

IPPERWASH INQUIRY

The Honourable Sidney B. Linden, Commissioner

SUBMISSIONS OF THE CHIPPEWAS OF KETTLE AND STONY POINT

(Parts I and II)



July 31, 2006

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Derry Millar,
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Dear Mr. Millar

We are forwarding this bound volume as the Submissions of the Chippewas of Kettle and Stony Point in relation to Parts I and II of the Inquiry, together with an electronic copy of it in MS word format.

Copies have been forwarded to all other counsel in Adobe Acrobat format.

The Chippewas of Kettle and Stony Point wish us to convey at this time their appreciation of your services, as well as those of all Commission counsel and staff, throughout the public hearing process.



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PART I SUBMISSIONS

Introduction

In 1942, Crown breach of a treaty with First Nations was not a crime and it did not give rise to any civil or constitutional remedy. To the contrary, breach of the terms of treaty and the erosion of Indian rights and culture were government policy: Indians should have no special rights and their future happiness would depend on assimilation and enfranchisement.

Enfranchisement, literally, means getting the right to vote. Indians did not have that in 1942, except in their own band elections and even there, Indian women could not vote. Under the *Indian Act* of the day, temperance was enforced, travel was restricted and children were removed from their own communities and placed in residential schools to be stripped of their Indian culture and traditions while trained, in the case of boys, for agricultural and labour jobs, and in the case of girls, for domestic service. Abuse of the children was widespread and, like all disenfranchised through history, they had no recourse.

The horrible impact of the residential school era on families, communities and tribal cultures was not collateral; these were seen as necessary to the goal of the policy and, in that sense, they were a deliberate assault on human dignity and human rights.

Even adults were seen as lesser beings in a state of continuing tutelage.¹ Businesses and services were free to discriminate against Indians; many believed (erroneously) that Indians did not have the capacity to contract or to hold title to lands outside their reserves;

¹ See *St. Ann's Shooting and Fishing Club v. The Queen*, [1950] S.C.R. 211, at p. 232: "The language of the statute [*Indian Act*] embodies the accepted view that these aborigines are, in effect, wards of the state, whose care and welfare are a political trust of the highest obligation."

the professions were virtually closed to Indians as was, of course, elective office in the broader community. Enfranchisement -- including forced enfranchisement of women who "married out" and university graduates -- was a legal solution to "Indianness", but not a personal one since appearance and accent were not removed by legislation and societal discrimination continued apace, often into the next generation or two. It was not uncommon for Indians to deny their heritage if they were able to pass as non-Aboriginal; unwittingly, perhaps, achieving governments' dream for them.

In his text on the "*Pioneer Public Service*" of the 19th century, Professor Hodgetts entitled the chapter on the administration of Indian Affairs, "The White Man's Albatross".² Indians were an anachronism in their own lands, a problem to be solved, and the solution was the illusionary one of "equality".

Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question.³

In 1942, the federal department responsible for administration of Indian Affairs was the Department of Mines and Resources: a ministry of things, not people. The *Indian Act* it administered defined "person" as an individual "other than an Indian".

Treaty rights to hunt, fish and trap were routinely ignored or regulated to the advantage of non-Aboriginal harvesters, especially non-Aboriginal commercial harvesters. In Ontario, a treaty right to hunt was not a defence to hunting charges in 1942 or for many decades after that.⁴ Treaty rights were, in practice, illusory. Even as recently as 1970, the Trudeau

² J.E. Hodgetts, "Pioneer Public Service" (Toronto, U of T Press, 1955).

³ Duncan Campbell Scott, Deputy Superintendent General of Indian Affairs, 1920; cited in Transcript, August 19, 2004, pp. 72-73.

⁴ See, e.g., *R. v. George*, [1966] S.C.R. 267. Calvin "Cabbage" George, a war veteran from Kettle Point, was charged under the *Migratory Game Birds Convention Act* for hunting ducks on reserve and

government had sufficient confidence in the myth of equality to propose the notorious “White Paper Policy”, which would abolish Indian status, discard treaties and convert reserves to fee simple holdings. While it remained official policy for several years, it was quietly withdrawn in the face of well-organized, articulate and effective Indian opposition.

Indians were valued for cheap labour and as purveyors of craft items. Indian men were most valued by the larger society in times of war when, not subject to conscription, they volunteered in greater proportion than any other segment of Canadian society and served with distinction. That did not qualify them for equality when it came to veterans’ benefits, however, where they found themselves once again at the mercy of the Indian agent.⁵

Overt racism and rampant stereotyping were facts of life experienced by most Indians in Canada, along with the more subtle racism implicit in government policies and lack of recourse to the courts to vindicate their rights. These things were true in 1942, and they have not vanished since.

Indians did have one thing of value: land. It was “great frauds and abuses” in the acquisition of traditional homelands by non-Aboriginals that led to the *Royal Proclamation of October 10, 1763*. But that did not stop the avarice; it only imposed a procedure on acquisition and a measure of protection for the Indian nations. Only the Crown could treat with Indians to acquire their land, and this new relationship became, in Canadian law, that of the Crown as fiduciary for the Indians’ best interests⁶ (221 years later).

convicted despite his acknowledged treaty right to hunt. The lone dissent of Cartwright J. in this case eventually found its way into the much later watershed decision of the Court in *R. v. Sparrow*, [1990] 1 SCR 1075.

⁵ See, e.g., Transcript: Clifford George, Sept. 10, 2004, at p. 67.

⁶ See, e.g., *Guerin v. The Queen*, [1984] 2 S.C.R. 335.

As reserves came to be created in Upper Canada and Canada West through treaties that followed on the *Royal Proclamation*, it was common for tracts of land to be reserved from the general cession for the use and benefit of the Indian parties “in perpetuity”. In practice, that frequently proved not to be such a long time. There was always a long line of individuals who wanted access to Indian lands for various purposes: settlement, agriculture, timber, recreation, utility corridors, hydro development, railway lines, ballast beds and many others. In early days, railways were preferred users of Indian land and the various *Railway Acts* included provisions for expropriation of reserve land.

In 1911, Canada amended the *Indian Act* to enable any level of government and any other entity, public or private, having expropriation powers to exercise them against Indian reserve lands. A slew of expropriations followed, frequently as a fallback measure when negotiations with the Indians for a consensual transfer (surrender) failed.

While the Inquiry has heard much about the profound attachment of Indian peoples to their lands, and of the specific attachment of the Stony Point families to the reserve from which they were removed, government deferred not one whit to that attachment; preferring to view Indian lands as a resource to be opened up to the greater public benefit whenever possible, and with as little regard as possible to the interests of the Indians.⁷ Even the treaty and legal connection to reserve land was ephemeral in government’s view:

It is true reserves had been set apart for the Indians by the grace of the Crown, but the Indian has no right or enforceable interest in that reserve. He has a right to hold the reserve during the pleasure of the Crown, and that is all. That pleasure may be revoked at any time, and he acquires no right of action because he is dispossessed of property which he has been in the habit of occupying.⁸

⁷ See generally, Roos, note 14 *infra*, chapter 1.

⁸ Argument of government counsel in *Henry v. The King*, 1905), 9 Ex. C. R. 417, at 424-25. Government counsel was E.L. Newcombe, later Deputy Minister of Justice and Justice of the Supreme Court of Canada.

Over the years, many reserve land transactions have been challenged by way of land claims and court proceedings. In 1942, that was virtually impossible since there was no policy or practice of negotiating claims and, under the *Indian Act*, Indians could not raise money for claims or hire lawyers to advance their claims, politically or legally.

In no case has any court in Canada set aside a treaty, expropriation or surrender of reserve land. Despite major developments in the law of Aboriginal and Treaty rights, including constitutional recognition of them of 1982, the loss of Indian reserve land is a one-way street. Indians cannot get it back.¹⁰

In 1942, a unique event occurred. An entire reserve appropriated for government purposes and that was the appropriation, under the *War Measures Act*,¹¹ of Stony Point Indian Reserve No. 43 for the purpose of establishing Camp Ipperwash for the Canadian Army.

The Chippewas of Kettle and Stony Point had refused to surrender the reserve, so it was taken from them. They petitioned eloquently against this forceful taking to preserve their lifestyles, their ancestral homes and their economic base.¹² No heed was given to their pleas.

In fact, the local Indian agent saw the appropriation not as a calamity to the First Nation

¹⁰ Even purchasing land in trust for the Band does not guarantee it can be made, or restored as, reserve land. The federal government's Additions to Reserves (ATR) Policy is a major roadblock dragging the process out for years, even when the purchase is addressed in a land claim settlement. See http://www.ainc-inac.gc.ca/pr/pub/ae/ev/94-24_e.pdf – DINA Evaluation of the ATR Policy.

¹¹ Other racist acts sanctioned by the *War Measures Act* were, in the two world wars, directed against Germans, Italians, Slavs and, most notably, Japanese Canadians. Immigration policy reflected Canadian official racism directed at Chinese, Sikhs, Japanese and Jews, among other groups.

¹² Inquiry Doc. No. 4000278: Petition dated March 25, 1942.

but as an opportunity for the Department:

Personally, I think this is a wonderful opportunity to gather a few straggling Indians and locate them permanently with the main body at Kettle Point. It would solve many problems and dispense with a great deal of expense from both Band Funds and Departmental Appropriations such as schools, roads, visitations, etc. This service is maintained to accommodate twelve families.¹³

Such callosity is mind-boggling. The First Nation faces the loss of approximately half of its land and economic base – unique lands that can never be replaced – and families that have settled, farmed and used the land for generations are described as “a few straggling Indians.” And this man is the local agent of their fiduciary. What contempt he must have had for the people he was employed to serve; yet one searches the historical record of this transaction in vain for a more sympathetic bureaucrat. The people at Stoney Point were mere pawns to be shuffled around the board for the convenience of government, if not punished for failing to consent readily to this humiliation.

That was precisely the term used by Chief Frank Bressette when he described the appropriation to a Special Committee of Parliament in 1947. It was, he said,

“as great a humiliation as any country in Europe which was occupied by the enemy.”¹⁴

The only consolation government offered to the First Nation was that, when World War II ended, the land would be returned. That, of course, did not happen.

To our national shame, it has still not happened, 64 years later.

¹³ Inquiry Doc. No. 4000264 :George Down to Secretary, Indian Affairs Branch, February 5, 1942.

¹⁴ Quoted in Helen Roos, "It Happened as if Overnight: The Expropriation and Relocation of Stoney Point Reserve #43, 1942" (M.A. Thesis, U. of Western Ontario, 1998 – Inquiry Doc. No. 4000509)

In the intervening years, Canada's failure to restore the Stoney Point Reserve to the First Nation caused much tension and frustration within the community, and as frequently happens among the powerless, disputes arose amongst the victims when they had nothing but empty promises from the government and little or no recourse.

These disputes were exacerbated when some compensation was received in 1981 and some of the original Stoney Point residents resented the way in which it was dealt with by the First Nation. Individual or family claims to compensation for the loss of their lands at Stoney Point were not addressed in this partial settlement, which included another, empty and qualified promise to restore the camp as a First Nation reserve.

On May 6, 1993 a small group of elders and younger supporters entered Camp Ipperwash and took up residence in the area of the rifle ranges. On July 29, 1995, many of the group moved into the built-up area of the camp and began to reside there. On September 4, 1995 some of the group moved into Ipperwash Provincial Park, originally part of the Stoney Point Reserve as well.

On September 6, 1995, Anthony O'Brien "Dudley" George was shot and killed by an OPP sniper.

***Justice will not be served until those who are
unaffected are as outraged as those who are.
-Benjamin Franklin***

The History of the Chippewas of Kettle and Stony Point

The Ipperwash Inquiry has been well-served by the contributions of Professor Darlene Johnston and Ms. Joan Holmes. Professor Johnston's insights into the history and culture of the Anishnabek and Ms. Holmes' research into the history of the Chippewas of Kettle and Stony Point make an extended exegesis here unnecessary. They will also serve, as part of the Inquiry's record, to inform and educate the public to a history that is not part of any general curriculum, although it ought to be.

It should be noted, however, that in cultural terms some of the traditions of the Chippewas of Kettle and Stony Point are not exactly as described by Professor Johnston. This is certainly no criticism of her work but a small qualification of what she has done very professionally and very thoroughly. No variances are of significance to any findings or recommendations the Commissioner will make in this Inquiry.

