the Forest Detachment. Sgt. Korosec attempted to calm the situation before ultimately leaving the area to avoid a confrontation.¹⁶ Sgt. Korosec's conciliatory attitude continued in his attempts at discussion with Bert Manning later that day. As a result of his discussions with Manning, Korosec was optimistic that the matter would be resolved.¹⁷ Moments later, when occupiers attempted to take over the Park – a situation which he described as being the most difficult situation he had ever faced as an OPP officer - Sgt. Korosec consulted with the Incident Commander before directing officers to leave the area.¹⁸

c) No Role in Decision to Employ the CMU

11. Sgt. Korosec spent the day in the Command Post on September 6. His role was to do as he was instructed by his superior officers.¹⁹

12. There is no evidence to support a finding that Sgt. Korosec was involved in the decision to deploy the CMU on September 6. Rather, the evidence establishes that while on duty at the Command Post, Sgt. Korosec was at all times following the directions issued to him by superior officers, including Insp. Carson, Insp. Linton and A/S/Sgt. Wright.²⁰

13. Sgt. Korosec had neither the ability nor the power to make critical decisions in relation to the OPP response to the occupation. As stated at paragraph 465 of our submissions, and as acknowledged by Insp. Carson during his evidence before the

¹⁵ Stan Korosec 04/05/2006 at 328.

¹⁶ Stan Korosec 04/06/2006 at 20.

¹⁷ Stan Korosec 04/06/2006 at 26, 28.

¹⁸ Stan Korosec 04/06/2006 at 29, 33, 36-37.

¹⁹ Stan Korosec 04/06/2006 at 158, 194-195, 201.

²⁰ Stan Korosec 04/06/2006 at 158, 194-195, 201.

Inquiry, the decision to deploy the CMU could only be made under the direction of a Level 2 Incident Commander who was responsible to oversee the CMU operation.²¹ Sgt. Korosec was neither a Level 2 nor even a Level 1 Incident Commander in September, 1995. Sgt. Korosec was well aware of the limits of his responsibilities and his limitations in this regard.²²

14. Sgt. Korosec was not privy to any planning or decisions being made regarding the use of officers in the area of the Park on September 6. From his perspective, it was a “regular night” and the police were not going to go anywhere near the Park.²³

d) Deployment of the CMU

15. It is asserted by ALST and others that the decision to deploy the CMU was made prior to Insp. Carson’s return to the Command Post on September 6. It is also asserted that this decision to deploy the CMU was made by A/S/Sgt. Wright and Sgt. Korosec without the knowledge of Insp. Linton, prior to Insp. Carson’s return to the Command Post. There is absolutely no evidence to support the assertion that Sgt. Korosec and A/S/Sgt. Wright devised a “plan” to deploy the CMU, or that they were working in conjunction to further an agenda to remove the occupiers from the Park.

16. Sgt. Korosec was not involved in the decision to hold back the day shift ERT members, to mobilize ERT members in “hard tac” or to contact S/Sgt. LaCroix to lead the CMU. Any actions taken by Sgt. Korosec on the evening on September 6 were at the direction of superior officers.

17. Sgt. Korosec contacted S/Sgt. LaCroix on instructions from Insp. Linton.²⁴

²¹ John Carson 05/18/2006 at 191-192, 219-220; 06/06/2005 at 98-99, 119-121. See also: George Hebblethwaite 05/10/2006 at 417; Wade Lacroix 05/08/2006 at 97.

²² Stan Korosec 04/05/2006 at 254, 257. Sgt. Korosec testified that any reference in the scribe notes to his being able to deploy the TRU team was erroneous as he was not qualified to do so, nor was this something he would ever consider doing. Stan Korosec, 04/06/2006 at 109; Stan Korosec, 04/18/2006 at 123, 141.

²³ Stan Korosec, 04/06/2006 at 227; 04/18/2006 at 55, 118, 262.

²⁴ Stan Korosec 04/06/2006 at 230.

18. The request that ERT team members return to the detachment was similarly conveyed by Sgt. Korosec at the behest of A/S/Sgt. Wright.²⁵ Sgt. Korosec was in no way involved or responsible for the decision to hold back members of the ERT team or to deploy members of the CMU. A/S/Sgt. Wright testified that the decision to hold back the day shift was his.²⁶

19. The request that A/S/Sgt. Kent Skinner attend at the Command Post and that the remainder of the TRU team be held down was made by Sgt. Korosec on instructions from Insp. Carson.²⁷

20. Sgt. Korosec testified that, at the time he was making these calls, no decision had been made to deploy the CMU.²⁸ The reference to 3 and 6 District ERT teams having left Forest²⁹ was not a reference to a clandestine deployment of the CMU – rather it referred to the fact that members of those ERT teams had finished their shift, been de-briefed, and gone off duty.

21. Sgt. Korosec did not influence Insp. Carson's decision to deploy the CMU. Because he was situated in the Command Post, Sgt. Korosec was privy to information which was circulating within the Command Post. However, he was not involved in the dissemination of information to Insp. Carson regarding the events which occurred during the evening hours of September 6.³⁰

22. The evidence establishes that the decision to deploy the CMU (i.e. the decision for the CMU to proceed to the sandy parking lot) was made by Insp. Carson following his return to the Command Post. The evidence of Insp. Carson is clear that although A/S/Sgt. Wright was entitled to voice his opinion on how to deal with the matters, and while Insp. Carson was willing to entertain all options, it was Insp. Carson and Insp.

²⁵ Stan Korosec 04/06/2006 at 237.

²⁶ Mark Wright 02/23/2006 at 58.

²⁷ Stan Korosec 04/06/2006 at 245.

²⁸ Stan Korosec 04/18/2006 at 57, 244.

²⁹ Stan Korosec 04/06/2006 at 237; P-1321.

³⁰ Stan Korosec 04/06/2006 at 235, 257.

Carson alone who made the decision to deploy the CMU. Following Insp. Carson's decision, Sgt. Korosec remained at the Command Post.³¹

3. Arrest of Cecil Bernard George

23. It is submitted on behalf of the Chippewas of Kettle and Stony Point First Nation ("CKSP") that Cecil Bernard George gave truthful and cogent evidence of what he did and what happened to him on the night of September 6, and that his evidence, along with the evidence of the Park occupiers, should be preferred over the account of any OPP officer.³²

24. CKSP submits that, with respect to the arrest of Cecil Bernard George, the evidence of OPP officers was "vague, inconsistent with each other, and mostly notably, their narrative of the events is completely inconsistent with the injuries...."³³ Similar suggestions were made by other counsel for the Aboriginal parties. These suggestions are an unfair and unreasonable interpretation of the evidence before the Commission. We have addressed this below.

25. Counsel for CKSP and other parties also have invited the Commissioner to make a finding that Cecil Bernard George's injuries were the result of excessive use of force by officers during his arrest.³⁴ We address this issue first, followed by our submissions on the evidence the Commissioner should preferred with respect to the arrest.

a) Excessive Use of Force

26. Section 26 of the *Criminal Code* states:

Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

³¹ Stan Korosec 04/06/2006 at 273.

