THE IPPERWASH INQUIRY
The Honourable Sidney B. Linden, Commissioner

REPLY SUBMISSIONS
on behalf of
The Estate of Dudley George and
Members of Dudley George's Family

Klippensteins
Barristers & Solicitors

160 John St., Suite 300
Toronto ON M5V 2E5
Tel: (416) 598-0288
Fax: (416) 598-9520

Murray Klippenstein
Vilko Zbogar
Basil Alexander

Andrew Orkin
Barrister & Solicitor

103 Glenfern Ave.
Hamilton ON L8P 2Y9
Tel: (905) 522-7929
Fax: (905) 522-0884

August 16, 2006

TABLE OF CONTENTS

1. WHAT'S THE POINT? 1

2. THE IPPERWASH PROTEST AND THE RULE OF LAW 5

3. BEWARE THE "STRAW MAN" 10

NO DIRECT ORDERS TO THE POLICE? 10
OPP NEVER WENT INTO THE PARK 11
GOVERNMENT ENTITLED TO RESPOND TO THE OCCUPATION 11
NO INFLUENCE ON OPP POLICY OR PROJECT MAPLE BEFORE SEPT. 4 12
HUTTON JUST COMMUNICATED THE GOVERNMENT'S POLICY 12
HARNICK AND RUNCIMAN DID NOTHING 13
THE OCCUPIERS WERE BAD PEOPLE 14
EX POST FACTO JUSTIFICATION FOR THE USE OF FORCE 14
EVERYBODY'S FAULT BUT MINE 15
WHAT ALL THE STRAW MEN DON'T DO 15

4. EVERYBODY'S FAULT BUT MINE 17

BLAME CANADA 18
Denying justice with respect to the Army Camp lands 18
Failure to follow up on the burial ground issue 19
BLAME THE PREVIOUS GOVERNMENT 20
BLAME THE FIRST NATION AND THE CHIEF 21
BLAME THE OCCUPIERS 23
BLAME RON FOX 24
BLAME THE OPP 25
BLAME DUDLEY 26

5. IT'S THE LAND – REASONS FOR THE OCCUPATION 28

6. GUNS GUNS GUNS 36

THE OPP'S (LACK OF) ACTIONS SPEAK LOUDER THAN ANY WORDS 36
EVENTS PRIOR TO SEPTEMBER 4, 1995 37
THE IMAGINARY GUN BUTT 38
THE SUPPOSED AUTOMATIC GUNFIRE 39
TINA GEORGE'S UNCERTAINTY ABOUT THE DATE 40
WRIGHT: "WE'LL DO OUR TALKING WITH GUNS" 41
THE MAKE-BELIEVE FIREARM IN THE MAINTENANCE SHED 42
THE "SOUNDED LIKE ONE GUN SHOT" RADIO TRANSMISSION 43
THE NIGHT OF SEPTEMBER 6 43
KEN DEANE: DUDLEY HAD A GUN 44

7. THE FANTASY THAT EVERYTHING WENT PERFECTLY 47

8. THE NEED TO CRITICALLY ANALYZE THE EVIDENCE 49

9. THE COVER UP 52

THE CAMPAIGN OF PUBLIC MISINFORMATION 53
REFUSAL TO INVESTIGATE 55
MISLEADING THE LEGISLATURE; MISLEADING THE INQUIRY 58

10. ADDITIONAL ISSUES 61

THERE WAS NO CONQUEST 61
1942 APPROPRIATION OF STONY POINT RESERVE 62
1937 BURIAL GROUND EVIDENCE 63
RAISING BURIAL GROUND GRIEVANCE IN AUGUST 1995 64
OTHER BURIAL GROUND ISSUES 65
OWNERSHIP CLAIM 65
COLOUR OF RIGHT 66
FEAR OF ATTACK ON THE COTTAGES 68
BEAUBIEN'S PRESS RELEASE AND FAX 68
AUTOMATIC GUNFIRE REPORTS 69
WRIGHT EXAGGERATING THE DENTED FENDER INCIDENT 69
THE CLAIM THAT CARSON WAS REASONABLE TO DEPLOY CMU 70
SEQUENCE IS KEY 70
"USE GUNS IF YOU HAVE TO" 71
OUT IN 24 HOURS 72
THE EX PARTE ORDER SOUGHT BY MCCABE 72

1. WHAT'S THE POINT?

> Q: What I'd like to know, sir, is looking back on the events of September 4th through September 6th, 1995 and your personal involvement in the Ipperwash matter, looking back on it today would you do anything different than what you did back then?
>
> **A: I don't believe so.**
>
> *Testimony of Mike Harris, February 20, 2006, p. 10*

An unarmed man was shot by the OPP during a land dispute. It should never have happened. Something went terribly wrong. Many things went terribly wrong.

This Inquiry has spent two years (and Sam George and his family have spent eleven years) trying to learn the truth of what happened and why. The point of it all has been to make sure that Dudley's death will always remain unique in Canadian history. Nobody else needs to die at the hands of state forces in a dispute over aboriginal land. No other family needs to suffer the loss of a loved one in this way ever again.

Few, if any, of the parties who were involved in the events leading up to the death are completely blameless. To deny it is folly. But to deny it is exactly what Mike Harris, Deb Hutton, Chris Hodgson, Robert Runciman, Charles Harnick, Marcel Beaubien, the Province of Ontario, the OPP, and the OPPA have attempted to do. In their submissions, they all deny mistakes were made or attempt to blame someone else for the tragedy, but never accept responsibility themselves. The minor exception is that the OPP has admitted that its "intelligence" about the dented fender incident on September 6 was wrong and that it could have done better to prevent a "perception problem."

The occupiers have not denied responsibility for their own actions. The occupiers occupied a closed Provincial Park. They did so knowing that they might be forcibly

removed and arrested for their actions.[1] They understood that their actions would have reactions, although being shot at by police was not one of the reactions they were counting on.[2]

Labeling the occupation as "illegal" doesn't help. Painting the occupiers as lawless, hard-drinking, gun-toting thugs does not help. Dismissing the true motivations for the occupation does not help. Blaming the First Nation community for being divided does not help. In other words, it is our submission that significant portions of some of the politician and police parties' submissions are not particularly helpful or relevant to the point of this Inquiry.

Occupations happen. They are a fact of life in a country that has a shameful record of dishonouring treaty promises to First Nations and, as a result, has a great number of unresolved aboriginal grievances over their lands. When occupations and blockades do happen, there will be reactions. However, it cannot be expected that the use of physical violence – and especially guns – will deal with the underlying issue in dispute.[3] This is particularly the case in a situation such as Ipperwash, where the occupiers decided that there would not be guns in the Park and were intending to keep the protest peaceful (which it was, up until the siege of September 6, 1995, aside from a few isolated incidents involving just a few individuals).

At Ipperwash, massive physical force was deployed. Guns were fired at the occupiers of the Park. Everything did not go perfectly. An unarmed man was shot. A family, a community, and a nation suffered.

---

[1] Marlin Simon, October 18, 2004, p.163.

[2] Bonnie Bressette, September 22, 2004, p.17; Stewart George, November 2, 2004, p. 187: "We might have to go to Court or anything, and I expected to go to jail, yeah. And I didn't think that we were going to be shot at."

[3] This is not to suggest that appropriate physical force should not be used to deal with criminal activity that may occur during the course of an occupation or blockade. For example, at Gustafsen Lake where First Nations people did have guns and were using them, it may have been necessary to have a heightened kind of response. However, Ipperwash was not Gustafsen Lake.

Mistakes were made. We need to acknowledge them and learn from them. Denying those mistakes just paves the way for repeating those mistakes in the future. The fact that none of the government or police parties have admitted that mistakes were made (other than the OPP "intelligence" and "perception problem" mistakes) or have accepted any responsibility for those mistakes is troubling.

At least the OPP has, to its credit, begun to make changes aimed at increasing sensitivity towards aboriginal issues and preventing violence in land disputes (even though it has denied that it made any mistakes in Ipperwash that played a significant role in the deployment of massive force). This stands in stark contrast to the inaction by the federal and provincial governments and their representatives up until the calling of this Inquiry.

What is the point of this Inquiry? As set out in the Order in Council establishing the Inquiry, the point is avoiding violence arising from First Nations occupations or other protests. Firstly, such violence can be obviously prevented by avoiding the protest in the first place. Secondly, the point can be to prevent violence when such protests occur.

The first point – avoiding protests – has largely been addressed in our previous submission and in other parties' submissions to this Inquiry, and is further addressed herein.[4] Preventing occupations and other aboriginal protests requires healing the underlying causes of the problem. Governments must deal with First Nations respectfully on a Nation-to-Nation basis, honour Treaty promises, and return Treaty land where that is the right thing to do.

With respect to the second point, preventing violence in the future starts with taking responsibility for the mistakes that led to violence in the past. Dudley George's death was the tragic exclamation point on a night of violent confrontation. The violent confrontation only occurred because decisions were made to treat the situation as an emergency and to deploy massive force against the occupiers. Those decisions were made because of mistakes made by the police and politicians involved in the situation.

[4] See, in particular, the submission under the heading "The Ipperwash Protest and the Rule of Law."

Those decisions sent the police – not the occupiers – on an offensive that night. There must be some accountability on the part of those responsible for causing the offensive deployment, in order to prevent anything like it from happening again in an aboriginal dispute – accountability for both those causing the actual deployment and those creating the political conditions resulting in the deployment. We will be better off by coming to terms with our mistakes and learning from them rather than denying them.

When the Commissioner considers the question "should anything have been done differently," we hope his answer is different than the one given by Mr. Harris (cited on p.1, above) and by the other government and police parties. We think, based on all of the evidence, and based on the course of events that disastrous night, it must be.

> **There's always risk involved in leadership, okay? And Aboriginal leaders, sometimes when the facts and the information, the truth is there, they have to stay with that, even if it means reversing their previous role or position on issues.**
>
> **It's not an easy thing to do but if the truth is facing you, you have to do it. I mean, you can't dismiss the truth, right. You have to side with it, even if it means taking some risk with your community.**
>
> *Testimony of Ovide Mercredi, April 1, 2005, p. 120*

2. THE IPPERWASH PROTEST AND THE RULE OF LAW

Mike Harris attempts to emphasize in his final submissions to this Inquiry that the "overarching policy issue that arises from the Ipperwash tragedy" is the issue of restoring and maintaining the rule of law and civil order.[5] Harris refers to "the obligation of government to maintain the rule of law and civil order in cases of direct action." His submissions state: "the real question arising from Ipperwash is how government may restore order and maintain the rule of law and civil order where it is disregarded by persons who have experienced historical injustice."[6]

The assumption and assertion is that it was Dudley George and his fellow protestors in Ipperwash Park who "disregarded" the rule of law. The estate and family of Dudley George submit that with a bigger picture look, the scene looks very different. It begins to look like it was the non-native governments who have been the real violators of the rule of law.

The Supreme Court of Canada carefully described some of the fundamental aspects of the concept of rule of law in its 1998 decision in the case of *Reference re Secession of Quebec*.[7] The Supreme Court stated that "the principles of constitutionalism and the rule of law lie at the root of our system of government."[8] The Court defined the core of the idea of the rule of law in stating that:

> At its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs. It provides a shield for individuals from arbitrary state action.[9]

[5] Submissions of Michael Harris, pp. 11, 12, 14, 15, 364.
[6] Submissions of Michael Harris, page 14.
[7] [1998] 2 S.C.R. 217.
[8] *Ibid*. at para. 70.
[9] *Ibid*.

One of the recurring features of discussion of the rule of law in the context of native protests is that non-native parties often refer to the first concept in the Supreme Court's definition of the rule of law, but leave out the second concept. It is easy to suggest that messy native protests violate the idea of a stable, predictable and ordered society – but one cannot ignore the idea that natives equally have the right to protection from, and redress for, arbitrary state action. In other words, it is easy to say that natives should be quiet and follow "the rules", while avoiding discussion of whether "the rules" – how they were made, how they are maintained – may be half (or all) of the problem. Does the rule of law protect natives from arbitrary state action? Or is a stable, predictable and ordered society mainly for non-natives?

When Dudley George's ancestors signed a written agreement with the Crown in 1827 which defined the Stony Point lands (part of which later became Ipperwash Park) as being theirs in perpetuity, the natives thought they had achieved a stable, predictable and ordered arrangement in which to conduct their affairs. Instead, the state used arbitrary action to deprive Dudley's people of what the state had promised them (including the lands at Stony Point). The state arbitrarily adopted an official policy of eradicating Indians (and their reserve lands) through assimilation despite the state's own Treaty promise. Was that the rule of law? The state passed the *Indian Act* without any consent or even input from natives. Was that the rule of law? The state set up Indian Agents with overwhelming coercive state power to control natives and shepherd them into selling off their lands and disappearing as a people, and the state maintained a system in which the Indian Agents themselves violated the laws by corruptly selling Treaty lands.[10] Was that the rule of law?

Instead of a stable order based on the agreed-upon Treaty, Dudley's ancestors discovered that the state forgot the Treaty, changed the rules and unilaterally imposed rules of its own creation, rules that would produce the result that the state wanted. The result was the loss of Treaty lands – in particular the Ipperwash Park lands through the 1928

[10] Details of this history are contained in the "Written Submissions on behalf of The Estate of Dudley George and Members of the Dudley George's Family", August 1, 2006, pages 23-38.

"surrender". When Dudley protested, the natives at Kettle and Stony Point were told (and are told still to this day) that they must obey those one-sided and arbitrarily imposed state rules, in the name of the rule of law.

The story of Dudley George and his fellow protestors, the Ipperwash Park lands, and the rule of law can be told as a parable – a hockey story.

In this hockey story, the native team shows up at the arena to play the non-native team under the agreed upon and accepted rules of the game (in this case, the Treaty). But in the dressing room, they are told that the rules have been changed, and that there are new rules for the hockey game – rules that were written by the non-native team.

The new rules, also known as the *Indian Act*, have been written entirely by the non-native team without any input from the natives. Worse, the non-native team is openly boasting that the new rules have been written to eliminate the native players from the hockey league, once and for all.[11]

Under the new rules, the coaching staff for the native team, also known as Chief and Council, are, amazingly, required to follow the direction of the opposing team's coach, also known as the Indian Agent. The new rules also specify that the native hockey players are not allowed the benefit of using hockey sticks on the ice (also know in this parable as lawyers).