Professor Johnston's description of the Covenant Chain is particularly valuable insofar as it informs us about Indian views and perspectives on the treaties with the Crown. Her evidence as to the erosion of that Covenant Chain informs us of the disrespect for Indian peoples, their cultures and their institutions that led to racist policies and the marginalization, socially and economically, of Indian peoples and their communities.

Ms. Holmes gave extensive evidence of the First Nation and the Three Fires Confederacy from which most of its members derive. Together with what are now the Walpole Island (*Bkejwanong*) and Sarnia (*Aamjiwnaang*) First Nations, the Chippewas of Kettle and Stony Point entered treaty with the Crown in 1827, ceding approximately 2 million acres to the Crown for settlement and reserving to their own use and occupation in perpetuity the Stony Point and Kettle Point reserves.

. . . expressly reserving to the said Nation of Indians and their posterity at all times hereafter, for their own exclusive use and enjoyment, the part or parcel of the said tract which is hereinafter particularly described, and which is situate at the mouth of the River Aux Sable, on Lake Huron, [the Stoney Point Reserve, described by metes and bounds] containing two thousand six hundred and fifty acres; and also that certain other part or parcel of the said tract which is hereinafter more particularly described, and which is situated at Kettle Point, on Lake Huron [described by metes and bounds] containing two thousand four hundred and forty-six acres; and also [Sarnia and Walpole Island Reserves] ... which said four reserved tracts, hereinbefore described, contain together seventeen thousand nine hundred and fifty one acres, leaving of the tract of land first herein described two million one hundred and eighty-two thousand and forty-nine acres . . .

Treaty No. 29: July 10, 1827 (Emphasis added)

Initially, all of the reserves excepted from the treaty were held in common by the four groups. In 1860, Walpole Island separated from the others and in 1919, the Chippewas of Kettle and Stony Point separated from Sarnia. After the latter separation, the First Nation held the two reserves, each approximately 2 miles square and about 2 miles apart along the Upperwash beach.

The residents of the two reserves were closely related, culturally, socially and through marriage. Some of the residents at Stony Point held lands at Kettle Point under the "location ticket" scheme of the day, and many of the residents at Kettle Point held location tickets at Stony Point.

Life for the residents of Stony Point was described by several witnesses, one being Bonnie Bressette:

A: Stony -- when we -- when we lived at Stony Point, we all had gardens. My dad was -- I don't think he was ever out of a way to put bread and butter on the table -- make a home for us. It was a good life. Everybody worked together.

Q: And I understand that you -- you and others who lived at Stony Point were allotted a clear -- cleared lot for a house.

A: Yeah, Mom and Dad had a lot right along Highway 21. That's where our house was.

Q: And each family had a bush lot --

A: Mmm hmm.

Q: -- as well. Is that a yes? Yes? Say yes.

A: Yes

Q: And, as I understand it, the bush lot was used for obtaining timber, herbs for medicine, and other essentials. Is that correct?

A: Mmm hmm, yes.

Q: And I understand, as well, that your grandmother, Laura, kept a -- kept some livestock on her --

A: Yes, they had horses and I remember there being chickens and ducks and geese -- whatever was needed on a farm, with a big garden.

Millar examination of Bonnie Bressette, Sept. 21, 2004 pp 140-41.

And Clifford George:

A: Yes, I did. I was born in Stoney Point, like I said, in March 11, 1920, and -- and I think it was the -- the start of the depression, you know, and it was -- it was really tough -- tough living for everyone, and not only -- not only the reservation, but -- but also the farmers were -- were having a rough time at that time at -- at the big depression in '29 and stuff like that.

Q: All right.

A: So, it was very -- it was -- very difficult, and there was no -- it was nothing like it is today, no welfare, no nothing, we had to fend around for -- for whatever -- whatever we needed. And most of that -- most of that come from the reservation itself, a lot of stuff in there.

That is why we -- we as Natives are -- are keepers of the land and -- and we use -- we use what's -- what's grown there, and we had lots of it there for -- for us to use during the whole season, that we used as food.

Q: All right. As you were growing up on Stony Point, I understand you went to day school there?

A: Yes, I did. We had a school there, a one (1) room -- a one (1) room school that -- that handled everything from -- from grade one (1) to grade eight (8).

Q: And how far did --

A: And that's one (1) school teacher.

Q: I'm sorry. And how far did you -- did you get along in that school?

A: I went -- I went to grade eight (8) and that was -- that was my limit.

Q: Did you go beyond grade eight (8) at all, sir?

A: No, no, I never did.

Q: All right. And in terms of your -- your school life and growing up on the Reserve at that age, can you tell us anything about that?

A: Well, like I say, we -- we're all very close, very close people, you know, the whole -- the whole Reservation was very close. And we all helped each other and everything like that, you know, and especially like -- like if we -- we killed a deer, well we split it

with all the other people.

And we helped each other that way, and it was a very good community. It was very -- it was a very Christian community at that time, because we had a Church there right by the school.

So, it was a very -- a very good community, and -- and we all, you know, we all managed to -- to get along quite well that way.

Q: And you had your friends and relatives around you?

A: Yes, all the time. We -- we played ball, we done this, you know, and I grew up a little older, and we -- we done everything that, you know, that ordinary young people do.

Q: Right. I think you -- you told me at some point in the past, sir, about your grandfather had built a fairly substantial building, as -- as I recall?

A: Yes, my grandfather, Levi, at -- at the first brick building on the Reservation. It was demolished in 1942 when the take-over was, because it couldn't be moved. And he also -- he also had two (2) large barns and -- and many animals and stuff like that. So -- so he was well fixed, according to all the rest of the farmers, because I worked for all the farmers around the district when I grew up. So -- so they all had good -- good -- had good reports of -- of my grandfather.

Q: All right. And you've told us something about the difficult times in -- in the depression years. Can you add anything to that?

A: Yes. Like -- like I said before, we -- we lived mostly off -- of the land, you know, as much as we could and -- and work was very scarce and stuff like that. I -- we worked for farmers and then -- and luckily the celery gardens appeared.

And we always had work in the summertime there, right clean through to the fall in the lifting out of the celery. That's from -- from below the hill on the way to Grand Bend -- right clean through to Grand Bend.

That was all -- three (3) different lakes

there at that time but they're all drained now for that purpose.

Q: And you call them the celery gardens?

A: Celery gardens, it was known as, pretty well all through the field -- but there was an awful lot of onions growing and the stuff like that where we all worked -- we worked alongside there.

Neighbours around the district, because they -- they need money, too, the white people, so we all -- we all worked for -- for -- you know each was like a dollar (\$1) a day, one (1) and a quarter day was -- was - - was quite a lot. Lot of time we had to walk that far to -- to get to work, too, which is about four (4) or five (5) miles sometimes.

Q: So you'd walk four (4) or five (5) miles to earn --

A: Sometimes --

Q: -- a quarter a day? Twenty-five (25) cents?

A: Pardon?

Q: So you'd walk four (4) or five (5) miles to earn twenty-five (25) cents a day?

A: A dollar and twenty-five cents (\$1.25).

Q: Oh, I see. All right. I'm not sure many people would work for that today.

A: We had to because we were brought up that way. Like my father was a great worker and so was my mother and we come from a family of -- we all had to work, even the small children had to go to work, you know, when we could.

I was pulled out of school many times to go and help my dad cut the wood in the wintertime, and to help neighbours.

Q: Your father would -- would cut wood

for -- for the consumption in the house?

A: For sale.

Q: Okay.

A: I was the one -- I was the one that kept the fires going at home with -- with my trusty axe.

Q: You -- you've told us, as well, on -- on previous occasions, that your parents kept a -- or your mother kept a large garden, as well.

A: My grandmother had always --

Q: Your grandmother.

A: -- after -- after my grandfather died, she -- she always had a huge garden and -- and at that time, in the hard-up times, she always made out -- the two (2) outside rows close -- close to the -- close to the road, this was for the gypsy as we'd call them
They were just farmers that -- that couldn't hack it any more, they went. So they used to come in and fill their -- their skirts with -- with food and that is why my mother -- my grandmother planted the -
- to follow the road, the rest of the rows were the opposite way, so.

So they'd pretty well know that they were welcome there.

Worme examination of Clifford George, Sept. 10, 2004, pp 14-20.

Rose Manning:

A: Well, I remember an awful lot from Stony Point because I -- I was raised in -- on like I -- I had my best years in Stony Point. I went to school in Stony Point. I also went to church in Stony Point. I also seen people that died and were buried there. I also went to marriages.

I also took part in all the quilting bees, the buzz bees, the -- you know, they used to do everything like they should today. Canning and making

layettes for the babies. They didn't have to worry about, you know -- nowadays they kind of worry about where their babies' clothes are coming from sometimes.

But they -- they were prepared ahead of time and my -- my both grandmothers, my grandmother Annie Elijah was my maternal grandmother and my other grandmother that I speak about is -- who was with me til -- til my oldest daughter was married, that was Lena Lunum, she also was a midwife and -- and a medicine woman, but I -- I do believe that they were both together when I was born.

But I know they done a lot of things differently back then. And -- and my -- my first language was the Anishnaabe language, the native language.

Q: Okay.

A: That was what was spoken in -- in our home.

And I remember all the -- the good things and -- and I remember that my parents and my grandparents, we -- we shared a big old house which later caught fire before we moved to Kettle Point. And they helped each other to raise -- to raise -- to raise us and we always had a good time, they always played with us and told us stories and took us for walks and took us to church and we had -- we had prayer meetings in my -- in my home.

Hensall examination of Rose Manning, April 6, 2005, pp 178-79.

Stoney Point was also an economic base for some First Nation members who resided on the Kettle Point Reserve but had lots at Stoney Point. Faced with the loss of her family's lots through the 1942 appropriation, Mrs. Beattie Greenbird wrote to the Minister of National Defence on April 24 and described the value of them:

On our front two lots where our boys have been farming the timber is well worth \$5,000.00 five thousand dollars for wood and for building purposes which we have been saving for this last ten years, and two more lots which our boys has been taking and located by council and they too have been saving good timber for their houses to build. They are worth more than the first two I have been mentioned. Do

you think the party who sold Stony Point would furnish the timber for our boys houses.

. . . .

PS. As the reserve is sold already I suppose we have a very poor chance to cut some timber for building purposes and fence post as we were told that we can cut timber any time even if the reservation is sold we need 5 or 6 hundred fence post at Kettle Point we were just starting to cut them when the blow hit us.

I'm the oldest and have rights to say something about our poor children's inheritance.¹⁵

Cross-allotments between the reserves were not unusual and certainly not surprising. Any member of the First Nation could be allotted land in either, or both, of its reserves. As a general rule, lots at Stony Point were 39-40 acres while those at Kettle Point were much smaller.

First Nation members also shared in decision-making with respect to both reserves, as shown by the following chart summarizing voting about land transactions between 1919 and 1942. Of the 63 names listed, 17 voted on both the 1927 surrender (Kettle Point) and the 1928 surrender (Stoney Point) as well as the 1933 oil and gas surrender for both reserves.

Some names are familiar from the evidence. Tom Bressette was the grandfather of the current Chief, who sold his lot at Stony Point to Archie Bressette. Both lived at Kettle Point. Wellington Elijah, father of Rose Manning, and Robert George (Senior) lived at Stony Point. Albert George was "Komani". Clearly voting on matters such as surrenders was not restricted depending on residence. The single First Nation had two reserves and all members (males over 21) voted on land matters of importance in relation to either or both.

¹⁵ Exhibit P-15.