³² Submissions of CKSP at p. 38

³³ Submission of CKSP at p. 40; Submission of Aazhoodena and George Family George at p. 130

³⁴ Submission of CKSP at p. 41; Submission of Aazhoodena and George Family Group at p. 134

27. Police officers are authorized to use force in the lawful execution of their duties. A finding of excessive use of force by an officer or a number of officers by this Commission would not merely be a finding of misconduct as contemplated by section 5 of the *Public Inquiries Act*, it would be tantamount to an expression of criminal responsibility by the officer or officers. This Commission is not empowered to do that.

28. A thorough criminal investigation of the matter was carried out by the SIU from 1997 to 1999, and the results of the investigation concluded that excessive force was not used by OPP officers during the arrest of Cecil Bernard George. This is detailed in the SIU report.³⁵

29. Counsel for Aazhoodena and George Family Group have suggested erroneously to the Commission that the SIU investigation was “stymied”, and closed without any substantive finding on the merits of the investigation.³⁶ A similar suggestion was put forward by CKSP.³⁷ This is simply not true, and an unfair characterization of the report.

30. The findings of the SIU, and the reasons for its conclusions are fairly presented in Chapter 12 of the OPPA’s submissions. We submit the Commissioner should accept them.

b) Arrest Evidence

31. The Commission heard evidence from twelve OPP officers who were involved in the events in the sandy parking lot on September 6. Each of them gave their evidence to the best of their ability, and they were honest, forthright and co-operative with the Commission about what they saw, did, and heard during the incident.

32. It is an unreasonable, indeed impossible expectation, even when assisted by notes, that a witness remember every detail of every moment in perfect continuity when testifying about events even close in time to the events, let alone about events that

³⁵ P-626

³⁶ Submission of Aazhoodena and George Family George at p. 130.

³⁷ Submission of CKSP at p. 40

occurred almost eleven years ago. More likely, the most unreliable and incredible evidence heard by this Commission was given by those witnesses who presented themselves as having a crystal clear memory, and an omniscient view of everything that transpired, despite the chaos of the occurrence and despite the passage of time.

33. Each of the OPP officers gave their individual accounts of their observations and involvement, if any, with the arrest, which arose solely as a result of Cecil Bernard George's own actions that night. If he had not assaulted S/Sgt. Lacroix, but instead remained in the Park, he would not have been arrested. For the reasons he described, including the rage he felt at the moment, Cecil Bernard George made the decision to leave the confines of the Park, and attack a police officer with a pipe.

34. As outlined in our original submissions, testimony was given by the officers that Cecil Bernard George was struck with batons and kicked, and attempts were made to restrain him during the arrest. Cecil Bernard George's resisted violently to his arrest. He was unwilling to capitulate to the officers' prolonged attempts to get him under control. The nature of his injuries was entirely consistent with the evidence from the officers, and with Cecil Bernard George's own evidence, that he was "fighting with [his] nightmare...."³⁸

35. The submissions of CKSP criticize S/Sgt. Lacroix for "vagueness" in his evidence regarding Cecil Bernard George.³⁹ In particular, based on the evidentiary passage referred to, it appears the criticism stems from S/Sgt. Lacroix's inability to identify Cecil Bernard George as his assailant. This criticism is unwarranted. The totality of S/Sgt. Lacroix's evidence with respect to the confrontation was reasonable, empathetic, and persuasive. S/Sgt. Lacroix accepts that it was Cecil Bernard George with whom he engaged on September 6 based on the investigation, and all of the evidence that supports this conclusion. However, he could not positively identify the man. Their encounter was quick and charged. It is unreasonable to suggest that S/Sgt. Lacroix should be able to identify Cecil Bernard George, as it would be unreasonable to expect

³⁸ Cecil Bernard George 12/07/2004 at p. 62-64

³⁹ CKSP Submissions at p. 46

that Cecil Bernard George, or anyone at the scene for that matter, to identify the person with whom they fought. These individuals were unknown to each other. It was dark, and the scene was chaotic. Many police officers and occupiers were fighting. It is difficult to know, with any certainty, who hit whom. In fact, this was the foundation for the acquittal of the assault charges against Cecil Bernard George at his trial.⁴⁰

36. As for the weight that should be afforded to the evidence of the occupiers about the arrest, Cecil Bernard George's actual injuries expose the exaggeration and bias in some of the evidence given by the occupiers about their purported observations. Cecil Bernard George had no broken bones and no internal injuries. He had a brief and uneventful stay in hospital, without complications or lingering health effects following his release from hospital.⁴¹ These facts are inconsistent with being subjected to a sustained, malicious "beating" which, according to now refuted and unreliable testimony given by the occupiers, was initiated by Cecil Bernard George's attempts to negotiate with police:

...and that's when Slippery come out and he -- he was approaching them, just him and there was probably maybe two (2) or three (3) of us behind him, kind of spread out and he -- he wanted to talk to those cops. He was just -- I remember him saying something about, like, Don't bring your guns here. You don't have to do this thing. And he was trying to talk to them and somebody barked out an order and they -- they punched out again and they just -- they just run him over.⁴²

He went out there thinking that them guys were actually going to show some kind of respect or something, or listen to him; I don't know why. Put his arm up in the air and he identified himself as a Kettle and Stony Point councillor and he went out there and, at that point in time, he decided to walk right out there, I guess. And then a cop come from behind him and clubbed him in the back of the head and he -

⁴⁰ 1004978 at p. 336-355

⁴¹ Cecil Bernard George 12/07/2004 at p. 118-120; Alison Marr 04/26/2005 at p. 95, 228-229, 240-241, 251-254

⁴² David George 10/20/2004 at p. 112

- I am sure he was probably knocked out before he hit the ground, just by the way he fell.⁴³

I think Bernard -- I think that's when Bernard went over the fence to try -- to try and reason with the police.⁴⁴

Once they got into the -- like the parking lot area there, they heard a -- Slippery was basically holding up his hand -- arm to them, telling them to stop and they didn't have to do this and stuff along those lines. That we had a right to be there and stuff like that. As soon as the police had come up to where his position was on the -- coming into the parking lot that's when I seen them -- basically as soon as they got to him they just -- seen a club go up and they clubbed him, he went down and just heard them yell, Punch out, or something like that. They had spread out and basically moved right over, run right over him. So he was behind their police lines and they -- they come up to the fence line.⁴⁵

He was trying to tell the police to leave us alone and a punch out was ordered and they ran past him and started kicking and clubbing him.⁴⁶

He walked out the -- the turnstile and started walking out towards the line of Police, and he was telling them that they had to go, that the Police had to leave, and he was also telling them that they'd never remove the Aboriginal people from the lands, stuff along that lines.⁴⁷

37. It was suggested that Cecil Bernard George did not attend the Park to engage in conflict, to join the occupation, or to confront police. He simply attended out of concern for family members who were there, and to warn the occupiers of the impending danger.⁴⁸ The evidence suggests otherwise.