The referee and linesmen for the game, also known as the judges, have all been chosen by the non-native team.

Behind the scenes, the coach for the non-native team (the Indian Agent, who has the power to direct the native team's coaches) has a lot of friends (known as local land speculators) who have bet large sums of money on the game – with all the money riding on the non-natives of course (if the non-natives win, the speculators get the Treaty lands).

[11] *Ibid.*

To top it off, the non-native coach, the Indian Agent, has himself got his own money riding on the non-natives.

Does the native team stand a chance under the new rules? No. In fact, that is the purpose of the new rules.

The native team protests about the new rules, but no one will listen. The native team can't leave, because they have nowhere else to go. The native team tries to play. What else are they supposed to do, start a bench clearing brawl? That is not their way.

Not surprisingly, the score is soon ten to nothing for the non-native team. When the native team protests to the referee, he says he is just enforcing the rules. When the native team says that everyone had agreed that the game would be played under Treaty rules, the referee says he doesn't know much about the Treaty rules, and anyway, the owners of the league have told him to use the new rules.

When the score reaches twenty to nothing for the non-natives, something snaps, and half of the native team sits down on the ice in frustrated protest.

Some people in the stands start shouting at the natives. They yell "play the game", "follow the rules" and "rule of law". They can see that the natives are not co-operating. Very few of the onlookers pause to think about where the rules came from. Almost none of them have heard of the Treaty rules that both teams had originally agreed to be bound by.

The arena security arrive to remove the protesting hockey players. However, the security personnel know nothing about the original Treaty rules, and, anyway, they say that's not their problem. One of the native players is shot and killed.

Somebody says it is a tragedy, and says that the real problem is how to deal with hockey players who disregard the rules.

Everything in this hockey parable happened to the native people of Ipperwash.

The agreed-upon rules were ignored. Unilateral one-sided rules were imposed. The result was the "official" loss of native Treaty land in 1928, part of which eventually became Ipperwash Park.

Can the non-native governments say they are respecting the rule of law when they are ignoring the original, agreed-upon basic Treaty rules governing the Stony Point lands? Can the province say it is respecting the rule of law so long as it keeps the Park? The estate and family of Dudley George say no.

3. BEWARE THE "STRAW MAN"

If you cannot refute an argument, set up a "straw man" instead. That is, create a position that is easier to challenge, and use that position as your target instead of the one that is truly important. This seems to be one of the main strategies adopted in the written submissions of the politician and police parties to this Inquiry. There is a substantial failure to recognize the factors that actually led to the use of violence, and a great deal of argument on matters that had little or nothing to do with it. Beware the superficially impressive straw man. He is well represented within the arguments of the politician and police parties.

No direct orders to the police?

A straw man set up by Mike Harris appears front and center on the first page of his submissions – a selectively excerpted allegation included in the original George family Statement of Claim some twelve years ago asserting that Harris specifically "ordered the O.P.P. to utilize its Tactical Response Unit."[12] By selecting out and emphasizing that one specific claim out of many, and saying that the Inquiry uncovered no evidence of that specific scenario, the suggestion is made that Harris is exonerated of all similar claims of pressuring, influencing or affecting the actions of police.

The final submissions of the Dudley George Estate and Family Group, as well as those of other parties, describe how the expressed views of Mike Harris probably affected police action in important ways, as they were intended to. Those points will not be repeated here, but it is submitted that "straw men" should not divert this Inquiry from the real causes.

[12] Submissions of Mike Harris, p. 11 and 13; see also Submissions of Deb Hutton, p.2-3, par. 4-6.

OPP never went into the park

Hutton points to the fact that the OPP never actually went *into* Ipperwash Provincial Park on September 6, 1995 as somehow being significant in showing there was not political influence.[13] This is fallacious. Clearly, Harris wanted an end to the occupation, but more importantly, the message received loud and clear by the OPP was that the political people wanted the police to "kick ass."[14] "Kicking ass" did not necessarily mean removing the protestors that particular night. Confronting the occupiers, hopefully making some arrests (ideally of some of the leaders), and having something to say to the Court next morning when asked what justified bringing an *ex parte* motion on an *emergency* basis, would qualify as "kicking ass."

Government entitled to respond to the occupation

Harris and Hutton in their submissions try to put forward a false dichotomy – saying that the provincial government was entitled, and had some responsibility, to respond to the occupation, with the alternative apparently being to do nothing at all.[15] That is not the issue. It is not controversial that governments are entitled to, and probably obliged to, take certain steps when occupations happen. The question is whether the government's response is a responsible one. Our submission is not that the Harris government was not entitled to respond to the occupation of Ipperwash Park – it is that the government responded in a reckless and unnecessarily belligerent way based on a policy approach (treating aboriginals and non-aboriginals the same) that is wrong.

[13] Submissions of Deb Hutton, p. 3, par. 6.
[14] P-444A, Tab 37, p.262.
[15] Submissions of Deb Hutton, p. 8, par. 19, 21.

No influence on OPP policy or Project Maple before Sept. 4

Harris and Hutton put much stock in John Carson's evidence that no member of the government influenced what should be contained in the Project Maple plan.[16] Similarly, Runciman argues that "the OPP policy surrounding occupations, as described by Commissioner O'Grady, was put in place several years before the election of the Harris government. Mr. Runciman had no input into this policy."[17]

This is another "straw man." Nobody has ever alleged that the Premier or anybody on his behalf ever had input into the 1991 OPP policy or into any aspect of Project Maple, including its objective of negotiating a peaceful resolution. We take no issue with the 1991 OPP policy or with the Project Maple objective (of peaceful resolution), nor has anyone at this Inquiry suggested that either was subject to political interference. The problem is that the OPP policy and Project Maple crumbled under the weight of political pressure on the night of September 6, 1995.

Perhaps it is not accurate to label this argument a man of straw, since it actually demonstrates the difference between how things worked before political pressure was exerted (generally cautiously and prudently) and after (with chaos, violence and death).

Hutton just communicated the government's policy

Hutton claims that, at the IMC meetings, her sole focus was communicating the government's policy position.[18] However, the problem is not that she communicated a position, but how she communicated and what she communicated. Bangs and Hunt provided the perspectives of their Ministers during the course of the IMC meetings, but they did it in an appropriate way. Hutton's imperious and aggressive conduct, as a representative of the Premier, stands in stark contrast. She effectively hijacked the

[16] Submissions of Mike Harris, p. 359.
[17] Submissions of Robert Runciman, p. 11.
[18] Submissions of Deb Hutton, p. 9, par. 22.

meeting and caused it to change its focus from a cautious wait-and-see kind of approach to ending the occupation as soon as possible ("Premier wants them out in a day or two"),[19] all of which was part of creating an emergency mindset within and outside the government.

Furthermore, the policy position asserted by Hutton was itself highly problematic. Treating aboriginals and non-aboriginals the same, not wanting to be seen to be working with First Nations at all, demanding an immediate end to the occupation despite the lack of urgency, etc., were part of this reckless and dangerous policy position. Governments are entitled to set policy, but it is not "anything goes."

Harnick and Runciman did nothing

Charles Harnick and Robert Runciman set up a straw man by claiming that none of their actions led directly to the shooting of Dudley George.[20] In fact, none of the parties allege in their submissions that this was their transgression. Their transgressions were their failure to do anything to stop the strong political pressure from engulfing the police operation and their covering up of the truth after the fact.

Harnick was "not involved in any debates or discussions regarding an *ex parte* versus a with notice injunction"[21] either in the Premier's Dining Room meeting or otherwise. Instead, the Premier made the ultimate decision, calling for an emergency injunction and instructing the Attorney General that he wanted the occupiers out of the park within 24 hours.[22] He usurped the Attorney General's role, and the Attorney General allowed this.

Runciman's position on the morning of September 6 was that he wanted to go slow.[23] However, when things heated up in the Premier's Dining Room, he was silent.

---

[19] See our Submissions, p. 67-71 and 82-84.
[20] Submissions of Charles Harnick, p. 1; Submissions of Robert Runciman, par. 5-6.
[21] Submissions of Charles Harnick, p.3.
[22] Exhibit P550
[23] Submissions of Robert Runciman, par. 31, 36, 37, 38.

Runciman "said either very little or nothing at the dining room meeting. Mr. Runciman was at the meeting as an observer and did not otherwise participate, but if a policing issue had arisen, and he had felt it was appropriate, he would have contributed to the discussion."[24] In other words, he apparently believed that nothing inappropriate happened at the meeting, even though he would have seen Ron Fox there,[25] and even though he heard police operational information, or "so-called intelligence," being passed up (e.g. reports of AK47s and warriors coming), as he did nothing.[26]

More important is the conduct of Harnick and Runciman in the cover-up which followed the death, which is discussed later in this Reply.

The occupiers were bad people

The OPPA's smokescreen of choice is a slew of tenuous allegations designed to colour all of the occupiers as a bunch of lawless gun-toting alcoholic thugs. Most of these allegations stretch the boundaries of both truth and relevance, but in any event, even if those allegations were accepted at face value, it still does not explain or justify an OPP sniper shooting and killing one of them.

Ex post facto justification for the use of force

The OPP has manufactured an ex post facto attempt to explain its mobilization of massive force. They have built an elaborate multi-armed straw man, but it is still a straw man. The reason why this multi-armed ex post facto justification for mobilization is a

[24] Submissions of Robert Runciman, par. 43.
[25] Runciman now claims he does not recall seeing Ron Fox at this meeting (although he stated during his examination for discovery that Fox was present – see Robert Runciman, January 10, 2006, p. 118-124; 150-164). In any event, he did know who Ron Fox was an OPP inspector at that time and thought highly of him (Robert Runciman, January 10, 2006, p. 56-59, p. 108-110), and certainly would have been aware of his presence at the Dining Room meeting at the time.
[26] Submissions of Robert Runciman, par. 45.

sham is covered in our submissions[27] and the submissions of other aboriginal parties in some detail.

Everybody's fault but mine

All of the government parties place blame for much of what happened leading up to the death of Dudley George on somebody else. In most cases, those arguments turn out to be a sham as well. This is addressed in the next chapter.

What all the straw men don't do

All of the aboriginal parties agree that there was political pressure exerted upon the OPP, and that the source of the political pressure was the Premier's Office. It is not controversial that John Carson and other operational police officers were aware of the existence of political pressure from all angles. The documentary record makes that clear. It is also more than plausible that the events of September 6 were influenced by that political pressure. The course of events makes that clear.

Deploying the riot police and sniper units to march upon the occupiers was the wrong decision. Failing to stop "the runaway train" anytime in the 2½ hours after it had left the station was the wrong decision. These are decisions that were made in the overheated atmosphere of political pressure, which must have critically influenced thinking.

The Estate and Family of Dudley George have waited a long time for answers about why there was violence and death that night. After two years of hearings in this Inquiry, and after eleven years of looking for the truth behind the tragedy, none of the police and none of the politician and government witnesses have put forward any adequate explanation for the escalation of state force against the occupiers that night. Instead, they have

[27] See our Submissions, p. 111-124

deployed an army of straw men. All of the attempts at justification fall short. There is no legitimate justification available to be put forward. There is no way to make sense of the events of September 6 without accepting that a miasma of political pressure enveloped the police operation and created a crisis.

4. EVERYBODY'S FAULT BUT MINE

Deb Hutton, Marcel Beaubien, the Province of Ontario, Mike Harris, the OPP and the OPPA spend a great deal of their submissions blaming everybody except themselves. Sometimes holding others partly responsible, such as the federal government for its failure to return the Army Camp lands, is appropriate. Other times the blame is misplaced. In either case, this exercise of passing the buck needs to be seen for what it usually is – an attempt to deflect attention from a party's own mistakes or wrongful conduct.

To list a few examples, some of these flawed "passing the buck" arguments advanced in some of the parties' submissions include:

- The federal government is responsible because of its failure to return the Army Camp;
- Previous provincial governments are responsible because they established the structure and policy for how to deal with occupations and blockades;
- The First Nation is responsible because there are divisions within the community;
- Chief Tom Bressette is responsible because the OPP and the government was only doing what he wanted;
- The occupiers are responsible because of their own conduct;
- Ron Fox is responsible because he passed on information from Queen's Park to Forest; and
- The OPP is responsible because it was advocating for a quick injunction.

Blame Canada

Denying justice with respect to the Army Camp lands

The federal government rightly ought to be condemned for its unjust and unjustifiable failure to return the Army Camp lands to the First Nation. It also ought to be condemned for failing to participate as a party to this Inquiry to explain itself, despite several invitations from the Commission to do so. Ron Irwin, who was the federal Minister of Indian Affairs at the time of the shooting and for several years thereafter, publicly supported the George family's call for a public inquiry (see Appendix A), but now the federal government does not even show up.[28]

Despite Canada's failure to show up at the Inquiry, the Commissioner may, and indeed is obliged under the terms of reference, to make findings about the circumstances surrounding the death of Dudley George, regardless of who they implicate. The takings of Stony Point Reserve land in 1928 and again in 1942 are part of those circumstances.

We agree that the federal government is partly to blame for disregarding justice and fairness for many decades with respect to the Stony Point Reserve lands. What we disagree with is the suggestion by some of the parties that the federal government's delinquency somehow relieves the provincial government and its representatives from any responsibility. As discussed in the next chapter, the inaction of the Federal Government on the Army Camp lands was not a main justification for the occupation of the Park, and it serves no one's purpose, except for a self-interested few, to pretend that it was.

[28] Although the federal government did produce a number of documents and three witnesses to the Inquiry, it should have had much greater involvement given its responsibility for taking the Stony Point Reserve lands.

Failure to follow up on the burial ground issue

Marcel Beaubien blames both Canada and the First Nation for the fact that nothing was done to fence off and protect the burial site in the Park.[29] On the other hand, he defends the provincial Deputy Minister for his inaction on the basis that he "was not aware of the location of the alleged burial grounds."[30] This position is completely untenable.

Let us not forget that it was the *Province*'s engineer that came across the burial ground. As stated by the Indian Agent at the time: "When cleaning out this *park* recently the Engineer discovered an old Indian burial ground."[31] The Engineer was, certainly, working for the Province. Why Deputy Minister Cain did not simply asked the Engineer to go ahead and mark off the area, or find out from the Engineer where the burial site was so that he could take appropriate steps to have it fenced off and preserved, is unknown.