Summary of Voting on Land Matters: Kettle & Stony Point Reserves

<u>Name</u>	<u>1919</u> <u>Sep'n</u>	<u>1927</u> <u>KP Surr</u>	<u>1928</u> <u>SP Surr</u>	<u>1933</u> <u>KP & SP</u>	<u>1942</u> <u>Pet'n</u>
Doc:	4000181	4000621	4000675	4000716	4000776
Elijah Ashquabe	X			X	
Abednego Bressette	X	X	X	X	
Archie Bressette	X	X	X	X	
Charlie Bressette		X		X	X
Dan Bressette	X	X	X	X	
Dan Bressette Jr.		X			X
David Bressette					X
Ernest Bressette					X
Frank Bressette				X	X
Harold Bressette				X	X
John Bressette		X	X	X	X
Ned (Nathan?) Bressette		X	X	X	
Sam Bressette		X	X	X	
Telford Bressette	X			X	X
Tom Bressette		X	X	X	
Peter Cloud				X	
Sheldon Cloud					X
Stanley Cloud		X	X	X	
John Elijah	X	X	X	X	X
Wellington Elijah		X	X	X	X
A. George			X		
Albert George	X	X	X	X	
Angus George		X		X	
Bruce George				X	X
Frank George			X	X	X
Ernest George					X
Harrison George					X
Harvey George				X	
Huron George				X	
Matthew George			X	X	
Maurice (Morris?) George		X	X	X	X
Moses George	X	X	X	X	
Robert George	X	X	X	X	
Roland George				X	
Tommie George	X	X	X		
Alfred Greenbird				X	X
Beattie Greenbird	X				X
Bruce Greenbird					X
Jack Greenbird					X
Sam Greenbird					X
James Henry	X	X			
John Johnson		X	X	X	X
Jos. Johnson	X	X	X	A	
Bruce Milliken					X
Grant Milliken		X	X	X	X
John Milliken	X	X	X	X	
John Milliken Jr.		X	X	X	

Cornelius Shawnoo	X			X	X
David Shawnoo	X			A	X
Edgar Shawnoo				X	X
Elliott Shawnoo	X			X	X
Isaac Shawnoo				X	X
Baxter Shawkence				X	
Caleb Shawkence	X	X		X	X
Harley Shawkence					
Sutton Shawkence	X				
Wilfred Shawkence				X	
George Smith					X
William Smith Sr.					X
Elijah Southwind	X			X	
James White		X	X	X	
Jos. White		X	X	X	
Berlin Wolfe					X

Notes to Voting Summary

“X” means voted without indication of how the vote was cast

“A” means notation that individual was present but did not vote (1933 only)

1. 1919 Separation Agreement (Doc. No. 4000181) – Names only marked here if the individual subsequently voted in a land matter; other signatures on agreement likely from KP or SP but these were not checked. 18 names noted.
2. 1927 KP Surrender (Doc. No. 4000621) – The so-called Crawford Purchase, subject of [1998] 1 S.C.R. 756, approving the surrender procedure despite several flaws and the “odour of moral failure”. 27 votes cast.
3. 1928 SP Surrender (Doc. No. 4000675) – Sale of the beach front at SP, including land that later became Ipperwash Provincial Park, to a Mr. Scott. This surrender is the subject of a land claim filed by the First Nation in 1996. 25 voters. Notation on list of 3 unidentified abstentions.
4. 1933 Surrender (Doc. No. 4000716) – Surrender of oil and gas rights under both

KP and SP reserves. 44 voters..

5. 1942 Petition (Doc. No. 4000776) – Petition opposing use of SP as military camp; 34 signatures noted here although document also signed by 10 women. The Inquiry collection does not include a voters list for the poll taken April 1, 1942. Inspector Arneil reports the result as 59 votes against a surrender, 13 in favour (Doc. No. 4000778). 72 votes cast.

6. This summary provides cogent evidence of the situation of the two reserves as held in common for the use and benefit of the Chippewas of Kettle and Stony Point consistent with the 1919 Separation Agreement. The historical record provides no evidence of a separate Stoney Point First Nation; this theory, it seems, was developed for strategic purposes in the 1970's and 1980's: see J. Holmes, *Historical Background*, pp. 60, 61.

Caveat: – The Chippewas of Kettle and Stony Point do not expect the Commission to make any findings or recommendations about the “one band, two band” controversy. It is expected, however, that any historical recitation will be faithful to the actual history of the First Nation and to the full documented record in the Inquiry’s database.

Family relationships between the two reserve communities were formed long before 1942, as one would expect of two Aboriginal communities in such close proximity. The Inquiry has heard evidence that the interrelationship is even more profound today. The vast majority of members of the First Nation are directly descended from members who either resided at Stony Point in 1942, or who had location tickets for land at Stony Point although residing at Kettle Point.

Q: The -- I mean, just on the basis of -
- if we take this as -- it's almost a double entendre,
but a representative sample, this would suggest that
probably half the people of the Chippewas of Kettle and
Stony Point are descended from people who had location
tickets at Stony Point.

A: I would say it seems that way.

Q: Or -- and-- and I'm talking about
location tickets in 1942.

A: Yes.

Q: And an even greater number are
descended from people who previously lived at Stony Point
because people married between the two (2) reserves, so
there are descendants that go back to Stony Point long
before --

A: Yes.

Q: -- 1942. Would you say that's a
majority -- a large majority or almost everyone?

A: Well, it's hard to find somebody that
is not related and I assume there must be some but it
would be very few that's not related to someone that came
and moved from Stony Point and had a location ticket
there or had location ticket there.

Liz Stevens:

A: There were nineteen (19) families in 1942 which were moved off the land. They were -- not all of those families held location tickets, some of them did.

Q: Right.

But at the same time there were people from Kettle Point that held location tickets to wood lots in Stoney Point.¹⁶

Rosenthal examination of Liz Stevens, March 7, 2005 pp 127-28.

Q: Yes. But -- but, nonetheless, if you could identify someone as coming from a family who was among the nineteen (19), even --

A: One thousand five hundred and forty-two (1,542) Band members --

Q: Would --

A: -- I did study --

Q: -- satisfy that in some sense?

A: Yes.

Q: But, it -- that from the nineteen (19), with or without a location ticket?

A: With or without location tickets --

Q: Yes.

A: -- from the nineteen (19) families

¹⁶ *These must have been a significant number of the location tickets at Stoney Point. The evidence is that 19 families were removed in 1942, while Holmes notes (p. 49) that there were 58 location tickets in all. Some residents, of course, would have held more than one location ticket and others, like the Greenbirds, did as well.*

that were moved. One thousand -- over fifteen hundred (1,500) people on our Band list can trace their lineage back to a family that might have been moved from Stony Point.

Q: But, so in paragraph 2 of this agreement, when you use the word locatee –

A: Hmm hmm.

Q: -- would you include those -- those families that didn't have location tickets, but that were resident on Stony Point Reserve?

A: Probably not when we did this agreement.

Rosenthal examination of Liz Stevens, March 7, 2005 pp 129-30.

Obviously, the damage done to the community and its members by the 1942 appropriation has carried through several generations now and, as noted above, has caused divisions and disputes in which virtually every member has an interest, if not a position. Even in 1942, however, the immediate damage was readily apparent.

Families from Kettle Point lost their wood lots at Stony Point, generally without any compensation at all since these lands were not “improved”. Families from Stony Point that were moved to Kettle Point found themselves on a few acres of marginal land in place of the 39-40 acres they had at Stony Point. They too received only compensation for their improvements, not for the land they had lost which was, in any event, undervalued.¹⁷

The appraiser clearly noted that his appraisal was not made according to the standard of appraisal practice of the professional association; most of the buildings were inspected but were not measured and the value for land was the amount that was usually obtained in sales between band members. That method did not take

¹⁷ In some cases, cleared farmland was counted as “improved” and compensated at the \$15/acre rate but not other wooded land in the same parcel.

into account that sales between band members did not alienate the land from the band or deprive the community of its communal interest in the land.¹⁸

To add further insult, some had to purchase land at Kettle Point even though they had not been paid, or paid fairly, for the land they lost.

The change from forty acre parcels to two acres severely impeded farming efforts, particularly on the swampland of the 14th Concession. Removal onto new land in the midst of the growing season prevented the families from growing needed winter food. In addition, the distance from the established clientele for the craft industry, and from local farmers who were employers, reduced the opportunity to make money. Within the first year of removal, many families were forced onto welfare, or off-Reserve in order to survive.¹⁹

It is difficult to imagine that such arbitrary, high-handed and dismissive conduct would have been visited on a non-Aboriginal community in southwestern Ontario, even in haste and even in wartime. There was no effort on the part of those charged with the administration of Indian affairs to protect the Indian interest at all, either communally or personally. In fact, as Roos points out in her thesis, Indian Agent McCracken seems to actively demeaned the position of the families moved to Kettle Point, calling them “refugees” or “DP’s” and encouraging others to do the same.²⁰

It is very likely that matters could have been made right had the Stoney Point Reserve been restored to the First Nation on reasonable terms at the end of the war. But as the decades rolled by, frustrations grew and many of the original members from Stoney Point felt that Chief and Council were not doing enough to get their land back. In the interim, the number of councillors had grown and the strong representation of Stoney Point prior to 1942 was seen as diluted, just as their living conditions and the area and quality of the

¹⁸ J. Holmes, *Historical Background*, p. 49.

¹⁹ J. Holmes, *Historical Background*, p. 54.

²⁰ Roos, *supra*, at pp. 99-100.

lands they now occupied were diminished. Grievances lingered from the uncompensated losses suffered during the appropriation and move. Time did not heal these wounds. If anything, they grew as hopes of an early – or any – restoration of the Stony Point reserve faded.

Of course, faced with government intransigence, there was little that any Chief and Council could have done.

Q: And the loss of the land at Stony Point, what was the effect of that on your relatives and family and friends?

A: I think a lot of them -- a lot of our people -- had hopes. The war was on, even our -- our boys were gone to fight in the war and it wasn't until after the war was over and then we all expected to be able to move back and they didn't allow that.

I think that's -- that's where, you know, there was hope for everybody -- hope for the people at Kettle Point that pretty soon they would get their land back that they had -- people were living on and we'd go back to Stony Point, but that never happened and whether we want to admit it or not, still to this day there -- there's little -- little hard feelings that exist.

Even though we try not to mention them, it -- it still exists there because our people from Stony Point, we always wanted to -- we always wanted to move back.

Millar examination of Bonnie Bressette, Sept. 21, 2004 p 161.

As some compensation was being negotiated through the 1970's more tensions emerged:

According to Helen Roos, however, the portion of the Band descended from the Stony Point group were growing increasingly disenchanted with the settlement options being proposed by the Council at Kettle Point, arguing that they were a

separate band. According to Roos, "... an early argument developed between the Native communities on the issue of future development of the land, distribution of funds, and political authority of the Kettle Point Council over the locatees' affairs."²¹

Unfortunately, when partial compensation was received in 1981, matters grew worse. Some of the Stoney Point group became increasingly separatist, developing the theory that Stoney Point had been a separate First Nation and lobbying Canada to ensure that they and their legal heirs be recognized as the only ones entitled to the Stoney Point reserve and that they would be the only ones negotiating the restoration.

The misfortune of this approach arose from its disregard of the actual history, its dismissal of the losses suffered by Kettle Point residents who had location tickets at Stoney Point prior to 1942, and its failure to note that the people they claimed to be solely entitled were, by now, the vast majority of the entire First Nation.

These facts were not unknown to the Stoney Pointers, as they came to call themselves. Their solution was to force members of the First Nation to identify as Stoney Pointers exclusively and renounce the Chippewas of Kettle and Stony Point. A relatively small number did just that; a much larger number considered the concept unacceptable; and many were torn:

Q: Thank you. I gather that you, personally, feel some conflict on this one (1) band/two (2) Band issue; is that a fair estimate of –²²

A: See this heart?

²¹ J. Holmes, *Historical Background*, p. 60.

²² Note that Ms. Stevens was addressing the question of whether there ought to be a separate First Nation. She was quite clear that there had not been one historically (*id.*).

Q: Yes. And there are other people who are similarly conflicted?

A: Yes.

Rosenthal examination of Liz Stevens, March 7, 2005 pp 122.

There were attempts on the part of Chief Bressette and the Council to work cooperatively with the Stoney Point group. Council had assisted them with funding and research over the years.

Q: Okay. Now, your evidence, if I understand it correctly, is that over the years the Chief and Council have devoted considerable time, effort and money of the First Nation to try and resolve the claims and address the concerns of people who, from time to time, describe themselves as the Stoney Point Group?

A: Yes.

Q: And, in that context, you spoke of the committee that involved Robert George, Jr., Angeline Shawkence, and Melva George in the 1980s?