⁴³ Michael Cloud 11/08/2004 at p. 221

⁴⁴ Stewart George 11/02/2004 at p. 88-89

⁴⁵ Kevin Simon 12/02/2004 at p. 15

⁴⁶ Warren George 12/08/2004 at p. 179

⁴⁷ Nicholas Cottrelle 01/18/2005 at p. 110

⁴⁸ CKSP Submissions at p. 43

38. Cecil Bernard George first attended the Park area at approximately 20:21, and he left the area at 20:42.⁴⁹ After spending approximately twenty minutes at the Park, he returned home, and picked up his brother, Jeremiah George.⁵⁰ He then returned the Park, bringing his younger brother with him. At 21:28, his vehicle was turned away by the officers at checkpoint Alpha. The officers also seized a number of baseball bats, clubs, and golf clubs from the vehicle.⁵¹

39. Despite being turned away at the checkpoint, Cecil Bernard George and his brother walked down the beach towards the Park. They had portable radios and a scanner with them.⁵²

40. On their arrival at the Park, Cecil Bernard George and the other occupiers scouted down East Parkway Drive towards the OPP TOC site, and into the cottages area looking for police. Cecil Bernard George radioed information back to the occupiers near the Park about the police.⁵³

41. If Cecil Bernard George's intentions were simply to warn the occupiers, he could have accomplished this on his first trip to the Park at 20:21. His return to the Park at 21:28, and his activities from 21:28 to 23:00 demonstrate his very active participation in conflict and confrontation with the police. Cecil Bernard George returned to the Park dressed in camouflage with baseball bats, clubs, and golf clubs in his vehicle, and with communication radios and a scanner. He certainly came prepared to participate in a confrontation with the police.

42. It was suggested that Cecil Bernard George's motivations for attending at the Park on September 6 were similar to his motivations and involvement during the Darryl George incident at Kettle Point in February 1995. It has been suggested that he

⁴⁹ Exhibit P-1149, P-1150 and P-1151

⁵⁰ Cecil Bernard George 12/06/2004 at p. 224; Jeremiah George 02/07/2005 at p. 119-120

⁵¹ Exhibit P-1126

⁵² Cecil Bernard George 12/07/2004 at p. 17

⁵³ Cecil Bernard George 12/07/2004 at p. 28

“assisted in diffusing the situation and successfully persuaded” a barricaded individual to turn himself into Kettle Point Police.⁵⁴

43. It is clear from the evidence at the Commission about this barricade incident that the individuals, other than Police Chief Miles Bressette, who breached the perimeter established by TRU were antagonizing police, and certainly not diffusing the situation. This is detailed in Cst. Irvine’s police notes about the occurrence:

Other natives coming into area now into ‘frozen zone’. One on snowmobile approached us. Now beside Cloud’s res. Began offering to fight us. Would not listen to reason. Told us to get off Indian land. Left us. Drove up...began chatting with susp. – still leaning out of window.⁵⁵

4. Decision in *R. v. Deane*

44. Counsel for the Aazhoodena and George Family Group submit that Judge Fraser’s reasons for rejecting A/Sgt. Deane’s evidence are “compelling and convincing and should be accepted by this Commission”.⁵⁶ Judge Fraser did not accept A/Sgt. Deane’s evidence. He found that Dudley George did not have a firearm when he was shot, and that A/Sgt. Deane knew that Dudley George was unarmed.

45. A/Sgt. Deane testified at his trial that after the bus passed his position he saw two muzzle flashes from the bush area adjacent to the sandy parking lot. The shape of the flashes indicated that the shots were fired in his direction. He fired four rounds at that location. He then saw the car leave the Park, veer to the right, and strike several officers. As the car reversed A/Sgt. Deane was walking forward, because he was still concerned about the muzzle flashes. As he moved he saw an individual leave that area, cross Army Camp Road, and hide by some posts at the intersection. The individual then moved to the roadway, shouldered a rifle in a half crouched position, and scanned the CMU. A/Sgt. Deane fired three shots. The individual faltered, went down on one knee, and immediately got back up. As he was getting up he turned slightly

⁵⁴ CSKP Submission at p. 42

⁵⁵ Exhibit P-1597

⁵⁶ Aazhoodena and George Family Group Submissions, para. 509.

toward the sandy parking lot, then toward his previous position by the posts, and threw his rifle in that direction. At this point the bus was reversing to the sandy parking lot. A/Sgt. Deane saw two people assist the individual he had shot back to the Park.⁵⁷

46. Judge Fraser considered that A/Sgt. Deane's evidence was implausible for the following reasons:

The defence evidence just summarized requires the Court to accept the following points. First, that Dudley George left an area of safety to go to an open area on the roadway. Secondly, that the accused either was unable to or chose not to use his sure light flashlight device or laser light features before or after Dudley George was shot. That immediately after seeing Dudley George assisted back into the park, he turned to his right and spoke to Sergeant Hebblethwaite with regard to the head count. Further, that Sergeant Deane walked 20 meters but did not have time to get the message over the communications system, re: the muzzle flashes or danger from the sand berm. Further that Sergeant Deane watched Dudley George move from the position where he was shot to a location in closer proximity to the CMU still carrying the rifle in his hand and still, according to Dr. Spitz's evidence, with the ability to fire a rifle. And not knowing how seriously he had injured Dudley George did not fire his weapon again to keep Dudley George from posing any further threat. Further that Dudley George having just sustained a bullet wound to his chest, which fractured his clavicle completely, punctured his left lung, partially fractured his left eighth rib, completely fractured his left ninth rib, tore a number of blood vessels, that he established as his next priority, the disposal of the weapon he was allegedly carrying. Furthermore that having made this decision Dudley George moved towards the police officers to dispose of the rifle, rather than heading immediately towards the park where his friends and relatives were. Further that Dudley George having sustained the injuries described above was able to throw the rifle into the field or ditch. Further that Dudley George threw the rifle into an area where Constable Klym and Constable Beauchesne happened to be. Also that after the threat was over he sent a message over the communications system but that message did not include any reference to shooting a man

⁵⁷ P-1768 at 110-114, 126-127, 205-207, 216-221, 224-225.

with a rifle, or the rifle having been thrown in the ditch. Also that someone with the responsibility to insure the security of his fellow officers and the CMU members would not warn them about the rifle. The Court would also have to accept that Constable Beauchesne ... (was) not the least bit concerned when Sergeant Deane asked him if he had seen the guy with the gun. Also that Constable Beauchesne who gave the impression to the Court of being an intelligent, highly competent member of this elite team, suddenly became disinterested in the subject of a native with a gun because of some telepathic message given to him by Sergeant Deane. Further that Sergeant Deane chose not to say anything to Sergeant Hebblethwaite no more than 15 seconds after he saw Dudley George being helped into the park further that Sergeant Deane decided to save this question for his meeting a short time later with Constable Beauchesne.⁵⁸

47. Judge Fraser's reasons for rejecting A/Sgt. Deane's evidence can be divided into the following categories: (a) A/Sgt. Deane's failure to report the muzzle flashes; (b) A/Sgt. Deane's failure to report the shooting of Dudley George; (c) A/Sgt. Deane's failure to report the rifle in the ditch; (d) the threat posed by Dudley George after he was shot; (e) A/Sgt. Deane's failure to use his flashlight; (f) A/Sgt. Deane's conversation with Cst. Beauchesne; and (g) A/Sgt. Deane's account of Dudley George's actions.

a) A/Sgt. Deane's Failure to Report the Muzzle Flashes

48. Judge Fraser found it implausible that A/Sgt. Deane would walk 20 meters after firing at the muzzle flashes from the sandy berm, but not report those muzzle flashes over his communications system. A/Sgt. Deane testified that he moved forward after firing at the muzzle flashes, because he was still concerned with the threat from that area. He did not see the individual who had fired the shots. He did not know whether the four rounds he fired had eliminated the threat. A/Sgt. Deane moved the 20 meters "within seconds", with both hands on his weapon. In these circumstances it is understandable why A/Sgt. Deane did not free up one hand to activate his communications system, and report what he had seen. There could have been more

⁵⁸ P-484 at 164 -166.

gunfire at any second. A/Sgt. Deane was properly focused on dealing with the firearms threat, not with reporting it.⁵⁹ There was no necessity for a further report of a firearm when the officers at the scene were already surrounded by gunfire.