Beaubien goes on to state that "the Federal Government's inaction as early as 1937 in relation to the alleged burial ground may have contributed to the occupation of the Provincial Park in September 1995," and that "it was incumbent upon the Federal Government to protect Natives by arranging, on their behalf, with the Province to locate, then fence and protect such a location."[32] This is unreasonable. The Province claimed to own the land, provincial employees knew the location of the site, and the Province should have done something about it. There were many failures by the Federal Government in connection with the history of the Stony Point reserve (particularly its role in taking the shorefront lands and then taking the rest of the reserve and failing to return it). However, responsibility for failure to protect the burial ground falls squarely on the shoulders of the Province. The Province again and again failed to do anything when it was reminded over the years about the burial ground – in the 1940s, in 1950, in 1975, in 1993 or at any other time.

---

[29] Submissions of Marcel Beaubien, p. 7 to 11.
[30] Submissions of Marcel Beaubien, p. 7, par. 21; see also Province of Ontario, p. 31, par. 93 on the same point.
[31] Report of Joan Holmes, p. 55, citing letter from MacInnes to W.C. Cain, Deputy minister, Ontario Department of Lands and Forests, August 17, 1937 [emphasis added].
[32] Submissions of Marcel Beaubien, p. 8-9, par. 25-26.

Blame the previous government

Harris and Hutton explain in some detail how the IMC structure had been set up prior to Mike Harris's 1995 election, and that the policy of not "negotiating over barricades" was carried forward from previous administrations.[33] Runciman also states: "most of the policies that were applied in reaction to the occupation of the Park were policies developed by or under other governments, led by different parties."[34]

This is another straw man. It is not those particular structures and policies that are impugned in the death of Dudley George. It is the fact that the IMC process was effectively hijacked by the Premier's office, and ultimately overridden by a knee-jerk ad-hoc process, that being the Premier's Dining Room meeting, where the actual decision was made to get an immediate injunction rather than one that would not be heard for at least two days. How this meeting and other political pressure created an emergency mentality that filtered down to the police is covered in our previous brief.[35]

The other point that Harris and Hutton do not mention is that the Harris government rejected the Statement of Political Relationships (SPR) set up under the previous government. The point is that while the Harris government may have adopted and adapted some of the policies and structures that suited its political position from previous administrations, it had a fundamentally different, and dangerous, approach to First Nations issues, rooted in its assimilationist philosophy of treating aboriginal people the same as everybody else. It misused the structures that it had inherited, and it dictated dangerous and reckless policy positions that clearly marked the Harris government apart from previous governments.

[33] Submissions of Deb Hutton, p. 61-62, par. 206.
[34] Submissions of Robert Runciman, p. 3.
[35] See our Submissions, p. 81-97

It is no accident that Dudley died after Harris took power and he implemented his policies, and not before. If the occupation had happened one year earlier under the NDP administration, it is impossible to imagine that there would have been the same kind of political pressure exerted or the same kind of result. Similarly today, it is hard to imagine that the OPP would engage in the same kind of offensive against the Caledonia occupiers as it did in Ipperwash, given that the policy position of the current government in respect of native issues is much more responsible than that of the Harris government.

Blame the First Nation and the Chief

Despite all of the ink that has been spilled detailing Chief Tom Bressette's position regarding the occupiers and their claims, the fact is that the government and the police never did anything because of what Chief Bressette wanted. In particular, the Harris government did not want to be seen to be working with Indians at all. Chief Bressette is now used as an *excuse* for the province and the police acting as they did, but he was not the *reason*.

Regardless of the views of a First Nations chief or any other individual in society, the government and the police have a duty to act responsibly, and they cannot avoid responsibility for their actions by stating that somebody supported or wanted them to take those actions.

Prior to the shooting, the police and MNR had obtained Chief Bressette's understanding as to whether there was a burial ground in the Park. They put a lot of stock in his understanding that there was no burial ground in the Park, completely discounting the fact that he did not speak for all of the members of his community – particularly the group that had engaged in the action. As it turns out, Chief Bressette was wrong. In any event, the point may be moot since the Province's position was that even if there was a burial ground, it did not affect title and apparently would not have changed how the government responded.

The Province of Ontario and Marcel Beaubien also attempt to blame the First Nation for failing to follow up with the Province about the burial ground issue between 1937 and 1995. This misplaces the burden of responsibility. The Province was the purported landowner. The Province had a fiduciary duty to protect the burial grounds. The Province, and not the First Nation, had the archival records and other evidence about the burial ground. There may be many reasons why the First Nation did not apparently formally follow up on this issue, and we cannot presume today to know exactly what those reasons are, although the oppressive *Indian Act* structure in place at the time is likely an important part of the story. In any event, the Province does not have license to continue to do nothing to honour its fiduciary and moral obligations until enough complaints about its inaction are brought to its attention.

Several of the parties refer to the divisions within the community, referring to the Stony Point group as a "splinter" or "breakaway" group. It is true that there has been some friction between Chief Tom Bressette and the Stony Pointers. However, it is not helpful to exploit that for the purpose of avoiding responsibility for a party's own actions or inactions. There is an important historical context underlying the internal friction, but there are conflicts within many First Nations in Canada, as there are within many organizations, groups, societies, and countries. Many groups have dissidents, and the claims of the dissidents cannot be dismissed simply because they are dissidents. Nelson Mandela in South Africa was a dissident, as is Aung San Suu Kyi in Burma (Myanmar) today. Neither had "a democratic mandate"[36] from their government. That does not mean that their grievances, against apartheid in the former case, and against the anti-democratic military junta in Burma in the latter, were and are not legitimate. A "democratic mandate" is not a prerequisite to raising legitimate grievances.

[36] See submissions of Mike Harris, p. 11: "The occupiers did not have a democratic mandate from any First Nation."

Blame the occupiers

One of the claims made by Harris and others is that the occupiers "made no effort to communicate any message of protest. They showed no interest in communication with authorities or the public."[37] He and other parties further claim that the occupiers made no attempt to assert any substantial case to any relevant authority about the need for protection of a possible burial ground in the Park.[38] On the other hand, however, Harris says that "justice had for so long been disregarded by the Government of Canada that for the persons who took over the Park, government, regardless of jurisdiction, had entirely lost its moral authority." [39] There is certainly much truth to that latter statement, and it largely answers the point as to why the occupiers asserted their rights in the manner that they did as opposed to engaging some formal process that they regard as illegitimate.

Much has been made about the occupiers apparently being non-communicative, and other aboriginal parties have commented on this issue. However, we wish to point out that OPP negotiation officer Seltzer noted that he simply did not have the time to do the negotiation job that they wanted to,[40] and that they had actually been "so close."[41] We also note that Ron French seemed to have no problems communicating with the occupiers, and the Command Post was aware that Ron French was going on to the old Army Base on the night of September 6.[42] These examples are contrary to the idea that one should keep talking as much as one can,[43] and they raise obvious questions about how serious the OPP was about "negotiating" and "communicating."

The occupiers may not have appointed a spokesperson before Dudley was shot. With time, there would have been dialogue, but that dialogue was never given a chance to

[37] Submissions of Mike Harris, p. 12; see also submissions of Deb Hutton, p. 218, par. 777
[38] Submissions of Mike Harris, p. 12.
[39] Submissions of Mike Harris, p. 14.
[40] Brad Seltzer, June 13, 2006, p. 173.
[41] Brad Seltzer, June 13, 2006, p. 175.
[42] Ex. P-426, p. 72.
[43] See *e.g.* Eileen Hipfner, Sept. 15, 2005, p. 145-146; Bonnie Bressette, Sept. 22, 2004, p. 158.

happen. Mike Harris caused an emergency mindset which precipitated swift action and which prevented any kind of dialogue from developing.

Blame Ron Fox

Hutton's extensive efforts in her submissions to blame Ron Fox for his "lapse in judgment" in communicating with John Carson about what was happening at Queen's Park are a smokescreen designed to cover up the inappropriate conduct of the Premier and herself. Ron Fox should not have been at the Premier's Dining Room meeting in the first place. He did not have the rank in the civil service that would ordinarily justify him being at a meeting of this nature. His being summonsed to the meeting was quite extraordinary, and was not done at the behest of his boss. It can only have been done at the behest of someone from the Premier's Office. Ron Fox's attendance at the Premier's Dining Room meeting can only have been required so that he could be put in his place and told what the Premier wanted and what the reality would be (after Ron Fox had openly disagreed with Hutton at the IMC meeting just a short time earlier). He was summonsed to be told that the situation was to be treated as an emergency, and that the police would have to account for what they were doing (i.e., if their actions were not in accordance with the Premier's wishes).[44]

Ron Fox was expected to communicate with John Carson, especially with regard to such things as the injunction and obtaining information that the government needed to know about the situation on the ground. He did what he was supposed to do in terms of passing on the message about the emergency injunction and the context for that decision. If he had any lapse in judgment at al, it was in saying more than he needed to and saying it in an inelegant way, but the fundamental message to the OPP was already contained in the communication that the government wanted the matter to be treated as an emergency.

[44] See our Submissions, including at p. 87-88

Blame the OPP

Both Harris and Hutton advanced in their submissions the argument that the OPP wanted MNR to get a quick injunction on September 5. We submit that this proposition is not substantiated when the greater context is considered.

In order to support this proposition, the parties rely on Carson's testimony where he questioned MNR's seriousness about the injunction. He heard there were two types of injunctions: a 24 hour emergency one or one that would take 2 to 4 weeks to get, so Carson challenges MNR as to what is going on.[45] However, Carson's reaction was very understandable when one considers that his expectation as of the September 1 OPP planning meeting was that "MNR is literally prepared to go into court at a minute's notice."[46] While this information was apparently wrong and/or misunderstood, Carson's reaction was very understandable given this expectation and the news that it could be 2 to 4 weeks before the injunction would be in place. This reaction was also consistent for someone who was (at least at this time) apparently naïve about court injunctions and did not really appreciate the difference between the two injunctions.[47]

There is also some reliance on a phone call between Carson and D/Chief Austin of the London Police Department at about 2:00 p.m. on September 5, 2006.[48] It is necessary to examine this call in more detail and in the proper order. To provide some context, Carson was attempting to make arrangements for the LAV from London PD, and Carson and Austin were discussing logistical issues. Carson was simply doing some preplanning for down the road,[49] and Austin was concerned about how long the LAV may be in the Ipperwash area.[50] Carson accordingly explained the time-frame in the context of potential injunctions as it had been explained to him:[51]

---

[45] John Carson testimony, May 17, 2005, p. 170-172.
[46] Ex. P-421, p. 1, 5.
[47] John Carson testimony, May 17, 2005, p. 171-172.
[48] Ex. P-444A, Tab 14.
[49] Ex. P-444A, Tab 14, p. 100.
[50] Ex. P-444A, Tab 14, p. 101.
[51] Ex. P-444A, Tab 14, p. 101-102 [emphasis added].

Carson:	Well, there is the emergency type one they can get within a day,
Austin:	Okay
Carson:	and *if they're not prepared to do that* then I have to, you know, we have to really re-look at our whole situation here.
Austin:	What you're doing, yeah.
Carson:	Yeah yeah yeah.

It is clear that at this time, which was prior to Carson speaking to Fox later in the day, Carson would adjust his operation depending on how MNR decided to proceed. He was alive to the fact that the emergency injunction may *not* be sought. Carson was not expressing a preference for a particular type of injunction. Rather, he was indicating his awareness that if the process was going to take longer, reality dictated that he would have to re-examine what they were doing on the ground (particularly since MNR's expected timelines had changed since the meeting a few days earlier).

In short, at this time the OPP was willing to adapt to whatever course of action MNR chose to take, and the OPP was not requesting a quick injunction. It is also important to remember that this was on the afternoon of the 5th, when Carson was just becoming acquainted with the "alligators" (i.e., political pressures). As detailed in our previous brief, his approach changed on September 6 when he agreed to buy into the emergency mindset that the Premier had created.

Blame Dudley

The OPPA's submissions are full of inflammatory characterizations of the occupiers, including Dudley. The Commission heard a lot of evidence about Dudley's character, as well as some of the tragedies and troubles he had during his life, and these are dealt with in our previous brief.[52]

[52] See Chapter 4 (p. 54-62) of our submissions and Ex. P-334.

Rather than responding to all of the specific vilifying and largely dubious allegations against Dudley, we will only refer to Sam George's words, which capture the essence of the truth. [53]

> I've looked at all the evidence that we've heard from Dudley, and about Dudley, and we looked at – we were aware that he would drink and so forth and I've never claimed in all my times that I've been seeking the truth as to what happened to him, that Dudley was an angel.
>
> But I can guarantee you one thing right now, that he is now.

[53] Sam George, April 18, 2005, p. 121.

5. IT'S THE LAND – REASONS FOR THE OCCUPATION

Ignoring or trying to delegitimize the grievances about the Stony Point Reserve lands and the desecration of sacred burial grounds will not make them go away. It will simply increase the level of frustration of those who have experienced historical injustice.

Beaubien,[54] Hutton,[55] and Ontario[56] go to great lengths to argue that the reasons asserted by the Stony Pointers as motivating the occupation of the Park were not the real reasons for the occupation, and that even if they were the real reasons, they were wrong to have a grievance. Harris also claims that the occupiers had neither a legal right nor a justifiable moral claim for the occupation.[57]

We are unclear about the point of those submissions, unless it is to somehow suggest that the emergency mindset and the use of force were justified because the reasons for the occupation were illegitimate.

Beaubien in particular alleges that the real reason, and the only reason, for the occupation was that the occupiers were trying to draw attention to their dispute with the federal government over the Army Camp lands. This implies that all of the occupiers who talked about reclaiming their land and their burial grounds as reasons for the occupation were either lying, just making it up, or unaware of why they did what they did.

In some cases, different First Nations witnesses had different understandings as to the specific location of burial sites and the specific basis for the claim to ownership. Obviously, the specific details had not been completely preserved over more than 50 years of oral history, but the core truths remained intact. The fact that there may be

[54] Submissions of Marcel Beaubien, p. 3 to 12
[55] Submissions of Deb Hutton, p. 54, par. 181; p. 55-56, par. 185-187, p. 218-219, par. 780, 782
[56] Submissions of Province of Ontario, p. 12, par. 29
[57] Submissions of Mike Harris, p. 11.

differences in understanding some of the details now does not detract from the core truths: that the land was wrongfully taken and the burial grounds desecrated.