A: Yes.

Q: They were on Council at that time?

A: Yes.

Q: And some money was provided to them --

A: Yes.

Q: -- to assist in their work? Later I believe that committee is shown in the minutes as being recognized as a working committee of Council?

A: Yes.

Q: The issue of taxes arose in -- in

the context of First Nation members who, over the years, had worked at Camp Ipperwash and paid income tax to work on their own -- on their own land.

A: Yes.

Q: And the First Nation embraced that cause as well --

A: Yes.

Q: -- to achieve tax remission?

A: Yes.

Q: They engaged lawyers for that purpose?

A: Yes.

Q: It took approximately ten (10) years to resolve?

A: Yes.

Q: But it is resolved now, to your understanding?

A: Yes.

Q: With the result that people working on Stony Point, even today, do not pay income tax on their wages because it's deemed to be an Indian Reserve for tax purposes?

A: Yes.

Henderson examination of Chief Bressette, March 3, 2005, pp. 278-80.

Q: And the - what role, if any, did you as - I take it you were Chief in 1990--

A: Yes.

Q: -- and the Band Council have with respect to the burial of Mr. Dan George?

A: We - we advised the military were fully supportive of the request that was being made and urged them to allow this to happen, based on the fact that there was still a burial site within Stony Point and if that was his wishes, he should have been able to have - have that, because that was where his family had land and property and where he wanted to be buried. If that was that we - we fully endorsed and supported that and we - we went to Sergeant Major and supported that and we - we went to Sergeant Major and asked him if, you know, that was going to be a problem. He, in turn, said, look, I will go down there and - and I'll clean up the site as best I can. I'll clear out the trees and whatnot. And they put a bunch of sand, leveled it off and put a - I think a fenced-in area around there.

Millar examination of Chief Bressette Mar 1, 2005, p 197.

Despite the earlier assertion of independence of the Stony Point group, in 1992, three Councillors from a slate of "Stoney Point" candidates were elected: Ron George, Maynard T. George and Gerald George.²³

In addition, Maynard T. George was contracted to further study and report back on the issue of whether or not there existed two separate and distinct First Nations. But that project was not successful:

He was saying there were two (2) bands and when we asked him to produce that information he wouldn't do it to -- for us.

Millar examination of Chief Bressette, March 1, 2005, p. 216.

Q: Now, in terms of research, you engaged Maynard T. George as a researcher at one (1) point?

A: Yes.

Q: And that was Chief and Council that

²³ Ron George's election was set aside by the Minister; Maynard T. George soon resigned in favour of the research project. We note here that while Maynard T. George was intimately involved as a protagonist in many of the events between 1993 and 1995, he was not a witness at the Inquiry.

did that?

A: Yes.

Q: He did not last long in that position as I understand?

A: No.

Q: Band funds were used with respect to the Hobbs project --

Q: -- to clear those accounts away?

A: Yes.

Q: There was several meetings attended to achieve a level of cooperation and coordination?

A: Yes.

Q: And ultimately, there was a -- a set of principles prepared, which you understood both groups to adhere to and recognize?

Henderson examination of Chief Bressette, March 3, 2005, p. 281.

Q: At Tab 30, Chief Bressette, there's a document on the second page in, it's Inquiry Document 3000370. It's statements of principles for negotiating the Stony Point land claim and this is a document from 1995, but is the document that you're referring to - was-was being started back in 1993.

A: Yes, this is what we were working on with - with Carl, basically, to outline the points for negotiation. So they were - everyone would know what we were attempting to do and we were committing ourselves to do.

Q: And - and this document as it stood in 1995 which is part of Exhibit - Exhibit P-30 was a document that you were - worked on over a number of years, with input from Mr. George --

A: yes.

Q: -- Carl George and his group?

A: Yes.

Millar examination of Chief Bressette Mar 1, 2005, pp 282- 85.

Q: And in the period of May and June 1993, did you go down and visit the Army Camp after the occupation of the ranges by members of your First Nation?

A: Yes I did.

Q: And when did you go down there, Chief Bressette?

A: I went down there after, I guess, the whole occupation started and I tried to talk to some of the folks. But they just told me, because I wouldn't support their position, that they didn't want me around there and I guess that was the end of that.

Millar examination of Chief Bressette, Mar 1, 2005, p 254.

Q: And after the -- the tragic occurrences on September 6th and 7th, Council devoted much time and effort to intervene to prevent a -- a bad situation from getting worse, to attempt to mediate and provide support to the people who were involved and to attempt, again, reconciliation, as appropriate, with the Stony Point Group; is that correct?

A: Yes.

Q: Now, what -- the -- the things I have described go over a period of ten (10) or twelve (12) years and during that -- during that period, once the group moved into the ranges in May of 1993, did you perceive the Chief and Council were getting any support from that group at all?

A: No.

Henderson examination of Chief Bressette, March 3, 2005, p 282.

The ultimate disengagement of the Stony Pointers made it difficult, if not impossible, for

the First Nation to support their move into the camp in 1993. Chief Bressette testified that Canada informed him that this could impede negotiations for the return of the camp lands. Even so, Chief and Council did not make any representations that the occupiers should be removed from the base at any time, although there were later recommendations from the community that non-members of the First Nation should be encouraged to leave.

On April 22, 1994, the Minister of National Defence announced that, after a review of his department's infrastructure needs, the decision had been made to close Camp Ipperwash and return it to the First Nation after it was cleaned up and unexploded ammunition cleared. Chief Bressette attributed this decision to his personal intervention with Prime Minister Chretien; occupiers attribute it to their own intervention on the base.

Everyone, however, celebrated the decision. In short order, however, both the First Nation and the occupiers were at odds with DND over its plan for clearance and cleanup. In the following year, DND commenced removing its moveable assets from the camp and reduced their presence to the point that the occupiers were able to move into and secure the built-up area of the camp on July 29, 1995.

Q: And the -- the Department of National Defence requested Chief and Council to send a letter if they wanted the water left on to provide health and hygiene for the -- for the people who had taken over the built-up area; is that correct?

A: Yes.

Q: And did Council send such a letter?

A: Yes.

Henderson examination of Chief Bressette, March 3, 2005, p 282.

In the summer of 1995 there were attempts, albeit unsuccessful, to engage National Chief Ovide Mercredi to assist with internal difficulties within the membership. At the same time, DND had contracted with Bruce Elijah and Bob Antone to establish a dialogue with

the occupiers and with Chief and Council. A meeting planned for mid-August was cancelled after the move into the built-up area.

Only recently has there been a degree of cooperation between the First Nation and the camp residents to facilitate an investigation of environmental, cultural and unexploded to ordnance concerns at Camp Ipperwash. Even so, the tensions of the past two decades are not completely dissipated and the First Nation wishes to register its concern that the Inquiry not address these matters in any way that will make them more difficult to resolve.

There is certainly hope of that.

You have to come to some way to work those differences out that is satisfactory to both people, or both groups of people. And we've never been able to reach that to this day.

Q: You're still working at it, trying to bridge the gap?

A: Oh, it will eventually -- it will eventually come.

Millar examination of Bonnie Bressette, Sept. 21, 2004 pp 182-83

Desecration

There are many forms of racism. Discrimination and stereotyping attack individuals and groups in personal ways. Marginalization devalues the fundamental humanity of a community, especially when its access to redress and opportunity is denied. Disrespect for institutions and artifacts speaks to concomitant disrespect for those who created them. Certainly the Chippewas of Kettle and Stony Point have suffered all of these, and it has been the First Nation that has had to deal with the consequences without external support.

Racism, tragically, does not end when the persecuted perish. There is no more telling statement than the desecration of a grave that the remains within are something less than human. And this too is something the Chippewas of Kettle and Stony Point have had to endure.

There was, and is, a cemetery in Camp Ipperwash that was the burial ground of the Stony Point community. When the land was taken, assurances were given that it would be protected and preserved. As Indian Agent McCracken reported:

At the time of the expropriation I recall that the military definitely promised to respect the cemetery at all times and everyone assumed that the military would protect the burial grounds by erecting a strong fence or some similar device. This was not done.²⁴

Clifford George told the Inquiry how he had returned from the war and visited the cemetery with his two brothers. First, they had to get permission.

But that -- that's the way it was. So we
-- we went -- we went there, and then it was absolute

²⁴ Cited in J. Holmes, *Historical Background*, at p. 57.

devastation to see the -- the mess that -- that the gravesite was. We couldn't even tell where my mother was buried, we just had an idea where she was buried, because at that time, nobody, not very many people afforded headstone.

But there were a headstone there for some, and it was all pot marked with rifle marks and -- and there was bandoleers of -- of shells just hung over the posts and stuff like that there, blanks of course, you know, where they're playing soldier.

And on top of that, they were -- they were supposed to be out of bounds after that, to that -- to that Cemetery. And there was -- there was trenches dug where they were -- where they were playing soldier, right in our gravesite, and that.

That's what -- that's what, you know, made it real -- real bad for us, you know. And -- and there used to be at, when we left, top the -- top the mound there, I guess I show you sometimes. There was a white picket fence around there when I left, right around about half-way down, and that's where all the dignitaries were buried up there, like clan mothers and Chiefs and stuff like that. There was a white picket fence around there where -- where -- where there's no gates, because us kids weren't allowed to go in there.

That was all devastated, there was no -- there was no picket fence and then the -- the -- the what stones there were moved and stuff like that, so...

It was -- it was a horrible mess when -- when dad -- when dad himself wrote to me, he says, don't worry about the gravesite, they're supposed to keep it.

Q: They didn't keep it, did they?

A: No, no, they didn't, they never did. It was a mess. Because they even fired at it with their rifles, I can see that in the stones, you know, in different places there, it was all pot marked with -- with rifle...

Q: You were with your brothers, Kenneth --

A: I had two (2) brothers.

Q: -- Kenneth and Clarence?

A: Yes. Good hardened soldiers crying, crying our eyes out, that's the way I -- that's the way I -- I told the people there, you know, that's a shame, you know, what they've done to -- and we -- we only had just a rough idea where my mother was buried.

Worme examination of Clifford George, Sept. 10, 2004 pp 64-66.

A: It was very devastating to us, as a matter of fact.

Worme examination of Clifford George, Sept. 10, 2004 p 20.²⁵

This was not a war zone; it was a training camp. Only minimal effort would have been required to fence the area and divert training exercises around it, but even that minimal effort was not expended. Only racism can account for the treatment of the cemetery that Clifford George and his brothers discovered when they returned from actual combat. As it turned out, none of them had been fighting for “the ashes of his fathers and the temples of his gods”. These had been appropriated by the Department of National Defence, and then demeaned and desecrated.

. . . and I always say to myself, I found all my enemies when I got home.

Worme examination of Clifford George, Sept. 10, 2004 p 66.

Some effort, at least, was made by a provincial engineer when Ipperwash Park was being constructed in 1937. When he discovered what he believed to be a burial ground, he encouraged the First Nation to secure protection for it, which they did by Council resolution followed up by a letter from Indian Affairs to the provincial Ministry of Natural Resources. The reply from the province promised to follow up on the matter, and after that history is silent. Surely a modicum of respect, if only between bureaucrats, would

²⁵ See also, J. Holmes, *Historical Background*, p. 56.

generate some communication that an investigation had been made, or that action had been taken or that a finger had been lifted. There is no record of any of these; nor is there any trace of the burial ground within the Park and nothing found by a provincial archeologist who visited the site many years later. The only reasonable inference is that whatever was there was obliterated, and no record kept.

Matters were no better in 1950 when construction of road in the park uncovered human remains found to be those of a young Aboriginal woman. She was buried there at an uncertain date but likely before 1900 in the estimation of archeologists who reviewed pictures taken by the park superintendent and kept by his family. If there was an official report of this discovery to the Ministry, this Inquiry has not been shown it.

What is known is that the remains, or at least the skull and lower jaw, were removed to the London Museum and subsequently lost. If all of the remains did not go to the museum, it is likely the balance were disposed of somehow in the park.²⁶ What respect must those concerned have had for the remains of this young Aboriginal woman? That much is apparent from the record: none.

The Chippewas of Kettle and Stony Point strongly urge that the racism manifest in these known occurrences of desecration be condemned by this Inquiry.