49. Moreover, there is no evidence that the other officers who saw or heard gunfire from that area, Sgt. Hebblethwaite and Cst. Poole, took the time to report that fact over the radio. Judge Fraser held A/Sgt. Deane to unrealistic reporting standards, and failed to appreciate that A/Sgt. Deane and the other officers were in the midst of a violent confrontation that involved gunfire.

b) A/Sgt. Deane's Failure to Report the Shooting of Dudley George

50. Judge Fraser also found it implausible that A/Sgt. Deane would shoot an armed individual, but not report that fact over the communications system. A/Sgt. Deane testified that after he shot Dudley George he advised A/S/Sgt. Skinner over the radio that one individual was down, and that an ambulance was required. A/Sgt. Deane also testified that he advised A/S/Sgt. Skinner "of the events" over the radio after the head count was complete, and the CMU was backing down East Parkway Drive. A/Sgt. Deane recalled telling A/S/Sgt. Skinner that the bus and car had driven through the officers, but was "not sure" whether he reported shooting someone. He did not specifically recall reporting that fact. Pressed further, his "best answer" was that he did not know whether he reported that.⁶⁰

51. A/S/Sgt. Skinner's evidence at this Inquiry confirms that A/Sgt. Deane requested an ambulance immediately after he shot Dudley George and saw him stagger. A/S/Sgt. Skinner sent Cst. Zupancic and Ted Slomer out to the roadway in TRU's makeshift ambulance. A/S/Sgt. Skinner then asked where the ambulance was needed, and for whom. A/Sgt. Deane advised that a First Nations person had been injured, but to disregard the ambulance call because the individual had been taken back to the Park. A/S/Sgt. Skinner recalled the ambulance at that point, because the CMU was returning

⁵⁹ P-1768 at 113, 126 - 129, 205 - 206.

⁶⁰ P-1768 at 129, 131, 142-143.

to the TOC, and it was not safe to send Cst. Zupancic and Slomer into an insecure and unknown environment.⁶¹ Cst. Zupancic also heard the call for an ambulance over the radio, and confirmed that he and Slomer were dispatched in the TRU ambulance, but then recalled.⁶²

52. A/S/Sgt. Skinner also confirms that A/Sgt. Deane reported “what happened” over the radio as the CMU was on its way back to the TOC. A/S/Sgt. Skinner listened to the first part of A/Sgt. Deane’s communication, but his thoughts turned to the fact that the situation remained unsecured and uncontained. His attention was diverted to the need to bring in additional TRU and ERT teams.⁶³

53. Insp. Carson’s evidence at this Inquiry indicates that A/Sgt. Deane probably did report the shooting of Dudley George over the TRU communications system. Insp. Carson testified that information came over the radio that A/Sgt. Deane had discharged his firearm,⁶⁴ and that a Native had been shot and run back to the park.⁶⁵ When Insp. Carson heard this on the radio he made a note of it, then threw his notebook into the dash of the vehicle. He knew the police had just lost control of this event.⁶⁶

54. Judge Fraser was also troubled by the fact that A/Sgt. Deane spoke to Sgt. Hebblethwaite about a head count 15 seconds after seeing Dudley George helped back to the Park, but did not tell Sgt. Hebblethwaite that he had just shot someone. A/Sgt. Deane testified that he asked Sgt. Hebblethwaite to determine whether any officers had been injured; that the head count took one to two minutes; and that during this time he was focused on the Park, looking for firearms.⁶⁷ Sgt. Hebblethwaite’s notes indicate

⁶¹ Kent Skinner 04/19/2006 at 197-198, 205, 227-230, 233-234.

⁶² Rick Zupancic 04/24/2006 at 110, 116-117.

⁶³ Kent Skinner 04/19/2006 at 198.

⁶⁴ John Carson 05/31/2005 at 25.

⁶⁵ John Carson 05/30/2005 at 116.

⁶⁶ John Carson 05/30/2005 at 117.

⁶⁷ P-1768 at 115, 226, 230-231.

that during the head count TRU members used their flashlights to illuminate the road and bush between the CMU and the Park.⁶⁸

55. It is understandable that A/Sgt. Deane and other officers at the scene were concerned about officer injuries at that moment in time. The gunfire had just stopped. The bus and car had just reversed towards the Park. It is also understandable that A/Sgt. Deane did not update Sgt. Hebblethwaite on what he had seen and done at that point.

56. Sgt. Hebblethwaite was busy determining whether any officers were injured. A/Sgt. Deane was focused on possible threats from the direction of the Park. Moreover, a TRU member's obligation is to report discharging a firearm to his supervisor.⁶⁹ A/S/Sgt. Skinner was A/Sgt. Deane's supervisor. Sgt. Hebblethwaite was not. The fact that A/Sgt. Deane did not report the shooting to Sgt. Hebblethwaite at that point in time is neither inappropriate nor surprising, and should not have affected the credibility of A/Sgt. Deane's evidence in any way. Indeed there is no evidence to suggest that Sgt. Hebblethwaite advised A/Sgt. Deane that he had just discharged his firearm at the individual in the car.

57. A/S/Sgt. Skinner testified that when the officers returned to the TOC A/Sgt. Deane reported that an individual had come from the sandy berm at the parking lot, crossed the roadway, and scanned the CMU with a long gun. A/Sgt. Deane reported that he fired three rounds, saw the individual stagger, and saw him carried back to the Park by two other persons.⁷⁰

58. Apparently A/S/Sgt. Skinner did not hear over the radio that A/Sgt. Deane had fired his weapon, as Insp. Carson did, presumably because A/S/Sgt. Skinner did not listen to the latter part of A/Sgt. Deane's radio transmission when the CMU was retreating. A/S/Sgt. Skinner had no concern that A/Sgt. Deane did not report the

⁶⁸ George Hebblethwaite 05/11/2006 at 256; P-1484 at 45.

⁶⁹ Kent Skinner 04/19/2006 at 230; P-1768 at 125.

⁷⁰ Kent Skinner 04/19/2006 at 232-233.

shooting until he got to the TOC, because A/Sgt. Deane and A/S/Sgt. Skinner were both focused on ongoing events. The situation was not secure. TRU still had a job to do, provide cover for the team coming back to the TOC.⁷¹

59. Two other TRU members, Csts. Beauchesne and Klym, also advised A/S/Sgt. Skinner at the TOC that they had fired their weapons.⁷² Three CMU members advised S/Sgt. Lacroix that they had fired.⁷³ There is no evidence, however, that S/Sgt. Lacroix or any other officer who discharged a firearm that night reported that fact over the communications system before returning to the TOC. The CMU logger tape does not record any such transmission. Cst. Zupancic's notes of the transmissions over the TRU radio refer to shots fired at police, and officers returning fire, but do not indicate that any particular TRU member reported firing his weapon.⁷⁴ Based on Insp. Carson's evidence, it appears that A/Sgt. Deane was the only officer who reported firing a weapon over the communications system before returning to the TOC.