The unjustifiable failure of the federal government to return the Army Camp lands was certainly a source of frustration. It is an important part of the context for occupying the Park, but it was not one of the main reasons for the occupation. The Stony Pointers occupied the Park because they sincerely believed the Park was part of their Treaty lands and were concerned about their ancestors' burial places in the park. This was repeated, in various ways, by many of the First Nations witnesses.[58] Moreover, their beliefs have proved to have a foundation in truth.

These were not reasons that the occupiers came up with after the fact. The police and the provincial government both knew, prior to the shooting, that the occupiers were claiming the Park lands as their own and that there was an issue about burial grounds in the Park,[59] even if the occupiers did not announce those "demands" in a formal communiqué. These were not just issues that the occupiers made up for the benefit of the outside world or a complex legal document – these were points that they were making to others within their own community.

With respect to the burial ground issue in particular, Dudley and others shared their intentions with Bonnie Bressette (who was not part of the occupying group) on the afternoon of September 6. There is certainly no reason why they would not be honest with her. Bonnie spoke about this during her testimony:

> Q: Okay. And you had a discussion with Mr. Glenn George and Mr. Dudley George and Mr. Roderick George, is that correct?
> **A: Yes.**

[58] Some of this evidence is reviewed in the Submissions of Aazhoodena and George Family Group at p. 116-117 and the Submissions of Mike Harris at p. 1189-120

[59] P-444A, Tab 5, p.15; IMC Meeting Notes: Janina Kovol notes, P-970; Anna Prodanou notes, Sept. 5 P-730, Sept. 6 Inq. Doc. 1006192; Andrew MacDonald, Inq. Doc. 1011721; Caroline Pinto, P-969; Eileen Hipfner, Sept. 5 P-510, Sept. 6 P-636; Elizabeth Christie, Sept. 5 P-735, Sept. 6 Inq. Doc. 1011800; Barry Jones, Inq. Doc. 1012275; David Moran, Inq. Doc. 1012547; Leith Hunter, Sept. 5 Inq. Doc. 1012564, Sept. 6 Inq. Doc. 1012325; Julie Jay, P-536; Scott Patrick Inq. Doc. 1011586; ONAS Inq. Doc. 1006190; Scott Hutchison.

Q: And what did you learn from your discussion?

A: That they were there because they wanted to bring attention that this Park was located on our ancestors' burial ground and that they wanted it to stop. That we couldn't be doing that anymore. And it had to stop. That's why they were there was to bring attention.

And that's -- I'd like to add my comments that that's what causes all the problems. When people who have the responsibility to address things like this never address it until there's been a protest, a demonstration or whatever. And that's what it was, to say this is our ancestors' burial ground and it should not be a Park where people can party and carry on anymore.[60]

[...]

A: The last time I seen Dudley, they were sitting on the corner of the picnic table talking to us, my husband and I.

Q: At what time approximately would that have been?

A: When we were having supper.

Q: What kind of a mood was he in through that day? And what was his -- his general attitude?

A: He was proud of himself by having a sit-in down there to create and let people know that this was a burial ground for our ancestors and that being part of creating this awareness and saying, This has to stop. He was -- he was proud of himself.[61]

[...]

Q: Now, with respect to their concerns about that sacred ground, you asked them, did you not, why they don't just go through the Courts with their concerns?

A: Yes.

Q: And what did --

A: Courts don't -- Courts don't listen to us, by the time we get anything into the Court system the money that we -- we don't have the economy to continually keep supporting the high legal costs of anything.

We had the -- with us we've tried the Court system for our beach frontage that was taken at Stony Point -- or Kettle Point, for other land issues, and by the time the Courts deal with it more time goes around and more seasons.

[60] Bonnie Bressette, September 22, 2004, p. 14-15
[61] Bonnie Bressette, September 22, 2004, p. 58

Q: Did you talk to Dudley about that, that day?
A: No, all my -- my only question was, why don't we just go into the Courts? And they said, we're here to let people know that this is our ancestors burial ground and we want it stopped and -- so that was their way of making it known.
Q: And they told you that they thought this was perhaps the only way to make this known?
A: Yes.
Q: And they said that if they did not do anything about it, people would just continue to use this place where their grandfather's are buried, just as a place to party and camp?
A: Yes.[62]

With respect to the other main reason, David George was one of the many occupiers who testified that the Park was their land,[63] and that there had long been an intention to reclaim the Park and restore all of the Treaty lands that were wrongfully taken:

Q: And how was it decided to move into the Provincial Park? Did you have meetings? How did that come about?
A: I think it was just like a group decision to go in there because of -- it's part of our original peace land.
Q: And when did the -- when did you first start to think about -- thinking about going into the Provincial Park?
A: Ever since I had first came on.
Q: First came on to the army camp?
A: Yeah.
Q: And did you discuss that issue with other people?
A: There was -- everybody was always talking about it. That's one of the things that we always talked about. Just about the Park and all -- all the lands that were taken away from us, like our hunting grounds. They took all that land and drained it all because it used to be a bog and drained it. And people just started selling off the land.
Q: And so that from the time you moved onto the Army Camp in '93, the Park was a topic of discussion, as other parts of your land were?
A: Yeah. People always talked about it.[64]

[62] Bonnie, September 22, 2004, p. 68-69
[63] See for example Stewart George, November 2, 2004, p.63, 108; Marlin Simon, September 30, 2004, p.95; Elwood George, November 3, 2004, p. 66, 149, 152; Clayton George, November 8, 2004, p.31, 38, 40 63, 69, 93, 119, 148-149; Mike Cloud, November 8, 2004 p.171.
[64] David George, October 20, 2004, p. 146-147

The Park was not occupied simply because of frustration over the Army Camp lands, but because the Park was also part of the Stony Point lands. The connection between the two pieces of land was that both had been reserve lands promised in the Treaty and had been wrongfully taken, although in different ways and at different times. The goal of the Stony Pointers was to get *all* of the Treaty lands back, and to restore the land to indigenous status.[65]

> Q: What was your goal in participating in these demonstrations as you got older? In -- in -- in other words, what was it that -- that -- that you wanted to accomplish for your people?
> **A: I wanted to get all our land back. That's what I wanted. I wanted to make sure that those -- those treaties that they wrote with our people were honoured because I could see, you know, you could watch TV and see always the white man kicking the Indian's ass. Every movie I seen, it was like that. I didn't like that. I -- I wanted to change stuff.**
> Q: Hmm hmm. What was you understanding, you mention the treaties, can you give us a brief sense of - and I know some of these treaty relationships are very complex and large -- but can you give us a brief sense of your understanding of that treaty relationship that your - your -- your people hold Stoney Point.
> **A: I knew it was a piece of paper that the White Man used to steal our lands.**
> Q: Hmm hmm.
> **A: I knew that and that's pretty much the way I still see it. Like, they don't honour them, they just write them so they can get what they want and then that's it**
> Q: Right.
> **A: And it's still that way.[66]**

It is disappointing that even after hearing all of the evidence about the grievances that led to the occupation of the Park, several parties still want to suggest that those grievances were never honestly held. That kind of approach – failing to listen and assuming we know better than what native people are saying – simply contributes to the frustrations that many First Nations people have in the first place in their dealings with the Crown and with the Canadian legal system.

[65] David George, October 21, 2004, p. 38
[66] David George, October 21, 2004, p. 20-21

People may disagree with the characterizations of native people that they are experiencing unjust impoverishment, dispossession, racist oppression and abuse, neglect, state violence, etc., but it is apparent that many in Canadian society are incapable of really hearing, understanding, and acting swiftly, broadly and generously upon the elements of native grievances and complaints that are demonstrably true.

This is why we have, before this Inquiry, stressed the importance of dealing with the underlying issues (i.e., the taking of land and the failure to protect the burial ground), as it is only when First Nations people see that their underlying issues are dealt with fairly and respectfully that there will be healing.

The broader context for the occupation is described in the report of the Royal Commission on Aboriginal Peoples:

> Land is absolutely fundamental to Aboriginal identity. We examine how land is reflected in the language, culture and spiritual values of all Aboriginal peoples. Aboriginal concepts of territory, property and tenure, of resource management and ecological knowledge may differ profoundly from those of other Canadians, but they are no less entitled to respect. Unfortunately, those concepts have not been honoured in the past, and Aboriginal peoples have had great difficulty maintaining their lands and livelihoods in the face of massive encroachment.
>
> This encroachment is not ancient history. In addition to the devastating impact of settlement and development on traditional land-use areas, the actual reserve or community land base of Aboriginal people has shrunk by almost two-thirds since Confederation, and on-reserve resources have largely vanished. The history of these losses includes the abject failure of the Indian affairs department's stewardship of reserves and other Aboriginal assets. As a result, Aboriginal people have been impoverished, deprived of the tools necessary for self-sufficiency and self-reliance. Aboriginal peoples have not been simply the passive victims of this process. They have used any means at their disposal to halt the relentless shrinkage of their land base. From an Aboriginal perspective, treaties were one means to that end. But Aboriginal people insist that the Crown has failed to uphold those agreements and has generally broken faith with them. And since the nineteenth century, they have continuously protested — to government officials, to parliamentary inquiries, and in the courts —

what they see as the resulting inequity in the distribution of lands and resources in this country.

There is a strong moral case, then, for improving Aboriginal access to lands and resources. But there are also many pragmatic reasons. One is the sheer cost of the present system of programs and services for First Nations, Inuit and, to a lesser extent, Métis people. Improved access to lands, resources and resource revenues will finance at least some of the costs of self-government.

An equally important reason is that conflict over lands and resources remains the principal source of friction in relations between Aboriginal and other Canadians. If that friction is not resolved, the situation can only get worse, as events between the summers of 1990 and 1995 have already shown.

The confrontation at Kanesatake (Oka) was much more than a trivial dispute over the location of a golf course. Like most Aboriginal communities, the Mohawk people of Kanesatake were seeking to secure their land base. In this particular instance, the interests of the neighbouring municipality of Oka became caught up in a three-way dispute between the Kanesatake community, Canada and Quebec over title to land. That dispute, which dates to the early eighteenth century (see Volume 1, Chapter 7), remains unresolved.

This was not an isolated incident. Also during the summer of 1990, a group from the Blackfoot Confederacy called the Lonefighters tried to halt construction of an irrigation dam on the Oldman River in southern Alberta, citing potential environmental damage to their communities and loss of traditional livelihood. This provoked an immediate reaction from the provincial government and area farmers, who expected to benefit from the regulation of water flow on the river. In northern Ontario, members of three Ojibwa bands blocked railway lines in support of their claims to a greater share in the allocation of local lands and resources. At Ontario's Ipperwash Provincial Park, members of the Kettle and Stoney Point First Nations communities, claiming the park contained burial sites, clashed with provincial police in the fall of 1995, resulting in the death of one of the protesters.

[…]

It is nevertheless essential for Canadians to understand that these are not new problems. The basic difficulty — given the change in power relationships between Aboriginal people and other Canadians over the past century or more — has been that, until very recently, governments have

> either ignored or failed to address the basic issues. Now the time of reckoning has arrived.[67]

There will be other occupations and blockades in the future. The reasons for those protests will vary (although they will probably almost always have something to do with the land). Part of the point of this Inquiry is to identify ways to resolve the underlying issues which motivate First Nations people to engage in these kinds of actions. The other main issue is how to prevent violence when these actions do occur. Whatever the reason for the occupation, there are appropriate and responsible ways to respond, and there are inappropriate ways to respond. As the results of the events at Ipperwash make clear, the hawkish response in that case – both by police and politicians – was in the latter category.

True, Dudley would not have died if the occupation did not happen, but that does not mean that he should have died or needed to die. There are many possible outcomes that may arise when people engage in occupations. Death should not be one of them.

[67] Royal Commission on Aboriginal Peoples, "For Seven Generations" – Final Report of the RCAP (Libraxus: Ottawa, 1996) (CD-ROM), Record 7626

6. GUNS GUNS GUNS

Several parties, especially the OPPA, rely on various witnesses to continue trying to justify the inflammatory proposition that the occupiers had firearms and were willing to use them, or more generally that the occupiers were lawless, violent, alcoholic thugs. The chorus of guns, guns, guns is simply not founded on fact. What it does do is simply perpetuate stereotypes and stigmatization of First Nations peoples.

One explanation for these desperate after-the-fact attempts to reconstruct the occupiers as villains is that there is in fact no adequate and responsible justification for the deployment of violence against the occupiers that night. Nobody claims that the occupiers were all angels, but the bottom line is they were not the ones doing the shooting or going on an offensive attack – that was the police. Many of the police officers involved turned out to not be angels either.

The OPP's (lack of) actions speak louder than any words

More important than the story now being advanced after the fact is what the OPP actually did over the course of September 4-6, 1995, as it received supposed intelligence and information about guns and gunfire. If the OPP truly believed and was truly concerned that there was a threat from firearms in the Park, then why did the OPP not take *any* appropriate steps to address its concerns before the evening of September 6? There is no evidence of any evacuations of cottages or any other properties near the park or army camp until after Dudley George was shot. Roads were never closed to prevent the passage of traffic or to isolate the occupiers (except after the CMU was deployed). Checkpoints were not moved in response to such "reports."

If the OPP really had suspected a serious risk of guns before September 6, it would have taken some counteraction. As Sgt. Korosec himself said about what would have happened if he had ever been confronted by a native holding a gun: "he'd probably be a dead native by now."[68]

Most tellingly, why would a CMU be sent marching into a small cul-de-sac in formation where the officers would be "sitting ducks"?

The OPP accordingly and rightfully did not take any of these reports as causing a serious concern, because they were truly *not* an issue.

Events prior to September 4, 1995

Some parties, especially the OPPA, have put forward evidence about supposed reports regarding events involving guns prior to September 4, 1995, including accusations about Dudley George holding and using firearms. All of these are of questionable objectivity and reliability.