²⁶ See M.W. Spence, "The Ipperwash Burial: General Report" (1996); Inquiry Doc. No. 4000408.

The Occupation of Ipperwash Provincial Park

Going into the summer months of 1995, the small group of “Stoney Pointers” had enjoyed considerable success in occupying the ranges at Camp Ipperwash, then occupying the built-up area of the camp and even displacing the army from the camp. They had also enjoyed the public support of several prominent and other lesser-known groups and attracted generally sympathetic coverage of their quest. They were, to this point, dealing largely with a vapid and ineffectual federal bureaucracy no longer interested in the camp for its own purposes and having only a tepid commitment to restore the camp lands to the First Nation as reserve lands. The military at all times seemed more interested in ‘managing’ the occupation rather than ending it.

In retrospect, it is likely that the group may have misjudged the mettle of the new Conservative government of Ontario, led by Premier Mike Harris, when they moved into Ipperwash Provincial Park on September 4, 1995. Like the events of July 29 back at the camp, a strong statement of resolve coupled with a small display of force was sufficient to cause the authorities to withdraw. But Mr. Harris would not be long content with that state of affairs.

His government was not supportive of Aboriginal and Treaty rights, even though these had constitutional protection and priority. Speaking the now familiar language of “equality”, the new government’s policy would be to ignore the constitution and the guidance of the Supreme Court of Canada. The special rights of Aboriginal peoples simply did not exist in the minds of the Conservative cabinet, so Aboriginal peoples could be treated exactly the same as non-Aboriginals. The rule of law would be supplanted by intolerance and coercive force when it came to First Nations.

The Hiawatha First Nation made a felicitous choice when they moved into Serpent Mounds Provincial Park that same Labour Day weekend. They did it early, when

politicians and bureaucrats were out of town, and they were able to achieve a solution before the politicians and bureaucrats got back.

September 4 was a Monday, the last day of the long weekend. By Tuesday morning, the provincial government apparatus in Toronto was at full strength. And the message from the premier was clear: get the Indians out of Ipperwash Provincial Park and get them out fast.

To avoid repetition here, the Chippewas of Kettle and Stony Point adopt in their entirety the submissions of the Chiefs of Ontario Office on the philosophy, actions and consequences of the actions of the Harris government – which alone explain the OPP decision to advance on the park the night of September 6, 2005, which led to the death of Dudley George.

At this point, we will look at the events surrounding the occupation of the park through the eyes of the Chief, Thomas Bressette, and two of the Band Councillors, Gerald George and Bernard George.

Chief Thomas Bressette

Chief Bressette was an active leader in the community's pursuit to have the land known as Camp Ipperwash returned to the First Nation, and strongly opposed the Federal Government's position regarding the need to retain the land for military purposes. The ongoing, sustained community efforts in this regard led, on February 22, 1994, to an announcement that DND would be closing the base at Camp Ipperwash and that the land would be returned to the Chippewas of Kettle and Stony Point.

Respecting Camp Ipperwash, and during the relevant period that this Commission is considering, Chief Bressette attempted several times to exercise leadership, with a goal

to unite the membership and minimize divisions within the community. These efforts were for the most part rebuffed and or ignored.

Chief Bressette and Council did not support the initial occupation of a portion of Camp Ipperwash by some Band members in May of 1993 as it was deemed that it would hinder the negotiation process respecting that same land. This was a decision made out of concern for the community at large; for the ongoing process of seeking the land's return; and not as a result of any animus towards those in occupation.

Q: And did you tell them that the - your concern was that the occupation could interfere with the negotiations?

A: Yes.

Q: And that was your concern?

A: Well, it was,. The Minister basically, advised me if there was occupations, it was going to hamper things. The government couldn't negotiate with us under those circumstances.

Millar examination of Chief Bressette, Mar 1, 2005, pp 219-222

Also: Derry Millar examination of Chief Bressette, Mar 1, 2005, pp 254-255

At all relevant times, Chief and Council believed that there was a process to deal with the First Nation's legitimate claims. Further, Chief Bressette was at all times cogniscent of the community and its relationship with their neighbours and was concerned with the balance which he believed had to be maintained.

Millar examination of Chief Bressette, Mar 1, 200, pp 243-244

Millar examination of Chief Bressette, Mar 1, 2005, pp 274-277

At the beginning of August, 1995, the First Nation became concerned with the presence of outsiders – non-members – in the Army Camp, controlling strategy and refusing admittance to Band members resident on Kettle Point. This concern was expressed to those in occupation of the camp, and was not an indictment of the Band members who were in the camp. In any event, Council's attempt to deliver a communication to this

effect was also rebuffed.

Exhibit P-30, Inquiry document #3000370, Correspondence from Chief Bressette Henderson cross examination of Chief Bressette, Mar 3, 2005, pp 271-272.

Q: And prior to your leaving (for vacation in August, 1995) was there an attempt made by you or an approach made to you to have Mr. Ovide Mercredi act as a mediator with respect to the issues between the - among the Band members over Stoney Point?

A: Yes, I - I believe there was a lot of attention in the media that was going on and I did get a call from the National Chief's Office and he did say he had some experience in dealing with these type of matters in the past and that he would be - offer his services to us if we had asked and I think I - I did state that at the Band meeting that he did offer to come and try to do some mediation because we had paid mediators before and --- and - and trying to find solutions and, like you stated, we had spent in the hundreds of thousands of dollars trying to deal with these kinds of issues and - and they were never resolved.

**Transcript Derry Millar examination of Chief Bressette, Mar 2, 2005, pp 82-84.
Also: Exhibit P-247, Inquiry Doc. 9000613, August 4th, 1995 London Free Press**

OPP officials, in particular John Carson and Dale Linton; Federal politicians; and local politicians, in particular Marcel Beaubien, would routinely communicate with Chief Bressette with the sole purpose of eliciting comments as to his disapproval of the occupation of the Camp, and ultimately of the Park, with a view to regurgitating it to others to justify their own positions and statements. Chief Bressette testified that he did engage in these discussions but would, in terms of facts related to the occupation, simply report what others had told him and would echo the concerns of his community members.

Transcript Derry Millar examination of Chief Bressette, Mar 2, 2005, pp 85-105.

All information to-date indicates that Chief Tom Bressette does not intend to confront the occupiers. This is confirmed through personal discussion, and through media information. The local news is now indicating that

Ovide Mercredi has agreed to attend and act as a mediator between the Native groups. Should any confrontation occur, there is sufficient ability to

respond and react to any violence. Chief Bressette had never condoned any violence or criminal acts, however,

Exhibit P-415; Carson letter to OPP Commissioner, August 9, 1995

Q: . . . But what I'm particularly interested in is your statement here that Chief Bressette has never condoned any violence or criminal acts; that's -- that was your report to the Commissioner in 1995.

A: Right.

Q: Do you still stand by that statement?

A: Sure.

Q: Okay. Would it -- would it be fair to say that Chief Bressette has never condoned any violence if it was committed by the OPP, either?

A: Well, that's fair.

Henderson examination of John Carson, June 28, 2005, p 156.

And the Chief says:
"Well, and you know, and there are going to have to be opportunity to leave, but they're going to be dealt with as trespassers."

Henderson examination of John Carson, June 28, 2005, p 157 (Emphasis added).

Q: Fair enough. Now, in terms of the plan that you described, getting the injunction, and hoping to find some solution, but being prepared to deal with the occupiers as trespassers, you did not call him back at any point subsequent to this and say there was any different plan?

A: No.

Q: Or that any different action would be taken?

A: No.

Henderson examination of John Carson, June 28, 2005, p 156.

Chief Thomas Bressette played no role in the decision of the Ontario Provincial Police to move against the protestors in and around the Ontario Provincial Park. He was not informed of any impending OPP action, and after the fact strongly condemned the actions and conduct of the Ontario Provincial Police and their operation of September 6, 1995.

Millar examination of Chief Bressette, Mar 2, 2005, p 134.

From the time the occupation of the Provincial Park commenced, and following through after the shooting of Dudley George, Chief Bressette was concerned for the safety and well-being of the Band members present in the Park. He passed on a warning, received from Bob Watts, to a local radio station which he hoped would be heard by those in the camp or park. He immediately attempted to gain information from the Ontario Provincial Police. He promptly informed and tried to obtain the assistance of the Assembly of First Nations; and spoke with OPP officials in an attempt to gain permission for Bob Antone and Bruce Elijah to attend the area of the Camp and Park. Chief Bressette also involved himself in the situation to calm matters, and attended the area of the Camp and Park himself for that purpose.

Millar examination of Chief Bressette, Mar 2, 2005, pp 106 - 111, 144-146, 149.
Henderson examination of Chief Bressette, Mar 3, 2005, pp 276 - 277.

Contrary to the suggestion made at the Inquiry, and belief of some, Chief Bressette did not share any positions or common objectives with the Harris government, as they related to the Provincial Park, or those who occupied it on September 4. When he was informed of what the Harris directive was, he took steps to get that information to the group in the

camp and the park.

Chief Bressette, since the shooting, has held Premier Harris, at least in part, responsible for the tragic events that took place. This, along with Chief Ovide Mercredi and Grand Chief Charles Fox, he communicated to the Premier and Charles Harnick at Queens Park several days after the shooting. He has consistently held to that view ever since.

*Millar examination of Chief Bressette, Mar 2, 2005, pp 158-61.
Henderson examination of Chief Bressette, Mar 3, 2005, p 275.*

Gerald George

Much has been made in this Inquiry, from many quarters, of the impact of Gerald George's interaction with Stewart George, and OPP officers on the evening of September 6, 1995.

During the course of the testimony the Inquiry has heard and the various examinations, it can be fairly gathered that some parties believe Gerald George imparted information to the Ontario Provincial Police, through Constables Mark Dew, and Sheldon Poole, which purportedly bolstered the theory and belief that the Park occupiers were in possession of a significant array of firearms/weapons, the implication being that was, at least in part, a justification for the Police action that evening.

Should the Commission see fit to even make a finding as to what was communicated to Constables Poole and Dew, It is urged that the Commission accept Mr. George's version of events, as it is the most plausible. The events regarding that evidence are outlined as follows

Gerald George has an altercation with one of the protesters from the park, Stewart

George. Stewart George throws a rock as Gerald drives away from him, and the car he is driving incurs a dent. The car belongs to Gerald George's sister.

- a. Gerald George reports the incident to Constable Poole at the checkpoint as he is leaving the area, with the thought that he will require a police report for insurance purposes.

Millar Examination of Gerald George, January 13, 2006, pp 95-96

- b. Gerald George is directed to back his car into the area, and makes a mischief report to Constable Sheldon Poole. Gerald George is a gun enthusiast who has a vast knowledge of weaponry. Indeed, Constable Poole describes Gerald George as being an individual who is knowledgeable and familiar with firearms

Worme Examination of Sheldon Poole, May 16 , 2006, pp 72-73

- c. Constable Poole notifies Acting Sergeant Mark Wright that he has an individual with information and a complaint. Sergeant Wright sends an intelligence officer, Mark Dew, to speak with Gerald respecting the information he has. Mark Wright tells Constable Poole: "You know what I'm after."

Johnson Examination of Sheldon Poole, May 16 , 2006 p. 263:13

- d. Gerald George's account of the interview with Mark Dew varies in detail significantly from Constable Dew's. Gerald indicates that he is shown a book of photos of individuals thought to be in the park and asked to identify them. His testimony is that he identified Stewart George as being the individual who threw the rock, but did not know many of the other individuals

in the book. His testimony regarding the book of pictures is quite specific in detail, he indicates some appeared to be aerial photos, that there were both men and women in the photos, and that he was asked specifically about an individual named Isaac.

Millar Examination of Gerald George, January 13, 2005, pp 101-104

- e. Later, Gerald George attends to Chief Tom Bressette's house and indicates to him that he was shown a book of pictures.

Millar examination of Chief Tom Bressette, Transcript March 2, 2005, pp 112-113

- f. Under cross examination, Detective Constable Mark Dew remains steadfast in his denial that he even had the book much less showed it to Gerald that day.