60. The evidence at this Inquiry therefore indicates that A/Sgt. Deane did communicate over the radio that he had fired his weapon, that a Native individual had been shot, that an ambulance was needed, and that the ambulance was not required because the injured individual was back in the Park. Judge Fraser's concern that A/Sgt. Deane did not report the shooting over the radio is unfounded, in light of the evidence at this Inquiry. There is no basis for any suggestion that A/Sgt. Deane attempted to conceal the shooting, that he "concocted" his story at a later date,⁷⁵ that he failed to report the shooting as soon as he could, or that he failed to report it to the right person at the right time.

c) A/Sgt. Deane's Failure to Report the Rifle in the Ditch

61. Judge Fraser also found it implausible that A/Sgt. Deane did not use his radio to warn that a rifle had been thrown into the ditch. A/Sgt. Deane acknowledged that he did

⁷¹ Kent Skinner 04/19/2006 at 230-231.

⁷² Kent Skinner 04/19/2006 at 232.

⁷³ Wade Lacroix 05/09/2006 at 16.

⁷⁴ Rick Zupancic 04/24/2006 at 110, 116.

⁷⁵ Aazhoodena and George Family Group Submissions, para. 514.

not think about the rifle at the intersection in the minutes after Dudley George was assisted back to the Park, or about the fact that someone could grab that weapon and use it against the police. In hindsight, A/Sgt. Deane was not positive that he would have moved forward to retrieve the rifle if he had thought of it, or that he would have asked other TRU members to do so. At that point, it was not prudent to rush back into that area to grab the firearm, because he “did not know what was still inside the park”.⁷⁶

62. It is not implausible that A/Sgt. Deane did not think about the rifle in the ditch at that point in time. He had just shot someone. He saw the bus drive through the CMU.⁷⁷ He saw the car strike a group of officers.⁷⁸ He saw a muzzle flash from the bus.⁷⁹ And there was other gunfire. Seconds after the gunfire ceased, the head count was underway. A/Sgt. Deane’s job at that point was to watch for possible threats from the Park. His immediate concern was firearms in the hands of individuals inside the Park, not the discarded weapon in the ditch at the intersection. It is entirely believable that A/Sgt. Deane reprioritized the risk associated with the discarded firearm. In the tense and desperate moments that followed the gunfire this would not be unreasonable.

d) Threat Posed by Dudley George after Shooting

63. Judge Fraser was troubled by the fact that A/Sgt. Deane saw Dudley George move after he was shot, before he discarded the rifle, when he was still capable of firing the rifle, and that A/Sgt. Deane did not know at that point whether Dudley George was still a threat.

64. However, Judge Fraser does not refer to any evidence that A/Sgt. Deane knew that Dudley George was still capable of firing his weapon, if indeed he was. Nor does Judge Fraser refer to any evidence that Dudley George held the rifle in a threatening position after he was shot, or that he otherwise acted in a threatening manner. If A/Sgt. Deane had observed Dudley George threaten the CMU at that point, by bringing the rifle

⁷⁶ P-1768 at 226-232.

⁷⁷ P-1768 at 109.

⁷⁸ P-1768 at 112.

⁷⁹ P-1768 at 109-110, 195-196.

to his shoulder in a firing position for example, A/Sgt. Deane would have been obliged to do what he did the first time he saw Dudley George scan the CMU. A/Sgt. Deane would have acted to eliminate the threat.

65. At this Inquiry Cst. Beauchesne was asked about the individual who was spotted on the road with what appeared to be a long gun when the CMU was part way down East Parkway Drive, before the confrontation. Cst. Beauchesne testified that the individual was carrying the object in a suitcase fashion, low to his right side. There was no immediate threat to the CMU. However, if the individual had been carrying the object in a threatening manner, Cst. Beauchesne would have yelled at him or shot him, depending on what the individual was doing.⁸⁰ A/Sgt. Deane watched Dudley George after he was shot, but did not fire again. That fact alone strongly suggests that Dudley George was no longer a threat.

66. The evidence of Sgt. Hebblethwaite at this Inquiry confirms that Dudley George was not a threat at that point. Sgt. Hebblethwaite saw an individual at the elbow of the road spin in a clockwise motion, go to the ground on his knee, then get up and move towards the Park with a pole or stick extending over his shoulder. Sgt. Hebblethwaite indicated that Dudley George had his back to the CMU after he was shot, and was retreating, not acting aggressively.⁸¹

67. It is submitted that Judge Fraser's concern that Dudley George posed a threat immediately after he was shot is pure speculation, not based on evidence that was before him, and is contradicted by Sgt. Hebblethwaite's evidence at this Inquiry and at the trial. Judge Fraser's concern is also highly implausible, it is submitted, given the nature of the wound suffered by Dudley George.

⁸⁰ Mark Beauchesne 05/25/2006 at 216-217.

⁸¹ George Hebblethwaite 05/11/2006 at 223-224, 245-250; OPPA Submissions, para. 691.

e) A/Sgt. Deane's Failure to Use his Flashlight

68. Judge Fraser also found it implausible that A/Sgt. Deane did not use the light mounted on his rifle before he shot Dudley George. Cst. Beauchesne was asked at this Inquiry why he did not use the light on his rifle before he fired two rounds at Warren George's car. Cst. Beauchesne replied that he was dismayed and in shock at that moment, and it did not occur to him to use his flashlight.⁸²

69. Judge Fraser failed to take into account the stress experienced by a police officer when he is about to fire a weapon at someone, and that A/Sgt. Deane's failure to use his flashlight on Dudley George is no more surprising than Cst. Beauchesne's failure to engage his light before he shot. The fact of A/Sgt. Deane not using his flashlight does not affect the credibility of his other evidence, any more that Cst. Beauchesne not using his light affects the credibility of his evidence.

f) A/Sgt. Deane's Conversation with Cst. Beauchesne

70. At the A/Sgt. Deane trial, Cst. Beauchesne testified that he spoke to A/Sgt. Deane on East Parkway Drive immediately after the bus and car retreated, and that A/Sgt. Deane asked him "did you see the guy with the gun".⁸³ Judge Fraser found it implausible that Cst. Beauchesne would not be concerned about this information at this time, because "the guy with the gun" could still be a threat.

71. At the Inquiry, Cst. Beauchesne testified that his conversation with A/Sgt. Deane could have been later in the evening, at the TOC, after information was received from the hospital.⁸⁴ If the conversation took place later in the evening, this would fully explain why Cst. Beauchesne was not concerned about an immediate threat when he received that information from A/Sgt. Deane.

⁸² Mark Beauchesne 05/25/2006 at 64, 175-176.

⁸³ Mark Beauchesne 05/25/2006 at 90-91; P-1591 at 119.

⁸⁴ Mark Beauchesne 05/25/2006 at 88-89, 90-91, 135-136.

g) A/Sgt. Deane's Account of Dudley George's Action

72. Judge Fraser found it implausible that Dudley George would move from an area of safety to an open area on the roadway. There is at least one obvious explanation for this behavior. The shots fired from the sandy berm area did not hit any police officers. It is entirely possible that Dudley George moved out to the roadway to get a better sight line. Judge Fraser was only speculating that there was no plausible explanation for Dudley George's movements, and he was wrong.