We adopt the other Aboriginal parties' submissions about this issue and the irrelevance of these events.[69] We add that it is significant that Carson did not deem these particular incidents important enough to consider when decisions were being made during September 4-6.[70] Also, Speck's opinion was that Captain Howse (one of the witnesses) was being antagonistic,[71] and most of the supposed statements about guns at the Base before September 1995 only surfaced over a year later, after the conviction of Kenneth Deane[72] (presumably to assist with Deane's appeal). These statements cannot be viewed

[68] Exhibit P1330; Stan Korosec, April 18, 2006, p. 13
[69] See *e.g.* Submissions of the Aazhoodena and George Family, paras. 406-408.
[70] John Carson testimony, June 9, 2005, p. 140-142.
[71] George Speck testimony, March 22, 2006, p. 126-127/
[72] Trevor Richardson, June 8, 2006, p. 313-315.

as credible at all, particularly since only memory was used and in most cases only the "odd" person had their notes,[73] if any.

The imaginary gun butt

Neil Whelan says he saw a gun butt in a native's vehicle's trunk in the park on September 4. His story simply does not stand up to scrutiny. Whelan admitted that he saw the gun butt from 40 to 50 feet away for a split second. He only informed Constable Japp (who did not mention it in his statement or notes), and did not inform any of the other officers on the ground until significantly after the incident.[74] First, this raises obvious questions in terms of his supposed concern for officer safety (if he had such concern, and had actually seen a gun butt, he would have reported it). Second, given Whelan's admitted distance from the object that he saw admittedly only for a split second, he may easily have been mistaken as to what he saw, or assumed he saw.

Whelan states that he informed Korosec about the supposed gun butt, and Korosec said he immediately informed Carson.[75] However, Carson's very detailed notes of that conversation with Korosec clearly make no mention of the supposed gun butt.[76] While the supposed incident was mentioned in the scribe notes much later in the evening,[77] it was likely made up or inflated by Whelan similar to his self-serving and incredible testimony regarding the picnic table incident during the night of September 5,[78] and his "mistake" about whether the fire was inside or outside the Park on the evening of September 6 despite the number of other observations he made.[79]

---

[73] Trevor Richardson, June 8, 2006, p. 313-315.
[74] Neil Whelan testimony, July 18, 2006, p. 259-264.
[75] Stan Korosec testimony, April 18, 2006, p. 31-34.
[76] Stan Korosec testimony, April 18, 2006, p. 35-37; Ex. P-410, p. 53; John Carson, May 16, 2005, p. 158-159.
[77] Ex. P-426, p. 2.
[78] See *e.g.* Submissions of Aazhoodena and George Family Group, paras. 418-422.
[79] Neil Whelan testimony, July 18, 2006, p. 267-269

The supposed automatic gunfire

As detailed in our previous submissions, the supposed rounds of automatic gunfire on the night of September 5 were likely nothing more than fireworks, and we do not intend to repeat that analysis here. Instead, we will examine in detail the evidence of Larry Parks and Steven Lorch, which simply did not stand up to cross-examination.

We submit that Steven Lorch is either mistaken or simply made up hearing the automatic gunfire in order to assist with the appeal of Kenneth Deane.[80] He had extremely limited experience upon which to determine whether what he actually heard was automatic gunfire or something else; he could provide no detailed specifics about time or distance; and he was not aware of *any* sightings, reports, or physical evidence to support the presence of automatic weapons. In addition, his notes conspicuously have no mention of *any* incidences that night, nor did Lorch discuss his alleged observations with any of his fellow officers that night or ensure they were noted. Constable Marissen's statement (who was at the same checkpoint at the same time) makes no mention of gunfire and explicitly says "There were, however, no problems."[81] The first reference Lorch ever made to this supposed automatic gunfire was clearly after Kenneth Deane was convicted. The most logical explanation for these facts is that Lorch is either mistaken or made up this information in order to assist with Kenneth Deane's appeal.

Larry Parks's assessment is similarly suspect. He had very limited and dated experience,[82] and he was also not aware of *any* other sightings, reports, physical evidence or subsequent investigation of automatic weapons to support his assessment.[83] He also discounted the idea that what he heard could have been firecrackers even though he reported Natives going to a campfire minutes before his gunfire report.[84] On September

[80] Steven Lorch testimony, June 12, 2006, p. 144-159.
[81] Ex. P-1692, p. 1147.
[82] Larry Parks testimony, p. 261-262.
[83] Larry Parks testimony, p. 321-330.
[84] See also Ex. P-426, p. 47.

4th, Parks had inflated an incident involving small strobe firecrackers into one involving "flares",[85] indicating that his "observations" could not be counted on as reliable.

Finally, George Hebblethwaite testified that sounds of automatic or semi-automatic gunfire were "commonplace".[86] This aspect of his testimony is simply not credible as he made no records as to when he heard automatic gunfire, nor did he report it up the chain of command.[87] Given the significance that such sounds would potentially have for both police and public safety, it is almost impossible to believe that he heard those sounds and did nothing to notify or report them.

Tina George's uncertainty about the date

Submissions have been made regarding Tina George's evidence about the date on which target practice occurred. We submit that when one looks at the totality of Tina George's evidence, it is completely unclear what day Tina George may have been referring to. In particular, Tina George completely denied hearing any gunshots or similar sounds on either September 4 or 5.[88] Counsel then had the following exchange with her: [89]

> Q: I anticipate that the Commission will hear evidence of -- that there were reports of gunshots being heard in or around the Army Camp or Park area during the evening of September 5th, 1995.
>
> Now, if that evidence were to come forward, would that refresh your memory or change your evidence?
>
> A: Pardon?
>
> Q: Would that -- if that evidence comes forward, would that refresh your memory or change your evidence concerning whether or not you heard gunshots that night?
>
> A: **If they gave me a date and I was there, yes, it would refresh my memory.**

[85] George Speck's notes refer to "throwing fireworks" (Ex. P-1160, p. 31), and Trevor Richardson's notes indicate that he was initially told that the incident involved fireworks (June 8, 2006, p. 288-290; Ex. P-1671, p. 14). It was only the next morning that Parks told Richardson that flares were involved (Ex. P-1671, p. 18).
[86] George Hebblethwaite testimony, May 15, 2006, p. 270-271.
[87] George Hebblethwaite testimony, May 15, 2006, p. 271-272.
[88] Tina George, Jan. 19, 2005, p. 147, 167-168.
[89] Tina George, Jan. 19, 2005, p. 171-172 [emphasis added].

Q: Okay. Perhaps I should just -- let's -- I'll rephrase the question. We anticipate that there will be evidence later on in this Inquiry that individuals heard gunshots the evening of Tuesday, September the 5th in or around the Park or Army Camp area?

A: I can't be sure on the date.
Q: Did you hear gunshots one of those evenings?
A: One evening I heard gunshots, yes.
Q: All right. And was that either the Monday or Tuesday?
A: It's possible.
Q: Possible?
A: Yeah.

We submit that this exchange clearly shows that Tina George was very uncertain about the date at this time and may have been confused or misunderstood the question. It is thus understandable why she corrected her testimony the next day to be clear that it was not during September 4-6, 1995.[90] We accordingly submit that she was mistaken about the date and that the correction was appropriate.

Wright: "We'll Do Our Talking With Guns"

Several parties quoted Wright's testimony that an occupier said "We'll do our talking with guns" on September 6. We submit that this is yet another way by which Wright exaggerated and manipulated the situation to create conditions that would justify "amassing an army" to confront the occupiers.

Marg Eve accompanied Mark Wright on the day in question and was part of that particular conversation. In her statement of September 15, 2006, she stated that someone she recognized as Dudley George said that: "this is only going to be resolved with guns, it was going to be settled with guns."[91] This statement is significantly different from Mark Wright's account and interpretation of the comment. The occupiers were committed to keeping their Reserve lands, and would not be removed again except through force, or specifically, at gunpoint. In other words, a reasonable interpretation of the alleged comment is that the guns referred to were police guns, not native guns. Since

[90] Tina George, Jan. 19, 2005, p. 8-14.
[91] Ex. P-1108, p. 3. See also Marg Eve's notes, P-1108, p. 43.

the occupiers did not actually have guns in the Park, Marg Eve's account is more consistent with reality than Mark Wright's.

In any event, the actions of the Wright and Eve indicate that they did not regard what was said as a real threat, as Wright maintained. They stayed at the fence attempting to talk to the occupiers for several more minutes rather than leaving.[92]

The make-believe firearm in the maintenance shed

The OPPA relies upon a grainy still photo extracted from a video that purports shows a person holding a firearm in the maintenance shed.[93] When the video containing that frame is played, it is totally unclear whether there is any firearm in the individual's hand. This is likely the assessment that Officer Chris Martin made at the time while viewing the video, and that is the real reason why he did not notify the Command Post[94] about a person holding an object in the maintenance shed.

Some people who have seen the famous grainy Polaroid of a "Sasquatch" believe in the existence of the Sasquatch. You see what you want to see. The OPPA sees a gun. We see a flashlight. We believe it is more likely that somebody walking around at 2:51 a.m. in the dark of night (which is the time of the still) would be holding a flashlight rather than a handgun. We also think the object looks much more like a flashlight than a gun. The Inquiry has heard evidence that some of the occupiers had flashlights. The Inquiry has not heard any reliable evidence that any of the occupiers had guns in the Park.

[92] See *e.g.* Marg Eve's statements (p. 4) and notes at Ex. P-1108.
[93] See *e.g.* Ex. P-42A.
[94] Chris Martin testimony, March 28, 2006, p. 124-127.

The "sounded like one gun shot" radio transmission

The OPPA also refers to reports of gunfire at 18:27.[95] However, the transcript of that radio transmission is very illuminating: "Just heard what *sounded* like one gunshot and *if it was*, it's a small caliber. [emphasis added]" From the transcript itself, it is apparent the officers themselves are not sure about what they heard, and it could have been anything (including fireworks or firecrackers or a vehicle backfiring). What is more interesting is that the OPP did not do anything with respect to officer or public safety (e.g. moving checkpoints, evacuations, closing roads). In all likelihood it had no impact on the OPP's action precisely because firearms were not an issue at the time and the OPP knew that, based on what had happened with the occupation so far.

The night of September 6

Other aboriginal parties have gone into great detail in their final submissions about the fact that the occupiers were not armed on the night of September 6th,[96] and we do not intend to repeat those submissions here. We add the simple observation that no police officer, no police equipment, no police vehicle, and no object whatsoever on the police side of the skirmish was ever hit by a bullet. If the occupiers, many of whom are hunters, had actually fired at police, it is unfathomable that they would have failed to hit anything at all, especially given the number and the formation of the police officers. None of the police even heard bullets going by or hitting any object behind them or beside them.

As for the shotgun labeled the "Bastard Blaster",[97] the evidence is that it was not in the Park at all during the period of September 4-6. Abraham David George testified that he last used that firearm during the winter of 1995 and that it had then been stolen.[98] In any event, when it was found in somebody's garbage can on Kettle Point miles from the Park,

[95] Ex. P-1317.
[96] See *e.g.* Submissions of Aazhoodena and George Family Group starting at para. 488.
[97] Ex. P-42C.
[98] Abraham David George, October 19, 1994, p. 126-128.

several days after Dudley was shot, it did not even appear to be a functioning weapon, as it had no trigger and had packaging tape wrapped around it.[99] This object had absolutely no role or connection to the events that occurred at Ipperwash. The OPPA's attaching some importance to this weapon is desperate and inflammatory.

Ken Deane: Dudley had a gun

The OPPA has submitted that Dudley George had a gun or alternatively that Kenneth Deane mistook what Dudley was holding a gun. These assertions simply do not accord with the evidence.

In order to accept that Dudley was armed, the Commission would have to accept an incredible combination of implausible things:[100]

- That Dudley George left an area of safety to go to an open area on the roadway;
- That Deane either was unable to or chose not to use his flashlight device or laser light features before or after Dudley was shot;
- That immediately after seeing Dudley assisted back into the park, he turned to his right and spoke to Hebblethwaite with regard to a head count;
- That Deane walked 20 metres but did not have time to get a message over the communication system regarding muzzle flashes or danger from the sand berm;
- That Deane watched Dudley move from the position where he was shot to a location closer to the CMU apparently still with the ability to fire the supposed rifle;
- That Deane did not fire his rifle again to prevent Dudley from posing any threat since he did not know how seriously he injured Dudley;

[99] Cliff George, Sept. 21, 2004, p. 122-123.
[100] Ex. P-1768.

- That despite the severe injuries sustained by Dudley, Dudley's next priority after being shot was to dispose of the supposed weapon he was carrying;
- That having made this decision, Dudley moved towards police officers instead of towards the park;
- That despite Dudley's severe injuries, Dudley was able to *throw* the rifle into the field or ditch;
- That the rifle was thrown into an area where Klym and Beauchesne happened to be;
- That after the threat was over, Deane sent a message over the communication system without any reference to shooting a man with a rifle or that the rifle was thrown in the ditch;
- That despite his responsibility to ensure the safety of fellow officers and the CMU, Deane would not warn them about the rifle;
- That Beauchesne was not the least bit concerned when Deane asked him if he saw the guy with the gun and that Beauchesne was disinterested in this subject;
- That Deane did not say anything to Hebblethwaite about Dudley being on the roadway with a gun, even though he spoke to Hebblethwaite no more than 15 seconds after he saw Dudley being helped into the park; and
- That Deane decided to wait to ask such questions until he met a short time later with Beauchesne.

It simply does not add up.

As for whether or not Deane was *mistaken* as to what Dudley held was a gun: Deane has always maintained that he saw a gun to the point of being able to describe its features in fair detail.[101] This stands in stark contrast to the facts and Hebblethwaite's testimony

[101] Ex. P-1768, p. 216-217. He also continued to believe that he was justified in discharging his firearm that night even at his disciplinary hearing (Ex. P-1787, p.405).

both at Deane's trial and at the Inquiry.[102] The inescapable conclusion is that Deane could not have been mistaken, and the entire story of Dudley having a gun was concocted ex post facto in an effort to disguise the fact than an unarmed man had been shot.

However, Deane cannot be held solely to blame. He and his fellow officers should never have been placed in that situation where violence was an inevitable consequence, and where death was foreseeable.

[102] Ex. P-1491; George Hebblethwaite, May 11, 2006, p. 222-224, 245-250.

7. THE FANTASY THAT EVERYTHING WENT PERFECTLY

The gist of the submissions of the police parties and some of the political parties is that things were going appropriately and according to plan. John Carson on the night of September 6th went so far as to say "we've got one 10-92 [arrest] so far here, things are going good."[103] Mike Harris testified that in hindsight he does not believe that he would do anything differently on September 4 to 6.[104] This raises the question, if everything went perfectly, how did an unarmed man end up being shot by an OPP sniper?