Johnson examination of Mark Dew, Transcript April 4, 2006, pp 330-331

- g. Constable Dew also indicates that he attended for a mischief complaint, nothing else, but that he never read the mischief complaint, that he did not recall making inquiries as to how the information was obtained that was allegedly provided to him by Gerald George, that he didn't recall making inquiries as to when the last time Gerald George had been in the occupied areas, and that he recorded none of those details in his notes.

Johnson examination of Mark Dew, April 4, 2006 pp 320-322

- h. Gerald George indicates Constable Dew questioned him regarding anti-tank rockets and other weaponry. Gerald testifies he spoke of firearms he owned, and had hunted within the Camp in years past.

Millar Examination of Gerald George, January 13, 2005, pp 101-104

- I. Constable Dew agrees under cross examination he had received previous reports of anti-tank rockets from other individuals. And he agrees that Gerald George would **not** have been privy to that information. And Constable Dew indicates he didn't question Gerald George about the anti-tank rockets, and agrees he and Constable Poole seem to be the only ones who took information from him that evening.

***Johnson examination of Mark Dew, April 4, 2006, pp 323-324, 333
Exhibit P-119, Inquiry document #2003761***

Gerald George's evidence is credible, and has the ring of truth to it. He recalls details and makes mention of the photos to Chief Bressette later. He reports being questioned about things such as anti-tank missiles that were suspected by the OPP, and yet he would not have known of the previous reports. It is respectfully submitted that the OPP, through Constable Dew, questioned Gerald George with a view to find the evidence to support the position that weapons existed in the Park. Their preconceived notions dictated that they would receive any information in the way they wanted to.²⁷

In the alternative, regardless of what conclusions are made as to Mr. George's comments and actions, given the testimony of Inspectors Carson and Bell, and those in CMU (see Hebblethwaite), the reality is it had no impact on the OPP operation itself, or the decision making process which led to it.

George examination of George Hebblethwaite, May 15, 2006, pp 47-48

Should a finding need to be made, the Commission will have to carefully assess the

²⁷ With reference here to Mark Wright's still cryptic statement: "I think you got ah, Sammy Poole down there, take a quick statement from him, . . . **and** ah, you know what I'm after okay." – Millar examination of Mark Wright, Feb. 23, 2006, p 48. (emphasis added)

respective testimonies of Gerald George, Constable Dew, and Constable Poole. Apparently, according to both Constables Dew and Poole, Gerald George was fearful and essentially requested to remain a confidential source. According to Poole and Dew, this was accommodated.

In relation to the disputed information, neither Constable Dew or Poole specifically name Gerald George in their notebook. It is suggested that the desire to protect Gerald George would likely derogate from any desire to receive a signed, detailed statement from him, and none was taken. It, however, does not explain the absence of it from their respective notebooks. It also doesn't explain the absence of a separate notebook, or other contemporaneous recording of the name or discussion. It does explain, perfectly, the unreliable way in which it was communicated through the ranks, and ultimately received by John Carson.

It is also completely consistent with the way in which the mischief report, provided by Gerald George, was ultimately communicated and received by Command staff, which at it's kindest can only be described as negligent and incompetent. It clearly provides another example of reports and stories conforming to what information, or kind of information, is desired on the part of the recipient, whether or not related to fact.

Not much more needs to be said on Mr. George's behalf respecting the mischief complaint. To state the obvious, Mr. George played no role in the careless communication channels operating within the OPP ranks at Ipperwash and no fault can be ascribed to him for OPP failures.

It is respectfully submitted that the Commissioner has no choice but to reject the evidence of the Ontario Provincial Police representatives in this regard, and accept the evidence of Gerald George, where such determinations need to be made.

This, in fact, ties in to the earlier point that perhaps this whole issue is moot. Regardless

of what was received by Constables Poole and Dew, it had no impact on John Carson's decision.

Q: And again, just to – I – hopefully a quick point, but we've heard a lot of evidence, Deputy Carson, about guns in the Park, and guns in the camp, and guns and – gunfire the night before, and all that sort of stuff and I just – again, I just want to be clear, that as of the time that you were actually sending your officers down the road, you did not have any concerns about being confronted by gunfire; as late as that point in time, correct?

A: I didn't believe we'd be fired upon.

Q: Right, you had just – whatever evidence there was, you – that did not translate, in your mind, to your men being fired on when they arrived – or your – your officers being fired on when they arrived at the sandy parking lot?

A: I – I didn't – I didn't believe that would occur.

Horton examination of John Carson. June 27, 2005, pp 139-130

Essentially, attempts to lay blame at the feet of Gerald George, were and continue to be fruitless. There is no fact, or set of facts, in evidence, which supports the notion that anything he said on the evening of September 6, 1995 – and he has given credible evidence of that – had any impact on police actions.

What remains is the fact that Mr. George had engaged in criticism of the occupiers that they regarded as unfair, which had provoked the attack on him and the rock-throwing incident, and made him conveniently blameworthy when he was seen talking with the OPP at the checkpoint. The other fact is that Mr. George provided a statement about the rock-throwing incident that was accurate, and omitted the personal assault on him from that statement. He was not motivated by revenge; he was angry that his sister's car had been damaged. The evidence sustains no other conclusion.

As it turned out, nothing said or done by Gerald George led to anything the OPP did or did

not do on the night of September 6, 1995. The OPP, although it certainly had the means to confirm the actual incident report and in fact requested that it be delivered to the TAC centre, reacted to a fictional incident involving a gang rather than a single individual and a victim that did not exist.

CECIL BERNARD GEORGE

Bernard George gave truthful and cogent evidence of what he did and what happened to him on the night of September 6, 2006, to the extent that he could remember it in light of the severe beating he received.

The Chippewas of Kettle and Stony Point respectfully submit that the evidence of Bernard George is to be preferred over the account of any OPP officer who either engaged in, or witnessed in part or in whole, the events surrounding his taking into custody; further that the evidence of the First Nation individuals who were within the Park, respecting the altercation with and arrest of Bernard George, be preferred over the account of any OPP officer.

Before commenting directly on the evidence heard at this Inquiry, some general comments are in order. First, the account of Bernard George on what occurred up until the point he lost consciousness was given with detail and precision. The evidence of many of the occupiers respecting this event, in particular the testimony of Abraham David George, was also given with great precision and fullness of detail.

Q: Okay. And it was after the second approach or rush, if I can call it that, that Cecil Bernard George proceeded out into the parking lot area?

A: Yes.

Q: Okay. And I believe you said that either you or someone else began to walk out with them but then changed your mind and moved back inside the Park?

A: Yeah, when they started running, that's when -- there was only a couple of us out there, kind of - I guess kind of like delegates, I guess.

Q: Okay. And --

A: Come out with Slippery, but as soon as they -- they charged up -- I don't know -- I took a couple of steps back and I thought Slippery was going to come back, too, but he didn't.

Q: Okay. Now, let me ask you this now, Mr. -- Cecil Bernard George was not a resident at the army camp, was he?

A: No.

Q: Okay. And he was not involved in the initial takeover/occupation of the Park on September 4th, 1995?

A: No.

Q: Okay. And, going back to September 6th, at this time when the officers approached the fence, how long had Mr. Cecil Bernard George been there? You - you described him yesterday as approaching -- coming up and meeting you guys from the beach area?

A: Yeah, he wasn't there too long, probably - - he just came up, gave us the walkie talkies and shortly after that is when the cops came down.

Q: Okay. So you don't recall the exact amount of time he was there, but it wasn't that long?

A: Yeah, it wasn't that long --

Q: Okay.

A: -- probably -- maybe ten (10) minutes -- ten (10) -- fifteen (15) minutes.

Q: And if I could take the liberty, Mr. George, of characterizing your testimony, is it fair to say that Mr. Cecil Bernard George came there in friendship to be supportive. He brought --

A: Yeah. Yeah.

Q: -- walkie talkies and he was kind of --

A: -- that's what I kind of -- that's what it seemed to be, yeah.

Q: Okay. He -- he brought the scanner. He brought the walkie talkies. He expressed his concerns about the officers -- I believe you termed it massing down the road?

A: Yeah.

Q: Okay. And I don't want to rehash this point because you gave a very detailed and good description of what you saw in how you observed Mr. George's and the officers' actions, but is it fair to say that Cecil Bernard George did not, at any time, verbalize any desire to engage in a confrontation with the police?

A: No. No. He was there talking peace.

Q: Okay. A: He didn't want them, the cops, to come down and kill anybody or shoot anybody up or beat anybody up.

Q: And was that the impression you got from Mr. Bernard George prior to the officers coming, that that was his intention in being there, based on what you saw and heard?

A: Yes.

Q: Okay. Now you also yesterday spent a considerable amount of time indicating on the Exhibit P-67, I believe, where you were in relation to what was going on. But in terms of distance, how far were you from Cecil Bernard George at the time the officers first surrounded him and began to strike him?

A: Probably maybe ten (10) feet behind him.

Q: Okay. You were quite close?

A: Yeah.

Q: Okay. And was that confrontation, the officers striking him, at least initially, was that stagnant? Was it occurring at the same place or was it moving back, away from you and the others?

A: No. The cops, they -- they punched out. They ran right at us and Slippery happened to be there and they run him over but that didn't stop their line from advancing.

Q: Okay.

A: There was just -- they just closed up the ranks and the -- there were cops behind that first line, they kind of surrounded him --

Q: Okay.

A: -- and proceeded beating him.

Q: Were they all doing this at the same time or were there a group of officers continuing to advance --

A: Yeah.

Q: -- while there were others

A: They were still advancing.

Q: Okay. The officers who were dealing with Mr. Bernard George, were they advancing as well?

A: No.

Q: Okay.

A: They were just sitting there. They were -- they sat there for a good, at least fifteen (15) seconds it seemed. They were beating him on the spot. They pretty much beat him into submission there, then they dragged him by his hair --

Q: Okay.

A: -- from there. And they were still beating him on -- all over the place.

Q: Okay.

A: Because it looked like a dead body they were dragging, because he was limp.

Q: Now, at least initially, prior to them dragging him back, away from where the initial confrontation took place, did -- appreciating that you engaged in the other events, but did you have a clear view of what was going on --

A: Yeah.

Q: -- with respect to Cecil Bernard George and the officers?

George examination of Abraham David George, Oct 21, 2004, pp 86-94.

In contrast, the evidence of all OPP officers were vague, inconsistent with each other, and most notably, their narrative of events is completely inconsistent with the injuries sustained by Mr. George.

“...rather my decision is based on a lack of credible and reliable evidence going to the identify of any individual officer or officers, and a similar lack of evidence to establish that the injuries, in fact, and in all of the circumstances, resulted from the use of excessive force by the involved officers....I believe it to be necessary and only fair to inform you that in reaching the above noted decision, I was

struck, in review of all the available evidence, by the discontinuity of the statements of the OPP officers who were interviewed as to the level of force applied to Mr. George and the injuries that he was clinically observed to have suffered. I concluded that the level of force actually applied against Cecil Bernard George by various OPP officers during the confrontation which caused his injuries, bore little relation to the picture that emerged from the officers' account of level of force used against Mr. George....”

Exhibit P-1535, SIU correspondence to Commr. Gwen Boniface, Feb. 10, 1999.

***Also: Millar examination Gwen Boniface, June 14, 2006, pp 179-185
Exhibit P-626, Inquiry document #1005368, SIU Director's Report
Vella examination of Wayde Jacklin, Apr 25, 2006, pp 264, 266-279
Johnson examination of Wayde Jacklin, Apr 26, 2006, pp 55-100
Worme examination of Robert Huntley Apr 27, 2006, pp 116-133
Johnson examination of Robert Huntley, Apr 27, 2006, pp 262-283
Johnson examination of Wade Lacroix, May 10, 2006, pp 281-330
George examination of George Hebblethwaite, May 15, 2006, pp 245-263
Johnson examination of Bill Bittner, May 17, 2006, pp 277-300
Johnson examination of James Root, May 17, 2006, pp 131-149
Johnson examination of Denis Leblanc, May 23, 2006, pp 240-260
Johnson examination of Chris Cossitt, May 24, 2006, pp 234-251***

During her testimony, Dr. Marr gave a thorough account and explanation of the injuries she observed on Cecil Bernard George. She described in detail each injury and made certain conclusions respecting them.