73. The remainder of Judge Fraser's concerns about A/Sgt. Deane's account of Dudley George's actions relate to Dudley George's movements after he was shot. Judge Fraser found it implausible that Dudley George would move towards the police officers rather than towards the Park, that his first priority was to dispose of the rifle, that he was able to throw the rifle into the ditch, and that he threw the rifle in the direction of Csts. Klym and Beauchesne.

74. Several First Nations witnesses testified at this Inquiry that Dudley George was moving towards the Park, or facing the Park, when he said he'd been hit or fell to the ground.⁸⁵ If Dudley George did initially move towards the police, it was in the first couple of seconds after he was shot, when he was spinning and reeling from the impact of the bullet wound. Dudley George likely did not know what direction he moved immediately after he was shot. However, the evidence at the Inquiry indicates that he did do what Judge Fraser expected. He moved towards the safety of the Park when he could.

75. Judge Fraser did not refer to any evidence that Dudley George would have been unable to throw the rifle after he was shot. However, he did refer to Dr. Spitz's evidence that Dudley George was still capable of firing the weapon at that point.⁸⁶ Judge Fraser also noted Dr. Shkrum's evidence that a broken clavicle would have made it painful for

⁸⁵ OPPA Submissions, para. 695-705.

⁸⁶ P-484 at 164.

Dudley George to move his arm, but that he could have been ambulatory for several minutes after sustaining his injuries.⁸⁷

76. Dr. Shkrum testified at the Inquiry that the bullet fractured Dudley George's left clavicle, and that an individual with Dudley George's injuries would have "some difficulty" moving his left arm because of the pain. However, he acknowledged that different people with the same injury experience different amounts of pain, and that individuals in a state of excitement or a very stressful situation will experience pain differently than if they were quiet and calm. Dr. Shkrum did not know whether a person in Dudley George's condition would be capable of throwing a weapon any distance.⁸⁸

77. Dr. McCallum agreed that individual experience of pain is "very variable". One person with a particular injury will experience a lot of pain. Another with the same injury will experience little or no pain. Dr. McCallum agreed with Dr. Shkrum that there are circumstances, sports for example, where adrenaline can cause people to act differently than they would in other circumstances.⁸⁹

78. Dr. Shkrum also testified that there was no visible damage to Dudley George's right arm or shoulder⁹⁰. Maynard (Sam) George testified that his brother Dudley George was right handed.⁹¹ There is no evidence that a broken left clavicle makes it difficult for an individual to move his right arm.

79. Neither the evidence referred to by Judge Fraser, nor the evidence at the Inquiry, supports the proposition that Dudley George was incapable of throwing a rifle to the right hand side of the road after he was shot. Dr. Shkrum did not know the answer to that question. There is no medical basis for the Commission to doubt A/Sgt. Deane's evidence on this issue, or to adopt Judge Fraser's unsupported conclusion.

⁸⁷ P-484 at 111.

⁸⁸ Dr. Michael Shkrum 04/28/2005 at 102,197-198, 217-219.

⁸⁹ Dr. Andrew McCallum 05/10/2005 at 129-130.

⁹⁰ Dr. Michael Shkrum 04/28/2005 at 102, 202.

⁹¹ Maynard (Sam) George 04/18/2005 at 113-114.

80. It is entirely plausible, even predictable, that an individual who was attempting to shoot at police officers would throw his weapon as far as he could, as soon as he could, when his mission was thwarted by a gunshot wound. Getting rid of evidence of a crime is an instinctive reaction, and is hardly surprising for someone who is shot while aiming a rifle at police.

81. The fact that the rifle was thrown in the direction of two police officers was almost unavoidable. There were officers to the north, south, and west of Dudley George. The only direction he could have thrown the rifle away from officers would have been towards the Park, where it would be in the open in the sandy parking lot. It is entirely plausible that Dudley George would throw the weapon in a direction where it might be concealed, in the first desperate seconds after he was shot.

h) Conclusion

82. For all the reasons above, Judge Fraser's reasons for rejecting A/Sgt. Deane's evidence are neither compelling, nor persuasive. The Commission should assess the credibility of A/Sgt. Deane's trial evidence for itself, measured against the testimony at this Inquiry and the documentary evidence in the database. The Commission should not merely adopt Judge Fraser's reasons, as proposed by counsel for the Aazhoodena and George Family Group.

83. Further, A/Sgt. Deane's trial evidence relating to the muzzle flashes from the sandy berm area is consistent with the evidence at this Inquiry from Sgt. Hebblethwaite, Cst. Poole, and Gabriel Doxtator, and also with the Affidavits of Csts. Gayos, Aitchison, and Madison, who were not called as witnesses.⁹²

84. A/Sgt. Deane's evidence relating to the shooting of Dudley George is also consistent with the Inquiry testimony of Sgt. Hebblethwaite, except that Sgt. Hebblethwaite thought Dudley George had a stick or pole in his hands, and did not see Dudley George throw that object into the ditch.

⁹² OPPA Submissions, para. 673-677.

85. Sgt. Hebblethwaite testified that he saw Dudley George spin in a clockwise motion, go to one knee, then get up and stumble in the direction of the Park. Sgt. Hebblethwaite stopped watching Dudley George at that point, because he had to avoid the bus as it reversed past him. He did not see what happened to the object Dudley George was carrying.⁹³ It is likely that Sgt. Hebblethwaite did not see Dudley George throw the object to the ditch, only because his attention was diverted by the oncoming bus.

86. The Commission should accept A/Sgt. Deane's evidence that Dudley George had a gun in his hands when he was shot, because A/Sgt. Deane is the only person who was watching Dudley George immediately before he was shot. In the alternative, if the Commission accepts Sgt. Hebblethwaite's evidence that Dudley George had a stick or pole in his hands, rather than a gun, then the most credible explanation for the shooting is that A/Sgt. Deane misidentified the object in Dudley George's hands as a rifle.⁹⁴ On that view of what happened, A/Sgt. Deane's evidence at trial is substantially consistent with the evidence at this Inquiry.

5. Ted Slomer

87. The Aazhoodena and George Family Group have alleged that Medic Ted Slomer attempted to "cover up" Cecil Bernard George's condition. This allegation is patently false. Ted Slomer assessed Cecil Bernard George at the TOC, determined that he needed to be transported to hospital for further assessment and monitoring, and made arrangements for that transport. As a trained health professional, Ted Slomer knew that Cecil Bernard George would be fully assessed at the hospital, and that all clinical findings would be documented and retained by the hospital. His actions in ensuring Cecil Bernard George received timely and complete medical attention are completely inconsistent with an allegation of "cover-up".

⁹³ George Hebblethwaite 05/11/2006 at 223-224, 245-248.

⁹⁴ OPPA Submissions, para. 705-716.

88. Ted Slomer's assessment of Cecil Bernard George was consistent with Dr. Marr's subsequent assessment of him at Strathroy Hospital. Most importantly, given the allegations of the Aazhoodena and George Family Group, they agreed in their assessments of Cecil Bernard George's level of consciousness, which is that he opened eyes to voice, responded to command, answered questions with single words, was oriented to person, and was slightly obtunded.⁹⁵

89. Both Ted Slomer and Dr. Marr agreed that there is some subjectivity in using the Glasgow Coma Scale. A difference in scoring of one point is simply not significant.⁹⁶

90. The Aazhoodena and George Family Group allege Ted Slomer was "covering up" because he did not retain his rough notes concerning Cecil Bernard George's initial assessments at the TOC. As Ted Slomer testified, he was not under any obligation on the night of September 6 to take or retain any notes. However, he had made some rough notes of information regarding Cecil Bernard George. Shortly after September 6, Ted Slomer typed up the notes, which were provided to the Ipperwash investigation. Some time after that, he inadvertently destroyed the original notes when he was clearing out papers.⁹⁷

91. Ted Slomer's evidence at the Warren George trial and at the Ipperwash Inquiry was consistent with the information in his typed notes. To suggest that the inadvertent destruction of the original notes is somehow suggestive of a "cover up" is ludicrous.