In its Part I submissions, the OPP admits few mistakes, and maintains that the deployment of CMU was a reasonable option. However, in its Part II submissions, the OPP outlines several changes that it has undergone and is undergoing with respect to what we consider to be several key issues in this Inquiry, including the issue of political interference. [105] If no significant mistakes were made, what was the impetus for all of these changes that were made after Dudley's death? Actions speak louder than words, and we say that the changes, while laudable, show that the OPP realized that some things had gone wrong and took quick steps to address them.

Similarly, the Province's actions speak volumes with respect to the issue of political interference. Larry Taman's creation of the "nerve centre" on September 7, 1995 instituted buffers by segregating political aides from the civil servants.[106] If the former Interministerial Committee was working properly and there was no inappropriate political interference in the process, why was it necessary to reconstitute that structure and remove the political members of the committee so quickly? Actions speak louder than words, and we say this change indicates a recognition by Taman and other senior civil servants

[103] Ex. P-444B, Tab 56. This is presumably after Cecil Bernard George had been arrested.
[104] Michael Harris testimony, February 20, 2006, p. 10.
[105] *E.g.* The gold-silver-bronze Incident Command structure. Similarly , Don Bell changed how intelligence flow and analysis worked as of *September 7*, 1995 (June 7, 2006, p. 283-285).
[106] Larry Taman, November 14, 2005, p. 145-146.

that the old structure failed under the weight of inappropriate political interference by Deb Hutton and her boss.

The actions (or inactions) of Mike Harris and his government also speak volumes. A great tragedy occurred. There was a compelling need to have some kind of investigation into the issue. However, unlike the OPP and the civil servants who realized that errors were made and took steps to make changes, Harris and his government took the opposite approach, and refused any kind of independent investigation as long as they were in power.

Everything did not go perfectly. An unarmed man was shot. The failure to ensure an appropriate investigation in such circumstances called for, and calls for, an answer. The answer is that Harris and others in his government had a consciousness of guilt. This is dealt with further in Chapter 9, below.

8. THE NEED TO CRITICALLY ANALYZE THE EVIDENCE

It has been eleven years since Dudley's death. People's memories fade, but more importantly, with the passage of time, many people naturally interpret events in a way that is most favourable to their interests. Caution must be exercised when reviewing evidence that is self-serving, especially given the passage of time. The evidence heard at this Inquiry cannot always be taken at face value – a critical approach to the evidence is required, and the truth cannot be determined otherwise.

Significant efforts are made in the submissions of many of the political and police parties to explain away the plain meaning of contemporaneous documents and recordings. In doing so, they rely on the testimony of individuals whose own actions are being scrutinized. For example, Stan Korosec and Mark Wright tried to explain away the various extremely aggressive comments they made during phone calls.[107]

In Stan Korosec's case, his explanation was that his comment about wanting to "amass a real fucking army to do those fuckers big time" was out of character, and uttered when he had just been disturbed from his sleep.[108] That explanation is very self-serving and needs to be critically analyzed. Korosec's guard was down after just being disturbed, and it is more likely that he revealed a little bit of insight into his hidden views when ordinarily he would be more guarded.

Similarly, Mark Wright tried to explain away his aggressive, militaristic, anti-native comments. Such comments are embarrassing when put to the person who uttered them over ten years after the fact. Many people would naturally tend to reinterpret such comments in a way that is favourable to them. In Mark Wright's case, those attempted

[107] See *e.g.* Ex. P-1343; Ex. P-1365; Ex. P-444A, Tab 48; Exs. P-463/P-464.
[108] Submissions of OPPA, par. 1018-1023

explanations should be rejected in favour of the plain meaning of the comments, which were a window into his mind.

It has been apparent at the Inquiry that witnesses will often given self-serving evidence, particularly when the questions relate to what was going on in their conscious or subconscious mind. There is documentary evidence that there was political pressure on the police originating from the Premier's Office, and it cannot be denied that the OPP was receiving such pressure. However, when anyone was asked whether they were influenced by such pressure, they naturally denied it, as expected.

There are many possible reasons for this. They may not have been conscious of being influenced. They may already have held views or intentions which were consistent with the political pressure, and which had merely been held in check, and therefore the release of that restraint simply felt natural. They may have been alive to the fact that they were being influenced, and that it was wrong to succumb to political pressure, but have been also aware that it was impossible for anyone to prove such hidden reasons. They may consider that they were not influenced because their views or intentions were already consistent with the political positions being communicated to them. Thus, the denials by police that they were politically influenced are inherently unreliable, and in our view, the Commissioner needs to look at other evidence, including documentary evidence and circumstantial evidence, to determine the question of whether there was actual conscious or subconscious influence.

For similar reasons, claims by Mike Harris, Deb Hutton, and others that they did not influence the police are self-serving and inherently unreliable. They certainly know that the only for anyone way to conclusively prove what was in their mind is to draw an admission from them directly, and so there was no incentive when giving evidence before this Inquiry to be forthcoming if indeed it had been their intention to put pressure on the police. In our view, the Commissioner needs to look at other evidence, including documentary evidence and circumstantial evidence, to determine the question of whether political pressure was exerted.

In short, evidence that is self-serving needs to be carefully and critically analyzed. Conversely, evidence that goes against a witness' self-interest tends to be credible.

For example, Charles Harnick's evidence about what the Premier said in the Premier's Dining Room meeting is extremely credible. He had nothing to gain and a great deal to lose by giving that evidence and admitting that he had previously misled the Legislature to cover for the Premier.

Similarly, many First Nations witnesses readily admitted negative conduct – throwing rocks or firecrackers, smashing a windshield, interactions with officers, etc. They had nothing to gain by giving this kind of self-incriminating evidence, and, although memories fade and some details are lost, these First Nations witnesses' evidence had the ring of truth. Thus, when every one of the occupiers gave evidence that there were no guns in the Park, that evidence had the ring of truth.

Mike Harris in particular reviews a great deal of oral evidence in his final written submissions to this Inquiry in a detailed, although selective, manner. What those submissions lack, for the most part, is any kind of critical analysis of the evidence. Many of the other political and police parties take a similar approach. The danger with this kind of approach is that not all evidence is equal, and is not equally credible. A critical analysis is essential, and the question of the degree to which evidence is self-serving is a key part of this analysis.

9. THE COVER UP

Inherent in the political use of violence by the state against people within its borders is a degree of comfort on the part of its perpetrators that they have tools to cover it up and will probably never be held to account. We see state authorities using violence to achieve political objectives all too frequently – in places like Darfur, in Burma (aka Myanmar), in China (e.g., Tiananmen Square), in Zimbabwe, in Iraq under Saddam Hussein, in South Africa during the apartheid era, etc. The political use of violence tends to be more common in countries that do not have an open political process, but even a democratic country like Canada is not immune. Sadly, most examples of this include violence against indigenous peoples – Oka, Neil Stonechild, residential schools, forced displacements and dispossessions (such as at Stony Point), … and Ipperwash.

There was political violence used against the Ipperwash Park occupiers in September 1995 – state forces marching against, beating, and shooting at First Nations people in a land dispute, in significant part as a result of the political position of the government. Then there was the cover-up.

There was a denial of a public inquiry for eight years. There was a refusal of any kind of independent investigation. There was a campaign of misinformation. There was a failure to disclose documents (like the infamous Ron Fox tapes). There were lies in the Legislature.

The terms of reference of this Inquiry require examining the events *surrounding* the death of Dudley George, and in some cases the conduct of parties after the shooting is important. The politician parties to this Inquiry all deny being part of the chain of causation in the death of Dudley George. Nevertheless, they demonstrated their consciousness of guilt by the roles they played after the fact in covering up the truth. Thus, when a party such as Robert Runciman claims that at all relevant times, he

"governed himself professionally, cautiously, dispassionately and in complete good faith throughout,"[109] such claims must be measured both by that party's conduct before the shooting and the party's conduct after the fact. This section deals with the latter.

It is apparent from the submissions that some of the parties continue to try to hide the truth or deflect attention away from the truth through straw man arguments or by trying to redirect responsibility (as discussed above). Fortunately, these attempts are now subject to the scrutiny of an open public Inquiry. Before we got to this Inquiry, though, the cover-up went on and on.

The campaign of public misinformation

The OPPA in its submissions now claims that Dudley George did indeed have a gun when Ken Deane shot him, and that the occupiers fired guns at the police on September 6, 1995. This falsehood has already been dispelled by the Courts, but not before it had done a great deal of damage. This claim – that officers were fired upon and returned fire – was part of a cover-up that began just hours after Ken Deane shot Dudley George. This must be put into context.

One of the first things John Carson did after the shooting was to work on getting a press release out which told the OPP's version of events. In Carson's words, "we probably have a window of opportunity here to kind of set the record as straight as we can before SIU puts the gloves on us."[110]

What the OPP did with its window of opportunity was to put out to the public a false and inflammatory press release. It said:

> On Wednesday 6 September 1995 at 7:55 p.m. a disturbance was reported to the OPP where Police had removed a number of picnic tables and two

[109] Submissions of Robert Runciman, p. 2.
[110] Exhibit P444B, Tab 62, p. 382; see also Exhibit P444B, Tab 67, p. 446.

> tents from the public roadway yesterday. A private citizen's vehicle was damaged by a number of First Nations people armed with baseball bats. As a result of this, the O.P.P Crowd Management team was deployed to disperse the crowd of First Nations people which had gathered at that location.[111]

Thus, within hours of the shooting, the public was told a wildly distorted version of the facts that had little resemblance to reality. The OPP has now admitted that it got its facts wrong, more than a decade after the fact.[112]

The press release goes on to give an altered version of the confrontation in the sandy parking lot, referring to the bus and car coming out of the park. Then came the most awful untruth:

> Occupants of those two vehicles fired upon the Police officers and subsequently Police officers returned fire.[113]

This was the impression of the incident that the public had for years. It greatly stigmatised the native occupiers and all First Nations people. It took years before the public began to accept the truth – that the occupiers were unarmed. Now, the OPPA in their submissions are attempting to resurrect this falsehood. It is important to lay this falsehood to rest once and for all. This falsehood has already caused enough damage.

The misinformation that "police officers who were responding to a confrontation were fired upon and they opened fire" was repeated over and over again by government authorities, and it became the official line of the government. The myth even became the official position taken by Canada before the United Nations[114] – a position that Canada has never retracted even after Justice Fraser's decision in April 1997 convicting Ken Deane for his role in killing Dudley George.

---

[111] OPP Press Release, Sept 7, 1995, Exhibit P440.
[112] Submissions of the OPP, p. 13.
[113] OPP Press Release, Sept 7, 1995, Exhibit P440.
[114] United Nations, Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur, January 25, 1996.

In his decision, Justice Fraser stated:

> There were no Crown witnesses or defence witnesses that saw any weapons in the hand of the First Nations people except for Sergeant Deane and except for Constable Chris Cossitt… Rather than scrutinize Constable Cossitt's testimony for any grains of truth that might fall out, I have dismissed it entirely as being clearly fabricated and false… I find that Anthony O'Brien (Dudley) George did not have any firearms on his person when he was shot … [and] that the story of the rifle and the muzzle flash was concocted ex post facto in an ill fated attempt to disguise the fact that an unarmed man had been shot."[115]

Fortunately, all of the parties other than the OPPA have accepted this as the truth (or at least, they do not claim otherwise). This was and is the truth, but it is not the whole truth. As Justice Fraser stated in his reasons for sentencing Ken Deane, "The decision to embark on this ill-fated mission was not Sergeant Deane's."[116] Dudley's family tirelessly sought for an answer to that question – who put Sergeant Deane there in the first place, and why? As bits of information slowly came out, the trail appeared to lead all the way to the Premier. And the Premier seemed to do everything he could to prevent the truth from coming out.

Refusal to investigate

As the public learned more and more of the truth, there were strong requests from a vast number of national and international human rights and civil liberties organizations, political representatives and parties (including the federal Minister of Indian Affairs), aboriginal organizations, religious groups, municipal governments, newspaper editorials, and many individuals from municipalities, all calling for a public inquiry into the death of Dudley George.

Harris never did call a public inquiry into Ipperwash. He and Harnick and other members of the government steadfastly refused all demands for an inquiry by the opposition

[115] R. v. Deane, Reasons for Judgment of Fraser J. Exhibit P-484.
[116] R. v. Deane, Reasons for Sentence, July 3, 1997 (2000029).

parties.[117] Further, neither Harris nor any member of his government, including Robert Runciman, arranged for any kind of independent investigation whatsoever into the matter which could have looked at the role that political influence may have played in the police operation at Ipperwash.

When it was someone else who was alleged to be involved in political pressure on police, Harris's party, and Robert Runciman in particular, was quick to condemn the action and call for a full independent investigation. Runciman, in his submissions, states: "While in opposition, he had been particularly critical of a former Solicitor General [Joan Smith] for violating this policy" of interference by the Solicitor General in the operational affairs of the police.[118] Part of Runciman's criticism at the time was that Ms. Smith did not take steps to cause an independent investigation into the allegations.