Q : ---excuse me, 1995, in the morning, there was a total of twenty-eight (28)

visible markings on - on Mr. Cecil Bernard George's body; is that fair?

A: Well, we've actually described twenty-eight areas of either tenderness or bruising.

Q: All right.

A: Some of them, I think I commented, there wasn't a bruise but there was tenderness.

Q: Fair enough. And were all of these injuries consistent with some form of blunt-force trauma?

A: Yes

Vella examination of Dr. Marr, Apr 26, 2005, pp 113-115

It is respectfully submitted that the Commissioner should find, as a fact, that Cecil Bernard George was brutally, and excessively beaten by the Ontario Provincial Police Officers he came into contact with on the evening of September 6, 1995, without justification, explanation or personal or corporate responsibility for what was done to him.

It is strongly urged upon the Commissioner that there should also be a finding, which is in our respectful submission clear upon an assessment of the evidence as a whole, that the OPP Officers, both those who came into contact with Mr. George, and those who were mere witnesses, engaged in active attempts:

- a. to mislead the Special Investigations Unit during the course of their investigation of the beating and arrest of Cecil Bernard George, thus frustrating any efforts to come to any factual conclusions about the event shortly after its occurrence;

- b. to, collectively and individually, mislead their supervisors, the SIU and the

courts, or to lie, about the nature of their specific individual involvement in the matter and the involvement of their fellow officers;

**Oct 21, 2004 - p 86-94 George cross examination of David George
June 14, 2006 - p 179-185 Millar examination of Gwen Boniface
Exhibit P-626, Inquiry document #1005368, SIU Director's Report
Exhibit P-1535, Inquiry document #1005305, SIU to Gwen Boniface
Apr. 25, 2006 - p 264, 266-279 Vella examination of Wayde Jacklin
Apr 26, 2006 - p 55-100 Johnson cross examination of Wayde Jacklin
Apr 27, 2006 - p 116-133 Worme examination of Robert Huntley
Apr 27, 2006 - p 262-283 Johnson cross examination of Robert Huntley
May 10, 2006 - p 281-330 Johnson cross examination of Wade Lacroix
(And other excerpts noted supra)**

Cecil Bernard George was not a participant in the occupation of the Provincial Park nor involved in the occupation of the army camp, although he had been involved in demonstrations and camped in the camp in 1991. He was, at the relevant time, an elected member of the Kettle & Stony Point Council.

Dec 6, 2004 - p 134 Millar examination of Bernard George

Bernard George testified that he attended at the scene of a standoff at the Kettle Point Reserve, between a community member and the OPP TRU Team. He further testified that, as a result of his communication with the individual, that he assisted in diffusing the situation and successfully persuaded the individual to turn himself in to the Kettle Point Police Service. Although Mr. George was uncertain as to the date of this encounter, later Police witnesses identified this as occurring sometime in February, 1995.

Dec 6, 2004 - p 154-158 Millar examination of Bernard George

On the evening of September 6, 1995, after hearing various reports of the Park's occupation, after personally observing an increased police presence in the area, and after having discussions with community members and family, Bernard George made the decision to attend the area of the Provincial Park during the evening hours out of concern

for family members there.

Dec 6, 2004 - p 208 Millar examination of Bernard George

Upon coming into contact with those occupying the park, Mr. George noted several identifiable moods amongst the people.

Q: And what was the mood of the people that you spoke to in the Park at this time?

A: The mood was - I guess there was a number of different moods I - that I sensed. I mean...one of them was probably fear because of not understanding and not knowing what was down that was curiosity. Everyone was curious...There was - I - I never sensed any anger within anybody - frustration...

Dec 7, 2004 - p 19 Millar examination of Bernard George

Bernard George did not attend the Park area to become engaged in a conflict, to join the occupation per se, or to confront Police Officers. He attended purely out of concern for others, and to warn the other First Nation individuals of the presence of police locally, and the potential danger they may face.

***Oct 21, 2004 - p 86-94 George cross examination of Abraham David George
Dec 6, 2004 - p 208-209 Millar examination of Bernard George***

While at the area of the Park Mr. George testified that he was holding a stick which was probably about three or four feet in length, and an inch or two in diameter. He further testified that, in addition to routinely walking about with a stick, that in this particular situation he held it out of fear of what might happen to him should the police think that he was a part of the occupation.

Dec 7, 2004 - p 23 Millar examination of Bernard George

To observe what was occurring, Mr. George, along with others, initially proceeded some

distance down East Parkway Drive upon noticing the advance of the Police officers. At this point, there was clearly no intention on the part of Mr. George to engage in a conflict with the Police. In fact, Mr. George testified that upon seeing the shields, and their reflection, his initial reaction was to engage in a discussion.

A: At that point I couldn't really tell. All I seen was the shields - the moon - the moon was reflecting of the shields.

Q: So that - but you thought they were riot police and you started backing down the road?

A: Yes, I did.

Q: And what did you do?

A: I backed down the road probably maybe fifty to a hundred feet and I stopped and they kept advancing.

Q: Yes? A: And my first thought was try to talk to them. That's the first thing I could think of was tell them something. Ask them - ask them to put their weapons away and - and I did that. That was one of the first things I - I told them and they weren't - they weren't that far away from me that they would have heard me.

***Dec 7, 2004 - p 36 Millar examination of Bernard George
Exhibit P-109, Map marked by Bernard George during testimony***

Mr. George described having to retreat back into the Park upon the Officers first approach to them, despite his reluctance to do so. He further described that the Officers proceeded to swing their batons over the fence at those in the Park.

Q: Why didn't you want to go inside the Park?

A: Because I never really understood about the issue surrounding why they - why they went inside the Park and I.....it was too short a time for anyone to really understand why, especially when you don't realize it yourself, you don't understand it, you're trying to learn about it. So I felt that I had the - I had the right to be on the roadway but I was never - that's just the way I felt

Dec 7, 2004 - p 48 Millar examination of Bernard George

And how close -- could you put a number 4

just beside that line please? And the -- how close to the fence did the police come the first time they came into the sandy parking lot?

A: They were leaning right over the fence.

Q: And what was happening at the -- when they were leaning over the fence? What were they doing?

A: They were swinging their billy sticks at the ones that were inside the Park.

Dec 7, 2004 - p 47 Millar examination of Bernard George²⁸

Prior to the second punch out being ordered, Mr. George had re-entered the sandy parking lot. He recalls picking up another object; a pipe, despite having given previous testimony, at another proceeding, that it was a stick. It is respectfully requested that Mr. George's explanation as to this change be accepted.

Dec 7, 2004 - p 61 Millar examination of Bernard George

When I picked up that pipe, I didn't realize that I would lose friendship, that I would lose a brother. And I went back over that fence, every feeling that I had inside of me left me and I don't want to remember what I'd said after that.

I remember telling them that there were people watching them for what they were doing to us; to leave them alone.

I heard other comments being yelled at them, about mayflower, then I couldn't hear any more. I couldn't hear any more voices. When a human being reaches that point, I had feelings I can't really put --

I couldn't hear anything any more. All I could see were these police officers in front of me. I can see their eyes right through the shield. I seen the

²⁸ Throughout the Part I hearings, there seemed to be an OPP party line that this never happened. CKSP views the preponderance of evidence, including the evidence of several OPP officers who were there, as more than sufficient for a clear finding that it did.

eyes. I wanted to run, I had nowhere to go. My friends were there, my family was there, I had to defend them. I had to defend myself.

And they charged. They came forward. I couldn't hear the people that were behind me anymore. I heard one voice saying punch out. When I heard that voice say punch out I knew they were coming to punch me and punch everyone else that was in their way because they had no feelings. They were full of fear, they were scared of the Indians. The Indians had sticks and stones and they had guns.

. . . .
Always protect yourself. Protect the ones you love behind you at any cost. I raised what I had in my hand and I wanted to run but I -- I couldn't. When I seen that one person blink his eye I swung what I had in my hand, and all I heard was an echo. And I was in a nightmare, a nightmare that I dreamt about, and I was fighting with my nightmare, and voices were talking to me.

And I could see strange stars, they were colourful stars. But I tried to get away from the nightmare and they kept me in the circle. I was inside of a circle, fighting with a nightmare. I couldn't feel anything. I had no feeling. I was in a nightmare and in nightmares you don't have feelings. But I heard voices.

Then I started feeling, I had a feeling inside of me that came from inside, not from the outside, it came from here on the inside and it started to come through me to the outside.

And I seen shadows around me, hitting at me, trying to kill me. That was my dream, they were going to kill you, because they were afraid of you, that you're an Indian, they're going to kill you. So I fought the dream back.

Millar examination of Bernard George, Dec. 7, 2004, pp 62-64.

It is respectfully submitted that Mr. George's version of events should also be accepted as, despite the various accounts of the OPP officers, there is no clear, convincing, unequivocal evidence on their part, which would suggest that Mr. George should not be believed. Again, Mr. George describes these initial moments of the altercation with

clarity. To contrast that, one only needs to compare it with the evidence of Wade Lacroix on these initial moments, which can only be described, at its best, as vague.

May 10, 2006 - p 294-299 Johnson cross examination of Wade Lacroix

To highlight this apparent confusion even further, attention is drawn to the evidence of Vince George who indicates in his testimony that, for some reason, Wade Lacroix indicated that he was, in fact, the one who initially struck Cecil Bernard George.

Apr 5, 2005 - p 228 Johnson cross examination of Vince George

The essence of Mr. George's testimony beyond that is, while out in the sandy parking lot, and at the time of the second punch out, he could not retreat back to the Park in a timely way, and instead made the decision to defend himself. It is suggested that his testimony is not self-serving, thus credible, in that he candidly concedes to swinging what he had in his hand first, in self defence. He candidly described the feelings he at that point had, and describes trying to still verbally communicate with the officers, without success.

Dec 7, 2006 - p 61-65 Millar examination of Bernard George

It is respectfully submitted that even if one were to accept fully, any or all of the various Police versions of what occurred with Mr. George, there is still no fact, or set of facts, in evidence, to justify the excessive force used on him. And there is little doubt that even the OPP on the scene viewed it as excessive at the time, with some pride:

WL: We took a barrage of rocks, we repulsed a full attack - about fifteen-twenty with clubs. Guy broke my shield right in half with a steel pole. I cold-cocked him.

BD: Good!

WL: Few boys - we hammered - we hammered them
- like we cut'em down - like [inaudible] with the sticks.

BD: Good.

Millar examination of Wade Lacroix, May 9, 2006, pp. 75-76.

No one has yet explained why the OPP failed to communicate, or attempt to communicate, in any way with Bernard George on East Parkway Drive, or in the sandy parking lot, or with anyone behind the fence, the OPP's objective and requirements.

Clearly the officers thought the time for dialogue was over;²⁹ in fact, it had never begun.

Project Maple

To the extent that Project Maple was a strategic plan to deal with an Aboriginal occupation of Ipperwash Provincial Park, the only thing that prevented it from being a complete fiasco is that the plan was discarded over the course of the 50-odd hours the park was occupied before the fatal shooting took place.

Q: And I understood you to say that you directed the Ident people to prepare that poster and hang it up so that everybody would see it during the briefing?

A: Correct.

Q: And the objective -- and I'm -- I'm reading this from the transcript -- quote:

"Objective: To contain and negotiate peaceful [and, "peaceful" was underlined] resolution."

Is that the -- the message that you

²⁹ See, e.g., Horton examination of John Carson, May 27, 2005, p 174.

directed to be posted there?

A: Yes.

Q: And did that accurately reflect the -
- the objectives as you understood them to be?

A: Correct. The very same as -- that
was in the project plan, Project Maple.

Q: It was in the project plan?
Now if we assess the actual performance on
the basis of containment or peaceful resolution, would
you not say that Project Maple was an abject failure?

A: We weren't able to negotiate a
peaceful resolution. A -- a project plan isn't -- is a
plan to -- to provide you some ability to deal with
situations, but no plan can provide you all the direction
for every scenario possible, because you just can't
determine what they might be. So you know, I -- I'm not
sure you can just arbitrarily say it was or not a success
or a failure.

Q: Fair enough. You -- you agree that
you were unable to negotiate a peaceful resolution?

A: Correct.

Q: Now I suggest to you that you were
unable to contain the situation either, since you lost
your own TAC or TOC site?