6. Arrest of Marcia Simon

92. Counsel for Aazhoodena and the George Family Group submits that "none of the officers took the opportunity during the pursuit to make any inquiries with respect to whether a car matching the description of Marcia Simon's vehicle had been involved in the altercation..." The officers involved in the pursuit radioed into the Command Post

⁹⁵ Ted Slomer 05/26/2006 at 307; P-367.

⁹⁶ Alison Marr 04/26/2005 at 249; Ted Slomer 06/05/2006 at 34, 94-95.

⁹⁷ Ted Slomer 05/26/2006 at 218; 06/05/2006 at 94-95.

the licence plate number of the vehicle they were pursuing.⁹⁸ In making this radio call the officers relayed to the Command Post the most reliable description of the vehicle that they had available to them. It would be reasonable for the officers in pursuit to expect the Command Post to advise them if there was any additional information known about the vehicle. The officers were instructed to continue to follow the vehicle.⁹⁹

93. It is suggested by counsel for Aazhoodena and the George Family Group that deactivating the cruiser lights part way through the police pursuit would have sent a confusing signal to Marcia Simon about whether or not she should have pulled over. Evidence of the officers involved in the pursuit established that there was adequate time for Marcia Simon to pull over before the lights were deactivated.¹⁰⁰ It is clear from Marcia Simon's testimony that she had no intention of stopping for the police and she was not prepared to accept that when a police car is behind you with its lights on you are required to stop¹⁰¹, in spite of the fact that it is an offence to fail to do so¹⁰².

94. Counsel for Aazhoodena and the George Family Group refers to a remark that can be heard in the background of the 911 call of a woman saying "leave her alone" as evidence that officers were distressing Melva George, and thus, Marcia Simon was telling them to leave Melva George alone. Marcia George did not testify in relation to this aspect of the recording, and it was not established in evidence whether the remark "leave her alone" was made by Marcia Simon or Melva George. Furthermore, the fact that one of the women said "leave her alone" does not mean that there was anything significant happening at the time. This remark may have been made by one of the women as a warning to the officers, as opposed to in reaction to any particular actions by the officers.

95. Counsel for Aazhoodena and the George Family Group submits that Marcia Simon should not have been arrested for failing to stop for police if the officers did not

⁹⁸ P-1254.

⁹⁹ P-1254.

¹⁰⁰ Steve Lorch 06/12/2006 at 243.

¹⁰¹ Marcia Simon 09/27/2004 at 176.

¹⁰² *Highway Traffic Act*, R.S.O. 1990, c. H.8, s.216(1) & (2).

have a reason to stop her in the first place. Officers had reasonable and probable grounds to stop vehicles leaving the Army base in order to conduct further investigations, as there was a risk that such vehicles may have been involved in the altercation in the sandy parking lot. This likely would have resulted in the officers checking the vehicle for weapons and permitting her to carry on, as was done when Gina George approached Checkpoint “D” and requested an ambulance. Marcia Simon’s refusal to stop for police escalated the risk assessment of the situation. In any event, the officers were empowered, under the *Highway Traffic Act*, to require her to stop and her refusal to do so was an offence under subsection 216(2) of the *Highway Traffic Act*.¹⁰³

7. Attempts to Locate White Car

96. Counsel for Aazhoodena and the George Family Group submits that no officers “made any attempts to assist the transportation of Dudley George to the hospital”. A/Sgt. Deane, D/Sgt. Richardson, and D/Cst. Bell made attempts to provide assistance to Dudley George.

97. The first attempt to provide assistance to Dudley George was made by A/Sgt. Deane when he requested an ambulance immediately after Dudley George was shot. The ambulance was called off shortly thereafter as Dudley George went back into the Park.¹⁰⁴

98. As already addressed in our submissions D/Sgt. Richardson and D/Cst. Bell were dispatched to attempt to find the white car that Dudley George was being transported in. D/Sgt. Richardson testified that the purpose of their attempts to locate the white car was “[j]ust to see who was injured and who was in the vehicle, I guess, and make sure they get to the hospital or whatever assistance they needed as well”.¹⁰⁵ D/Sgt. Richardson and D/Cst. Bell did not locate the vehicle until it was already in

¹⁰³ *Highway Traffic Act*, R.S.O. 1990, c. H.8, s.216.

¹⁰⁴ Kent Skinner 04/19/2006 at 197-198.

¹⁰⁵ Trevor Richardson 06/08/2006 at 198.

Strathroy and close to the hospital.¹⁰⁶ It would have taken more time to stop the vehicle and attempt to render assistance at that point than it did to simply let the vehicle pull into the hospital.

8. Arrests at Strathroy Hospital

99. Counsel for Aazhoodena and the George Family Group refers to D/Cst. Speck's and Cst. Dobbin's testimony regarding their understanding of the grounds for the arrests at Strathroy Hospital as evidence that the officers who made the arrests did not have reasonable and probable grounds. However neither D/Cst. Speck nor Cst. Dobbin were arresting officers that evening. Cst. Dobbin did assist in the arrest of Carolyn George but she was not the arresting officer.¹⁰⁷ D/Cst. Speck was not even present when the arrests were made. He was inside the hospital at the time.¹⁰⁸

9. Segregation of Police Officers during the SIU Investigation

100. There is no factual basis to conclude that the accounts of the CMU officers and the TRU team members involved in the September 6 confrontation were affected in any way by the fact that they were not all segregated before being interviewed by either the SIU or the OPP.

101. There was little if any discussion or conversation amongst them of the details of the events of the confrontation.

102. Given the accounts of the many officers provided at their individual interviews on September 7 and 8, there is no basis to assume any kind of collusion, or even influence, in the information provided in their interview statements. In addition, many of the officers could not be "segregated" following the incident because they remained on duty.

103. In any event, in 1995 there was no specific rule that required the officers to be segregated prior to being interviewed by the SIU.

¹⁰⁶ Trevor Richardson 06/08/2006 at 200-201; Carolyn George 02/03/2005 at 163.

¹⁰⁷ Tracy Dobbin 06/12/2006 at 313-314.

¹⁰⁸ George Speck 03/22/2006 at 265.

104. Today, the matter of segregating officers is specifically addressed in a *Police Services Act* regulation. O. Reg. 673/98 provides:

- 6 (1) The chief of police shall, to the extent that it is practicable, segregate all the police officers involved in the incident from each other until after the SIU has completed its interviews.
- (2) A police officer involved in the incident shall not communicate with any other police officer involved in the incident concerning their involvement in the incident until after the SIU has completed its interviews.