When it was he and the Premier who were facing allegations of political interference after 1995, Runciman did the exact opposite of what he had preached a few years earlier. This double standard brings into question his self-serving claim that he "governed himself professionally, cautiously, dispassionately and in complete good faith throughout."[119]

In 1989, when then-Solicitor General Joan Smith went into a police detachment to inquire about the well-being of a person in custody, Robert Runciman was highly critical of her and accused her of political interference with the police. He demanded an independent investigation,[120] and then demanded her resignation.[121] He was also outspoken about his

[117] See *e.g.* Ontario, Legislative Assembly, *Hansard* (29 May 1996) at 3148 (G. Phillips); Ontario, Legislative Assembly, *Hansard* (25 Nov 1996) at 14:10 (H. Hampton); Ontario, Legislative Assembly, *Hansard* (28 Apr 1997) at 14:40 (B. Wildman); Ontario, Legislative Assembly, *Hansard* (4 Jun 1997) at 10407-10424 (Opposition Motion for Public Inquiry); Ontario, Legislative Assembly, *Hansard* (18 June 1997) at 13:50 (G. Phillips); Ontario, Legislative Assembly, *Hansard* (18 Aug 1997) at 14:30 (H. Hampton); Ontario, Legislative Assembly, Standing Committee on Estimates *Hansard* (3 Sep 1997) at 16:00 (G. Phillips); Ontario, Legislative Assembly, *Hansard* (3 May 1998) (P. Kormos); Ontario, Legislative Assembly, *Hansard* (25 May 1998) at 14:50 (P. Kormos); Ontario, Legislative Assembly, *Hansard* (27 May 1998) at 14:50 (P. Kormos); Ontario, Legislative Assembly, *Hansard* (3 Jun 1998) at 14:00 (P. Kormos); Ontario, Legislative Assembly, *Hansard* (14 May 2001) at 15:30 (G. Phillips); Ontario, Legislative Assembly, *Hansard* (8 May 2001) (G. Phillips); Ontario, Legislative Assembly, *Hansard* (6 Jun 2000) (G. Phillips); Ontario, Legislative Assembly, *Hansard* (20 Nov 2002) (G. Phillips).
[118] Submissions of Robert Runciman, p.8.
[119] Submissions of Robert Runciman, p.2.
[120] Robert Runciman, January 11, 2006, p. 271-273.

view that the Premier had not taken the proper steps to ascertain the facts of the situation.[122]

Some time after the shooting of Dudley George, perhaps a year or so, Robert Runciman became aware that the OPP officers at Ipperwash were receiving information that there was strong political pressure connected with the Premier and himself.[123] He agreed it would be inappropriate if the OPP felt they were getting significant pressure from politicians.[124] However, unlike the position he took six years earlier, he did not agree that he or the Premier had a responsibility to inquire about the details surrounding those allegations.[125] In 1989, he had a fundamental problem with the fact that the alleged wrongdoer was deciding whether and how to investigate the allegations against herself. In 1995, he had no problem with being able to make the call about whether he, as an alleged wrongdoer, would or would not launch an independent investigation into the allegations against himself and the Premier. In 1989, it was about doing the right thing. In 1995, when the finger was pointed at Harris and himself, it was about loyalty and friendship and avoiding scrutiny.

At root, Harris's denial of a public inquiry, and Runciman's denial of any kind of independent investigation in circumstances that clearly called for one, indicate a consciousness of guilt. Mike Harris and his government had something to hide. He desperately did not want to be held to account or have the truth to come out. Obviously, he denied it when asked,[126] but it is the inescapable conclusion.[127]

---

[121] Robert Runciman, January 11, 2006, p. 269, 274, 275.
[122] Robert Runciman, January 11, 2006, p. 280-281.
[123] Robert Runciman, January 11, 2006, p. 261-263.
[124] Robert Runciman, January 11, 2006, p. 264.
[125] Robert Runciman, January 11, 2006, p. 281.
[126] Mike Harris, February 16, 2006, p. 146, 163.
[127] Prior to the 2003 election, the official party line for why the Harris government would not call in inquiry was that the matter was before the courts. This remained the party line even after all of the criminal trials had run their course, after all of the other investigations had concluded, and when the only matter that remained before the courts was Sam George's lawsuit which he had always unequivocally stated he would drop if an independent public inquiry were called. The facts speak for themselves. The official party line was a sham.

Misleading the Legislature; misleading the Inquiry

Without any independent investigation, it was left partly to members of the Legislature to seek answers about Ipperwash. Unfortunately, a great deal of the information that Harris and members of his government gave to the public through the Legislature was misleading and incomplete. So far, former Attorney General Charles Harnick is the only one that has been willing to admit it.

Harnick's submissions claim that the candour of his evidence was remarkable, particularly given his testimony that Mike Harris had stated in a loud voice: "I want the fucking Indians out of the Park."[128] The flip side of Harnick's point is that he had misled the Legislature on that same issue several years before.[129] Harnick courageously told the Inquiry the truth, under oath, despite how agonizing it was for him to be forthcoming. He admitted providing untruthful answers to the Legislature on the same point, where he was not under oath. He had done so to cover up the fact that Mike Harris did wrong. It had been about loyalty and friendship to Mike Harris, not about telling the truth.[130] It is our submission that Harnick's evidence must clearly be preferred over the self-serving evidence of Mike Harris, who denied making the comment.

Mike Harris also gave misleading information to the Legislature. He just did not come clean about it the way Harnick did. ALST's submissions describe his failure to reveal the existence of the Premier's Dining Room meeting and the fact that Harris and Hutton were not "shocked" to learn that OPP officers were in attendance there.[131] Other comments which Harris made to the Legislature include:

- "None of the meetings were our meetings or her meeting or my office meeting or the cabinet office meeting or the Premier's office meeting." (June 18, 1997)
- "We've made public, certainly, all of our role in this." (June 18, 1997)

[128] Submissions of Charles Harnick, par. 7.
[129] See Submissions of ALST, p. 57-58.
[130] Charles Harnick, November 29, 2005, p. 30.
[131] Submissions of ALST, p. 59-70.

- "You make up imaginary files. You make up imaginary involvement. There were no files, there were no records, because we had no involvement." (Feb 5, 1997)
- "[T]hat is a matter for the OPP to deal with… we would not have offered any opinion." (May 29, 1996) [132]

With the evidence that this Inquiry has heard about the Premier's Dining Room meeting, we now know that these statements, and others, were false and misleading.

Harris and Hutton rely to a large extent on the self-serving evidence that they themselves gave before the Inquiry. They were not forthcoming or candid on many points. There was a cover-up in the Legislature, and Harris, Hutton, and to a lesser extent, Runciman and Hodgson are still attempting to cover up the truth.

The evidence strongly conflicts with the suggestion that there was any "consensus" at the Premier's Dining Room meeting to treat the matter as an emergency and get an emergency injunction. The evidence indicates that it was Harris alone who made that decision.[133] The evidence strongly conflicts with the suggestion that Harris and Hutton were oblivious that an OPP officer was present in the Dining Room meeting. This has been covered by ALST's submissions. In fact, as stated in our submissions, the inevitable conclusion from the evidence is that Fox was summonsed to the meeting at Hutton's request. The evidence strongly conflicts with the suggestion that Harris and Hutton were being honest when they said they did not know who called the Premier's Dining Room meeting.[134]

It is remarkable that neither Harris nor Hutton have taken responsibility for calling that Dining Room Meeting in the first place.[135] One or both of them must have. It could not

[132] Ontario, Legislative Assembly, *Hansard* (February 5, 1997; June 18, 1997); P-973.
[133] Submissions of the Estate of Dudley George and Members of Dudley George's Family, p.77-96.
[134] Submissions of the Estate of Dudley George and Members of Dudley George's Family, p.93, 137.
[135] Michael Harris, February 15, 2006, p.244-246; Michael Harris, February 16, 2006, p.232-233, 244; Deb Hutton, November 22, 2005, p.77, 85-86.

have been convened by anyone outside the Premier's office,[136] and Harris and Hutton were the ones inside the Premier's office who were dealing with the matter. This raises the question, why would they hide even that seemingly innocuous fact that they convened this meeting? The circumstances suggest that this was to downplay their role in creating a crisis, influencing the OPP and, ultimately, in part causing Dudley's death. Specifically, it was to hide the fact that the Premier was knowingly giving implicit direction to an OPP liaison officer at that meeting.[137] It was to cover up the fact that responsibility for the political use of violence against Dudley and his people lay partly at Harris's own feet.

[136] Submissions of Michael Harris, p.259.
[137] Submissions of ALST, p.59-70.

10. ADDITIONAL ISSUES

There are a significant number of points made in the submissions of other parties that we believe warrant a response. Unfortunately, practical limitation require us to only focus on what we see as the main ones, as set out above, and a few other miscellaneous points, which follow.

There was no conquest

It wouldn't be so bad if people just misunderstood the occupiers' motives. However, some people still misunderstand actual history, even after many days have been spent at this Inquiry dealing with the historical causes of the Ipperwash situation.

One of the most glaring historical errors which is unfortunately still perpetuated in some circles is that there was a conquest of First Nations in Canada. The submissions of Deb Hutton, for example, state that "First Nations maintain collective rights (which are based on traditional occupation and use of land prior to the conquest) with respect to land which has not been surrendered to the Crown."[138] This may be consistent with Deb Hutton's views,[139] but it is not consistent with reality. As stated by the Royal Commission on Aboriginal Peoples:

> There was no conquest. Early in the contact period the relationship was one of peaceful coexistence and non-interference. It was mainly after Confederation that Canada began to appropriate large tracts of land to house the ever-increasing influx of settlers and that the process of colonization and domination of the aboriginal population began. No one asked them whether they wanted to be British subjects or Canadian citizens. They were simply herded into small reserves to make way for

[138] Deb Hutton, p. 14, par. 35.
[139] As described in our submissions at p. 64.

> development and at Confederation were assigned to the exclusive jurisdiction of the Parliament of Canada.[140]

There is a fundamental difference between the idea that there was a conquest and reality. Further, the vast bulk of Hutton's submissions about historical issues (at paragraphs 34-38) are substantially incorrect, legally and historically. Her submissions omit the fact that the Provincial government owes fiduciary duties for First Nations (and that they are not merely citizens to be treated the same as anyone else). They ignore that the Crown has obligations to fulfill treaty obligations. They mischaracterize the meaning of section 35 of the Constitution as not addressing the validity of surrender of any piece of land (if a surrender was invalid, rights to the land were not extinguished and would be protected by s.35). They mangle the actual meaning of s. 88 of the *Indian Act.* Overall, Hutton's submissions are fundamentally deficient on many points, especially those dealing with First Nations issues.

1942 Appropriation of Stony Point reserve

Marcel Beaubien suggests that the "Federal Government's occupation of the Stony Point lands and the creation of Canadian Forces Base Ipperwash was a legitimate action under the *War Measures Act*."[141] We strongly disagree. The appropriation of unceded Treaty reserve land, which was guaranteed to the members of the First Nation and their posterity in perpetuity, was neither legitimate, fair, nor just. It was a breach of the Treaty and probably was not even authorized under the *War Measures Act*, given that the land which was appropriated had never been ceded to the Crown. The Federal Government could have expropriated private lands nearby, but there was an ulterior motive for appropriating the Stony Point reserve, which was to dispossess "a few straggling Indians" and forcibly relocate them at Kettle Point.[142] That was not consistent with the spirit of the *War*

[140] Royal Commission on Aboriginal Peoples, "For Seven Generations" – Final Report of the RCAP (Libraxus: Ottawa, 1996) (CD-ROM), Record 4437.
[141] Submissions of Marcel Beaubien, p.3, par. 1.
[142] Report of Joan Holmes at p. 48 (Exh. P7).

Measures Act, and was quite hypocritical, given that Canada was going to war in part to battle a racialist ideology.

1937 Burial Ground evidence

Marcel Beaubien claims that the Band Council Resolution of 1937 and the correspondence between the federal and provincial governments that followed "are not evidence of the *actual* existence of a burial ground, but rather evidence only that the Band asked, through the Federal Government, that the "Old Indian Burial Ground" be marked out and fenced off so that it would be protected."[143] The distinction that he is trying to make is entirely unclear to us.

The Province of Ontario also asserts that: "The evidence at this Inquiry with respect to the existence … of any alleged burial site is inconclusive."[144] To the contrary, there is clear evidence of burial grounds in the Park. Obviously, the Band Council would not have passed a BCR seeking that a burial ground in the Park be protected if there was no burial ground, or evidence thereof, in the Park.

The Province of Ontario claims that: "Prior to September 12, 1995, provincial government officials who were involved in the Ipperwash events were not aware of the 1937 correspondence."[145] This is not accurate. Daryl Smith was involved as a media person for MNR in the Ipperwash situation in September 1995, and he is the person who located the 1937 correspondence in the province's archives many years earlier. Since Daryl Smith sent the information to the Park superintendent, it is also possible that former Park Superintendent Don Matheson (now deceased) may have known about it. In any event, Don Matheson was generally aware of the oral history of old burial remains being found during the construction of the pump house, or at least his wife was.[146]

[143] Submissions of Marcel Beaubien, p.7, par. 20.
[144] Submissions of Province of Ontario, p. 33, par. 98; p. 35, par. 106.
[145] Submissions of Province of Ontario, p. 31, par. 92.
[146] Bonnie Bressette, September 22, 2004, p. 177-178.

The Province states that there is no evidence that the Kettle and Stony Point First Nation followed up on the 1937 request, and that therefore it would not be fair to conclude that the Province failed to take appropriate action.[147] It is apparent that the Province did absolutely *nothing.* As far as anybody is aware, the burial grounds in the Park have never been fenced off and protected. The Province knew of the existence of the burial ground in the Park, it knew the location (after all, it was found by the Province's engineer), and knew that the First Nation wanted it fenced off and protected. It is more than fair to conclude that the Province failed to take appropriate action. It is the only reasonable conclusion.

Furthermore, although the Province relies on the 1972 Hamalainen report,[148] which found no evidence of burials in the Park but was highly problematic, it was confronted only three years later with documentary evidence of the burial site. Still, it did nothing. The Province relied, and still relies, on evidence, as faulty as it was and is, that justified its inaction, and ignores strong evidence that its inaction was wholly inappropriate and unjustified.

Raising burial ground grievance in August 1995

The Province of Ontario states that "at no time after the takeover of Camp Ipperwash in July 1995 did a First Nation person or group raise any grievance or issue directly with the Province regarding a land claim or the existence of a burial ground within the Park."[149] This is thoroughly misleading.

For example, OPP officers met with Glen George in early August 1995, and the OPP passed along the information to the Province that "they now allege there is a burial

[147] Submissions of Province of Ontario, p. 32, par. 95.
[148] Submissions of Province of Ontario, p. 32 ,par. 95.
[149] Submissions of Province of Ontario, p. 9, par. 19.

ground within the Park boundaries."[150] There were also several assertions made that the land was "our land," although sometimes inelegantly expressed.

Other burial ground issues

Ontario says: "the existence of a First Nations burial site does not, however, affect ownership of, or title to, the land on which the burial site is located."[151] There is no reference cited for this proposition. It is incorrect. At the very least, the existence of a First Nations burial site gives the members of the First Nation a sort of easement over the land, to visit and tend to the graves of their ancestors. Further, the actual burial remains do not pass with a change in title to the land.[152]

The bigger question is how to now remedy a historical injustice that occurred some 70 years ago when the Province failed to take any steps to fence off and protect the burial site, now that the knowledge of the specific location(s) of the burial site(s) has been lost. Much or all of the Park lands must now be considered sacred.

Ownership claim

The Province of Ontario claims that "until the 1990s, there was never any claim or statement, verbal or written, formal or informal of which the Province was aware, that suggested any member of the Kettle and Stony Point band disputed the Province's right and title to the land comprising the Park.[153] Beaubien makes a similar point.[154] They are both wrong. There was an informal land claim being asserted in the 1970s.[155] At that time, MNR was forewarned to secure a legal and historical analysis of the situation as

[150] Exhibit P1055, Inquiry Docs 3000435 and 1003499.
[151] Submissions of Province of Ontario, p. 27, par. 76.
[152] P-553- Ontario Court (General Division) proceedings between Roxanne Griffin (Applicant) and Jack Klassen (Respondent), p. 7, 9 (Appendix B).
[153] Submissions of Province of Ontario, p. 6, par. 8.
[154] Submissions of Marcel Beaubien, p. 12, par. 34-35.
[155] Inquiry Documents 1003210, 1003314, 1003315.

soon as possible since "it [was] clear that Indian action on this matter [was] imminent."[156] The Park issue did not suddenly emerge in 1995. It was a long outstanding issue, which just happened to be overshadowed by an even greater injustice when the rest of the Reserve was appropriated in 1942.

Colour of right

The Province's and Deb Hutton's' discussions about "colour of right" are problematic in many respects.[157] The entirety of these parties' submissions regarding the issue of colour of right contradicts the position that the Province was actually compelled to take in the past in dealing with the very facts at issue. These parties' submissions on this point are therefore moot.

The Assistant Crown Attorney in charge of prosecuting the occupiers for forcible detainer concluded in 1996 that there was no reasonable prospect for conviction since the accused had colour of right:[158]

> **MEMORANDUM**
>
> **RE: IPPERWASH PROSECUTIONS**
> **Forcible Entry, C.C.C. s. 72(1)**
> **Forcible Detainer, C.C.C. s. 72(2)**
> **Trial: October 21 to November 1, 1996**
>
> There are 23 persons charged with the offence of Forcible Detainer, C.C.C. s.72(2). The Crown is withdrawing all of the charges of Forcible Detainer, C.C.C. s.72(2) for the reason that there is no reasonable prospect of conviction.
>
> With respect to the Forcible Detainer charges, the Crown is required to establish that the detention or "holding" of Ipperwash Provincial Park was done by accused persons "without colour of right."
>
> "Colour of right" is defined as an honest belief in the existence of a state of facts which, if it actually existed, would, at law, justify or excuse the act done. The accused have raised the defence of colour of right on the basis that there is a Chippewa burial

[156] See our submissions, p. 43-44, and Inquiry Doc. 1003315, p. 3.
[157] The submissions of the Province of Ontario on this point are at pages 17 to 26.
[158] Memorandum from Henry Van Drunen, Assistant Crown Attorney, Inquiry Doc. 3000569.

> ground within Ipperwash Provincial Park and that therefore they were justified in being in the Park during the time set out in the charges.
>
> Whether there is, in actual fact, a burial ground within Ipperwash Provincial Park and whether or not there is in actual fact a valid right of ownership, possession or occupation by the accused persons – these are considerations which are not relevant in determining whether the defence of colour of right is valid. In this criminal proceeding, the issue is whether this belief held by the accused persons is honestly held.
>
> The Crown has confirmed the existence of correspondence made in 1937 … This documentation gives objective support for the reasonableness and the honesty of the accused's belief.
>
> Further, it has been clearly indicated by the Provincial Division Judges a pretrials that this defence will succeed in all instances when it is raised.
>
> Accordingly, this "colour of right" defence is of sufficient significance that the Crown concluded that there is no reasonable prospect of conviction. The Crown must therefore withdraw all forcible detainer charges.
> …
>
> Henry van Drunen
> Assistant Crown Attorney

The submissions about "colour of right" are not helpful in dealing with the question of how one responds to occupations when they happen. Here, there was an actual occupation. As pointed out by Henry Van Drunen, there were actual burial grounds in the Park. In addition, another basis for claiming colour of right is that the underlying surrender was, at the very least, morally corrupt. The Province and the OPP formed the view that the occupation was illegal before it even had the full facts about the burial ground and the land taking, and they responded as they did anyway.

Whether the occupiers did or did not have colour of right was ultimately irrelevant to the response of the Province and the OPP. Ron Fox did try to make the point at the IMC meeting on September 6 that the occupiers were raising colour of right,[159] but his submissions made no impact on the decisions which were ultimately made. Thus, the issue of colour of right is irrelevant except to make the important point that the issue was ignored in the haste of the government to take action against the occupiers.

[159] Handwritten notes of Julie Jai for the September 6, 1995 IMC meeting, p. 3 (Exhibit P536); Handwritten notes of Eileen Hipfner for the September 6, 1995 IMC meeting, p. 3 (Exhibit P636).

Fear of attack on the cottages

It has been 11 years since the occupation. None of the cottages neighbouring the Stony Point reserve have been attacked. Even those cottages that are on the Stony Point reserve lands have not been attacked. The suggestion that the occupiers were going to take the cottages next[160] was rooted in paranoia rather than reason, and there is no basis for parties to continue to raise this as an issue.

Beaubien's press release and fax

Contrary to Beaubien's suggestion, his inflammatory press release of September 5, 1995 was not simply "done in order to get [Bill] King's attention."[161] It was drafted with the intent of being sent out, and it would have been sent out if Beaubien did not receive a call back from King.[162] The press release confirms that Beaubien was indeed irate, as Wade Lacroix suggested to John Carson that morning,[163] and highlights the force with which Beaubien wanted some action taken against the occupiers.

The same can be said for the constituent's letter advocating violence and aggression, which Beaubien forwarded to King on Sept 6 under a cover letter that said he "totally" agrees with the constituent.[164] That context is important for understanding the tone of Beaubien's comments to Carson and Linton in the Command Post on September 6, just hours before the shooting.[165]

---

[160] Submissions of Marcel Beaubien, p. 12, par. 37.
[161] Submissions of Beaubien, p. 31, par. 82.
[162] Marcel Beaubien, January 19, 2006, p.108-110.
[163] Exhibit P444A, Tab 4.
[164] Exhibit P952. The use of the phrase "totally agree" is important, and was clearly understood by Beaubien notwithstanding his claim that he has not yet mastered the English language. In another piece of correspondence, he stated that he agrees with "some of" the point raised by a constituent. Also, the word "totally" is very similar to the French equivalent "totallement." Beaubien, January 24, 2006, p. 105-106, 151-152; 232-250, Exhibit P1026.
[165] See our submissions, p. 97, regarding the meeting between Beaubien and Carson/Linton.

Automatic gunfire reports

Contrary to the suggestion of the Province,[166] the report of gunfire on the night of September 5th *was* operational police information. It was raw police intelligence that was unconfirmed and unverified and subject to interpretation. It was not appropriate for this information to be shared with the IMC group through any channel. Nor was it necessary.

The Province claims that the possible presence of guns in the park was important and significant information for MNR since it raised a public safety issue.[167] However, there was in fact no public safety issue that affected MNR's jurisdiction since the park was closed, and, in any event, the police were exclusively responsible for ensuring public safety.

Part of the problem was apparently that the line between the OPP and MNR was extremely blurred, and the OPP saw itself as working on MNR's behalf rather than as being a neutral party.

Wright exaggerating the dented fender incident

The OPP claims that Mark Wright was not the source of the misinformation regarding the Gerald George incident.[168] To the contrary, Wright was involved in inflating and exaggerating the Gerald George incident to the Command Post, and particularly to Inspector Linton. Linton's statement explicitly states that Wright is the one who informed him of the supposed striking of a women's car by 8-10 male First Nations people.[169] Further, Linton tells Carson about this incident using these terms in his initial call with him at 20:20.[170] This gross mutation of the facts occurred very quickly after the

[166] Submissions of Province of Ontario, p. 51, par. 158.
[167] Submissions of Province of Ontario, p. 51, par. 159.
[168] Submissions of OPPA, p. 173, 182, 183
[169] Ex. P-470. See also Ex. P-426, p. 73.
[170] Ex. P-444B, Tab 51.

incident, yet persisted without correction or comment from anyone else right up until at least Linton's conversation at 21:48 with Parkin.[171] At the very least, Wright did not correct the misconception of a women or not, much less the number of people involved.

The claim that Carson was reasonable to deploy CMU

Many parties have submitted that Carson was reasonable in deploying the CMU on the night of September 6. However, this submission assumes that Carson was the one who actually deployed the CMU, when in fact it was Wright and Korosec who actually gave the order to "suit up in CMU hard tac" and even initially deployed the CMU without any authority of the Incident Commander[172] (although the Incident Commander later ratified the deployment of CMU). We do not intend to repeat our original submissions here regarding this issue, but this perspective is reinforced by the fact that one can hear Wright start his phone call with Tim McCabe prior to Linton and Carson finishing the call in which Carson finally convinces Linton to use ERT.[173]

Sequence is key

One of the very important things to keep mind is the order in which specific detailed events occurred, particularly during the night of September 6, 1995. Some submissions gloss over the specific timing and order in which things occur, and we submit that timing is at the heart of understanding what happened at Ipperwash, particularly on the night of September 6.

As part of the timing, it is also important to note that there is a 7 minute adjustment that generally needs to be performed for telephone call in order to synchronize them with the

[171] Ex. P-469, p.1-2.
[172] See Submissions of the Estate of Dudley George and Members of Dudley George's Family, p. 101-107 and Appendix A.
[173] Ex. P-428, Regions 48/49.

scribe notes and the radio transmissions. Our submissions account for this discrepancy, but others do not,[174] and it is important that the Commission be aware of this discrepancy when reviewing the arguments and trying to reconstruct what happened, especially in the critical period between 7:50 p.m. and 8:30 p.m.

One specific detail that requires correction is at page 329 of the submissions of Mike Harris. The call that is incorrectly stated as having begun at 7:42 p.m., actually took place at 9:48 p.m.[175]

"Use guns if you have to"

Harris states that Bob Watts received a call from Leslie Kohsed-Currie around 11:00 a.m. on September 6.[176] That was not Ms. Kohsed-Currie's evidence. She stated that the call was around 1:30 or 2:00 in the afternoon[177] – shortly after the conclusion of the Premier's Dining Room meeting. She informed Watts that Deb Hutton had made a comment: "Get those fucking Indians out of the Park and use guns if you have to."[178]

Harris and Hutton argue that no such statement was ever made by Ms. Hutton. However, it is very similar to the comment that Harris made at the Premier's Dining Room meeting: "I want the fucking Indians out of the Park." While Ms. Kohsed-Currie attributed the statement to Hutton as opposed to Harris, it does tend to corroborate Harnick's evidence on this point.

The other alternative is that Ms. Hutton did make that comment. Clearly, she did not make such a comment *during* the IMC meeting, but she may well have said it before or after the meeting to just a small number of individuals – maybe even in the same room, or maybe in another location altogether. Not everyone who could have heard such a

[174] See *e.g.* the Submissions of the OPP, para. 139 – the corrected time should be approximately 20:22.
[175] The transcript records this call as occurring at 21:41, but 7 minutes must be added.
[176] Submissions of Mike Harris, p. 253.
[177] Leslie Kohsed-Currie, October 17, 2005, p. 25-26.
[178] Bob Watts, March 8, 2005, p. 41.

comment, if it was made, gave testimony before this Inquiry. In short, there is no direct evidence that Ms. Hutton made the comment, but that does not prove she did not make it. It would have been consistent with the Premier's inflammatory and hawkish views expressed at the Dining Room meeting for her to have said it.

Out in 24 hours

There is conflicting evidence and submissions as to Larry Taman's note which reads: "AG instructed by P that he desires removal within 24 hrs."[179] However the document speaks for itself, and whenever it happened to have been made, the message is clear. The Premier wanted the occupiers out of the Park within 24 hours. He was not a patient man when it came to Ipperwash.

The ex parte order sought by McCabe

The Province notes that paragraph 3 of the order sought in the Ipperwash *ex parte* injunction application is similar to another injunction order known as the Beardmore order.[180] However, the Province neglects to mention the notable differences between the Beardmore order and the order that McCabe sought.[181]

First, the order sought at Ipperwash was worded so that it was broader and applied to all of the Government of Ontario instead of just the Ministry of Natural Resources. In addition, *any* person in the government could be directed by *any* minister or deputy minister instead of the Beardmore order that focused on just the Ministry of Natural Resources. These changes raise obvious questions about its intended implementation if it

[179] Exhibit P550, Doc. 3000776 (Handwritten notes of Larry Taman).
[180] Submissions of the Province of Ontario, Part 1, paras. 266-268.
[181] Tim McCabe, Sept. 29, 2005, p. 31-43.

was granted, particularly since the Premier was clearly involved in Ipperwash and had strong views about it.

Second, the Province neglects to mention that the Beardmore order was sought in a very different context than Ipperwash:[182] a roadway to a construction site had been blocked with some logs; almost a month had passed since the blockade had begun; the Province had sat down with the protestors to discuss their grievances and provided funding; and a written agreement was reached. The agreement was not adhered to, the Ministry attempted one more time to work it out, and then the *ex parte* injunction was sought (with wording limited to the Ministry of Natural Resources). Ipperwash is different on almost every account, and one has to wonder why a more expansive order than Beardmore was sought for Ipperwash, particularly given what was going on within the government at Queen's Park in Toronto.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 16, 2006

Murray Klippenstein

Vilko Zbogar

Basil Alexander

Andrew Orkin

[182] Tim McCabe, Sept. 29, 2005, p. 40-43.

KLIPPENSTEINS
Barristers & Solicitors
160 John St., Suite 300
Toronto, ON M5V 2E5

Murray Klippenstein
Vilko Zbogar
Basil Alexander
Tel: (416) 598-0288
Fax: (416) 598-9520

- and -

ANDREW ORKIN
Barrister & Solicitor
103 Glenfern Ave.
Hamilton ON L8P 2Y9

Tel: (905) 522-7929
Fax: (905) 522-0884

Counsel for the Estate of Dudley George
and Members of Dudley George's Family