105. This is not sufficient for the Aazhoodena and George Family Group. They go further. They propose a rule (Recommendation No. 43 at para 621) that police officers must obtain legal advice from a lawyer who does not represent or provide legal assistance to any other police officer in the same incident. Such a “rule” is both impractical in many incidents investigated by the SIU, and it would improperly interfere with the rights of police officers, in the context of a criminal investigation or otherwise, to seek legal assistance from the lawyer of his or her choice. The sinister assumption underlying the proposed “rule” is that a lawyer acting for or representing more than one officer in an incident will improperly use his or her role to compromise the integrity of the SIU investigation.

106. There is absolutely no evidence whatsoever before the Inquiry that would support such a proposed “rule”.

107. The issue of legal representation for individual police officers involved in an SIU investigation is adequately dealt with in O. Reg. 671/98:

- 7 (1) Subject to subsection (2), every police officer is entitled to consult with legal counsel or a representative of the association and to have legal

counsel or a representative of the association present during his or her interview with the SIU.

- (2) Subsection (1) does not apply if, in the opinion of the SIU director, waiting for legal counsel or a representative of the association would cause an unreasonable delay in the investigation.

10. OPPA Support of A/Sgt. Deane

108. The OPPA and its members were understandably supportive of A/Sgt. Deane, in the circumstances in which he found himself. The Association was entirely free to support him as were its members who did so, even though they were prohibited by their employer from displaying their support while in uniform.

109. A/Sgt. Deane's act of shooting Dudley George occurred as a police operational act that he was assigned to carry out, if required, to protect the lives of his fellow officers. A/Sgt. Deane believed that the act of shooting Dudley George was required in light of the immediate threat that he perceived Dudley George presented to the CMU officers.

110. By A/Sgt. Deane's own account, he was criminally prosecuted for an act that he performed to safeguard his fellow officers from very grave harm. A/Sgt. Deane's fellow officers were free to express their own open support for their fellow officer within the legal process of his trial and appeals.

111. A/Sgt. Deane was well known, and extremely well regarded, within all of the ranks of the OPP for his integrity and professionalism.¹⁰⁹

112. A/Sgt. Deane was also well liked by his fellow officers and by members of the community with whom he came into contact as a police officer.¹¹⁰

¹⁰⁹ P-1780.1; P-1780.2

¹¹⁰ P-1780.1; P-1780.2

113. The “assistance” of OPP officers at A/Sgt. Deane’s trial and appeals did not bias or prejudice the process. The “assistance” was nothing more than a reasonable response to a request by A/Sgt. Deane’s counsel to put factual information before the Court, in order to assist the Court in its adjudicative process. It is a legitimate role for police officers to cooperate with both the prosecution and the defence in the course of a criminal trial and appeal. All of the “assistance” was known to the Crown and all of the affidavits and other material were provided to the Crown.

11. Allegations of Systemic and Individual “Racism”

114. The submissions of the Aazhoodena and George Family Group and of ALST take a few recorded comments of a few individual OPP officers and civilians, and some “culturally insensitive” memorabilia, and exaggerate the significance of these as indicative of a police force “plagued with problems of racism – both individual and systemic”.

115. Nothing can be further from the truth both individually and collectively. The OPPA and its members, and the OPP as an institution, are critical of acts and comments that are “racist”, whether they concern First Nations persons or any other racial, ethnic or cultural group.

116. It is not at all helpful to the improvement of awareness and sensitivity to racial, ethnic or cultural differences in our society, whether one is focused on police officers or any other segment or professional group in society, to label unintended and misinformed conduct that turns out to be insensitive to a particular race, culture or ethnic group, as overt racist acts. Overt racist acts and comments that are meant or designed to express racial superiority, prejudice, enmity, or hostility are very different from unintended and uninformed acts that are not ill motivated but are viewed by a particular group as inappropriate because they are “culturally insensitive”.

117. The OPPA and its members do not condone racist comments or attitudes by OPPA members. The comments made by Csts. Dyke and Whitehead, which have been

referred to at the Inquiry, were discovered by other police officers upon review of the tapes in response to an Information and Privacy request. The comments were reported by the officers who discovered them, and a Professional Standards investigation was carried out.

118. The OPPA apologized for these comments made by two of its members. The OPPA does not condone the remarks, and does not accept them as being representative of the views of the men and women who are members of the OPPA. In its January 2004 press release, the OPPA stated:

The Association and its members, past and present, deeply regret both the tone and content of the remarks on this tape made by two of our members. We do not condone the remarks and we do not accept them as being representative of the views of the vast majority of men and women who are members of the OPPA.

On behalf of all our members, we are very sorry and offer our apologies for these hurtful remarks.

119. It is unfair and “insensitive” to a professional group to label all the members of the group as “racist” on the basis of a very few comments or actions by some members.

120. Instead of recognizing any such distinction, the Aazhoodena and George Family Group and ALST lump the inappropriate actions and comments together in order to vilify all police officers as racist, concluding that there is “a problem of wide spread and systemic hatred of First Nations people amongst” the members of the OPP.

121. These hyperbolic and extreme submissions that unfairly characterize the evidence then go on to assume that the only appropriate response to “racist” expressions and acts of “cultural insensitivity” is extreme disciplinary measures.

122. The current *Police Services Act* Code of Conduct, found in O. Reg. 123/98, already defines misconduct by a police officer to include discreditable conduct that:

- 2 (1)(i) fails to treat or protect a person equally without discrimination with respect to police services because of that person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or handicap.
- (ii) uses profane, abusive or insulting language that relates to a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or handicap.
- (v) uses profane, abusive or insulting language or is otherwise uncivil to a member of the public.

123. The discipline provisions of the *Police Services Act* appropriately permit a measured and nuanced disciplinary response to police misconduct, consistent with the varied considerations that inform all discipline penalties. There is a sophisticated jurisprudence that has developed around the discipline provisions of the *Police Services Act*. An important aspect of the jurisprudence recognizes the significance of remediation and rehabilitation of officers who have been found guilty of misconduct. This is expressly recognized in paragraphs 68 (5) (b) and (c) which mandate a penalty to include the requirement that a police officer “undergo specified counselling, treatment or training” and “participate in a specific program or activity”. The current provisions of the *Police Services Act* and regulations are sufficient to protect the public interest that police officers conduct themselves appropriately in their treatment, protection, and interaction with any person, whatever that person's race, ancestry, place of origin, colour, ethnic origin, citizenship etc.

124. The Chippewa of Kettle and Stoney Point submissions propose that “where the inappropriate conduct (of a police officer) involves Aboriginal people, there should be a provision for an Aboriginal elder to participate in the discipline process”.

125. Currently, Part V of the *Public Services Act* (and Bill 103) gives a public complainant both status and rights in a police investigation of misconduct and party status at a discipline hearing.¹¹¹ A complainant who is Aboriginal may have the assistance of an elder or anyone else the complainant wishes to involve in the process as the complainant's agent.¹¹²

126. ALST proposes that there be formal discipline penalties for "any racist or culturally insensitive misconduct".¹¹³ A public complaint of any allegation of misconduct gives the complainant the right to know the result of the investigation, to participate or decline to participate in an informal resolution process, and to request the OCCPS to refer the complaint to a formal discipline hearing in which the complainant may participate as a party. The role of the complainant in the discipline investigation and resolution process is even further enhanced in Bill 103. If the matter complained of merits a formal discipline proceeding, the present legislative scheme provides for a such a result.

¹¹¹ s.69(3) *Police Services Act*.

¹¹² s.10 *SPPA*.

¹¹³ ALST submissions, at para. 140.