A: That's fair.

Q: And a lot of your equipment?

A: Yes.

Q: So you didn't attain either arm of
the -- of the double-barreled objective?

A: I'm sorry?

Q: I say you -- you weren't able to achieve either arm of the two (2) objectives, containment and negotiation of a peaceful resolution.

A: Correct.

Henderson examination of John Carson, June 28, 2005, pp 196-98.

The first element of the plan, containment was problematic on both sides of the equation. First, in containing the park from the inside prior to occupation, there were clearly not enough police resources in the circumstances to keep the would-be occupiers out. Then it was impossible to keep the occupiers themselves contained in the park since they had full mobility back and forth to the army camp over roads the police did not, and did not try to, control. Anything short of a negotiated solution would not have contained the situation going forward since there would not be enough police in a vacant park, off season, to prevent another ingress, even after a forced eviction.

Staff Sgt. Lacroix described the limitations of “containment” in First Nation communities:

A: Not too many places I would say in Ontario that everybody in that little subdivision are related. You know, they're all related and of course they -- they become emotional. They see police surrounding their cousin.

They're -- they're all of one (1) race. They're all of one (1) heritage, related. It's a small, tight community. It -- our tactics do not work in a First Nations community.

Falconer examination of Wade Lacroix, May 10, 2005, p 95.

Another way of stating this would be to suggest that where the Aboriginal group has more reinforcements close at hand than the police do, patient negotiation will be preferable to reciprocal shows of force bringing the parties back to the initial position but in a much worse mood. In addition, there is the risk that a party that does not lose ground will

consider itself the victor after a show of force by the other side.

Without the OPP realizing it at the time (or subsequently), it appears that this is exactly what happened in the sandy parking lot. By advancing to the fence line, and not crossing it, the CMU conveyed the message that it could not get across due to the resistance there. The OPP say they never intended to cross the fence line into the park, which seems credible, but the occupiers did not know that. They assumed the show of force was intended to drive them out of the park and appeared to become more confident when the assault stalled at the first barrier. From that point, the confrontation escalated.

No one has ever explained to the Inquiry why one person, with a bull horn if necessary, could not have conveyed the OPP message: “stay in the park and we won’t bother you [for now]”. The message alone might have achieved the objective, but that can never be known now. At worst, the march into the sandy parking lot would have been understood for what it should have been: punctuation of a message clearly conveyed and not an assault on the park.

Of course, it should never have come to that. The Chippewas of Kettle and Stony Point have failed to find anything in the OPP evidence to explain why that move was so urgent that night. Where there are explanations, they lack substance; where there are supposed facts, they turn out to be wrong; where there is “intelligence” it is either flawed, unreliable or wrong as well. There were a few people in the sandy parking lot, several more in the park to the east and, on the other side, Mrs. Hannahson and her grandson. There was no crisis. In fact, the municipality, putative owner of the sandy parking lot and Matheson Drive, was not asking that they be cleared and was not seeking an injunction.

With respect to the OPP operations on the night of September 6, 1995, the Chippewas of Kettle and Stony Point adopt in their entirety the submissions of the Chiefs of Ontario Office.

The First Nation further submits that there were four factors in play that led to abandonment of the Project Maple Plan and the breach of OPP Policy with respect to the use of force:

- a. Frustration: The OPP had suffered two reverses: the first when they were themselves evicted from the park; the second when they sustained vehicle damage the night of September 5 while trying to move picnic tables. The decisive show of force the next morning to remove the tables was unsatisfying as only two individuals were present at that time and they quickly withdrew.
- b. Negotiation: This, in fact, was another source of frustration. The OPP had adopted a “take me to your leader” approach to negotiations and this had taken them nowhere. While greater resourcefulness, reappraisal and patience were called for, the actual decision seems to have been that 40 hours was long enough and the linchpin of the OPP strategy was taken out of play.
- c. Pressure: John Carson received clear, direct and credible messages that the Premier of Ontario was dissatisfied with the OPP performance to date and that he expected the Indians to be removed from the park without delay. He not only received these messages, he passed them along to other officers.
- d. Catalyst: The catalyst was Mark Wright. On his own initiative, he had

held back the ERT teams going off duty that evening. He communicated to John Carson that Dale Linton was dithering. He gave direction to the officers taking the incident statement from Gerald George: “. . . and you know what I’m after . . .”. He wanted a show of force: ““Don't you say we go get those fucking guys?” And he was happy to get one: “we're going to war now”.

It is Wright who tells Tim McCabe:

Well they're moving ah they're coming out for a fight down to the road so were taken all the marines down now.³⁰

There is, of course, no evidence that anybody was coming out for a fight. But Wright did get his wish and somebody else paid for it: Dudley George, notably, but many, many others as well.

Responsibility for the decision to send the CMU and TRU down the road that night rests with John Carson, the incident commander. It was an irrational act in aid of a trivial objective.

By the time the CMU had reached the edge of the sandy parking lot, the First Nation people were all behind the fence. Wade Lacroix actually radioed back, “mission accomplished.” What were these tactical teams to do then? Stand there all night to preserve their accomplishment? March back to the TAC centre? No. Not enough force had been shown, so they deployed into the sandy parking lot, a confined area with a steep

³⁰ Transcript, Sept. 28, 2005, p 134.

rise at their backs and bright lights in their eyes. Then they advanced on the fence line: a futile gesture since they intended to go no further. But again, the First Nations boys and men did not know that. They were heartened when, from their perspective, the attack failed.

Bernard George, recognizing how unnecessary this all was and fearing for the safety of his relatives and others behind the fence, came out to harangue the officers. Although armed with a length of pipe, he did not attack anyone. The OPP punched out to attack him, and proceeded to give him a vicious beating. No one from the OPP seems to have witnessed that. The people behind the fence did. And they reacted by coming out themselves and deploying two vehicles into the confined area of the parking lot.

The CMU withdrew in confusion. But not until they had discharged an unknown number of gunshots at the vehicles and elsewhere, hitting Nicholas Cottrelle who was driving the bus and somehow missing Warren George who was driving the car. And not until after Kenneth Deane had shot and killed Dudley George, an unarmed man.

The magnitude of the debacle became evident within hours. The entire First Nation was galvanized into action and blocked Highway 21 at Kettle Point. The next day they marched in numbers to the army camp, then down to the park and then to the TAC centre where, again, OPP officers were forced to withdraw. Their mobile command centre was trashed, they lost vehicles and other equipment, and, as it turned out, they lost the park as well.

Kenneth Deane was held accountable for the homicide of Dudley George. He served no sentence after his conviction but was discharged from the force. No one else was held accountable for creating the situation that made his actions not only possible but, given the history of TRU deployments in southwestern Ontario, a very distinct possibility.

The OPP line of defence for its actions was that they had been fired upon by the First Nations people. There is no persuasive evidence that any of them had firearms in the park or in the sandy parking lot. There is a long history of police discharging their weapons at vehicles they regard as threats to their safety. There are still a few officers who believe they were fired upon and they are a minority even of the officers who were on the scene that night. No one else believes it at all.

Mike Harris got his wish too. The OPP mounted a show of force for him. The law officers of the Crown got him an injunction *ex parte*. And it availed him naught.

PART II SUBMISSIONS

Introduction

The Chippewas of Kettle and Stony Point respectfully submit that the avoidance of incidents like the tragic one at Ipperwash Provincial Park depends upon the knowledge policing authorities bring of Aboriginal peoples and communities, the respect they bring for Aboriginal views and culture, a complete purge of racism from all ranks and virtues of resourcefulness, continuing reappraisal and patience that were so woefully lacking between September 4 and 6, 1995.

At the same time, policing authorities must be insulated from political pressure if they are to do their work in a dispassionate and professional way. This can be difficult to achieve in a society in which politicians are not noted for their reticence and in which policing authorities are frequently obliged to consult with, or inform, them.

Obviously the best way to avoid future policing incidents would be for the general community to be educated in the same way about Aboriginal peoples, their history and communities as well. Dealings with Aboriginal peoples founded on knowledge and respect, faithfulness to the principles of consultation set out in recent Supreme Court of Canada cases such as *Haida Nation*,³¹ and continuing dialogue reduce the possibilities of precipitous action by anyone. The best policing incident is no policing incident.

One cannot read the history of the Ipperwash Park Incident without quickly reaching the conclusion that timely settlement of Aboriginal land claims must be a high priority. Had Canada honoured its obligations to the First Nation and restored the Stony Point Reserve to it at any time prior to 1995, the chain of causation would have been broken.

³¹ *Haida Nation v. B.C. (Min. of Forests)*, [2004] SCC 73.

That is not to say that there would never have been a claim made to Ipperwash Park but the circumstances would have been entirely different, and a timely and fair claims process would have addressed it.

Respect must begin at the highest levels of government and permeate the public service. Legislation, regulations, planning decisions, administrative procedures and policies and law enforcement policies must reflect it. In Ontario, that is not always the case.

Aboriginal and Treaty Rights

Historically, aboriginal rights received little attention or regard in law, although Indian Title was recognized as an aboriginal right.³² Treaty rights had no formal legal recognition at all in Ontario and could not be asserted against provincial regulation until 1951, when s. 88 of the federal *Indian Act* came into effect. Treaty rights did not avail against federal legislation at all.³³

The situation changed dramatically in 1982 when the *Constitution Act* of that year recognized and affirmed existing aboriginal and treaty rights. In Ontario, that had little immediate effect as the province continued as before, arguing that affirmation was qualified by the word “existing”, meaning that if treaty rights had been regulated prior to 1982 they could still be regulated. That did not change until the decision of the Supreme Court of Canada in *R. v. Sparrow* (*supra*), which rejected that argument.

Under *Sparrow*, which was an aboriginal right to fish case, existing (unextinguished) rights could be regulated, but only in limited circumstances and only then if the regulatory

³² See, e.g., The Manitoba Act, 1870.

³³ See, e.g., *R. v. George*, *supra*.

scheme included a priority allocation for the exercise of aboriginal and treaty rights. Ontario changed its prosecutorial practices, but not its laws or regulations. Ontario statutes (unlike Saskatchewan's, for example) are devoid of any reference to aboriginal and treaty rights, which is not just an issue of respect but one of substantive law.

Certainly this legislative vacuum assisted the Harris government in its pretense that there was no substance to aboriginal and treaty rights and that they did not have to treat them seriously, or at all. It is essential, in the view of the Chippewas of Kettle and Stony Point, that Ontario's laws send the signal to all citizens that aboriginal and treaty rights do have their rightful place in this province, consistent with the Constitution of Canada.

This all has an impact on law enforcement as well. In the 1980's, after constitutional amendment but before *Sparrow*, First Nation fishermen from Kettle and Stony Point were raided on the lake by a multi-party task force of MNR conservation officers, OPP and wildlife officials from Michigan. The case went to court after *Sparrow* was decided and, in a decision that was not appealed, the First Nation's treaty rights were vindicated, effectively reversing the *George* decision 25 years earlier. The charges were also dismissed on the basis of other constitutional violations in respect of search and seizure.

It is important that the Commissioner review this particular decision since it relates specifically to the continuing struggle of the Chippewas of Kettle and Stony Point and because it demonstrates the kind of law enforcement that can occur in the absence of respect for aboriginal and treaty rights:

***R. v. Jackson*, [1992] 4 C.N.L.R. 121 (Ont. Prov. Ct.)**

Ontario legislation should also recognize, as an aboriginal right, the interest of First Nations in cultural sites and burial grounds off-reserve, whether on Crown or private land. Such recognition would lead to appropriate consultation in relation to such matters and

entitle them to land claims resolution processes.

Law enforcement officials should receive timely and continuing training in the law of aboriginal and treaty rights.

Land Claims

There is a vast literature on the subject of the land claims processes of the federal and various provincial governments, and it is not proposed to repeat it here. The Inquiry has commissioned a paper from Professor Michael Coyle and the Chippewas of Kettle and Stony Point are content to commend his recommendations to the Commissioner.

Time is always of the essence.

Resources must be equal to the task.

In addition, there must be respect. On the web pages of the Ontario Secretariat for Aboriginal Affairs, there is an FAQ on land claims which includes the following statement:

The courts have determined that the historic relationship between the federal government and Aboriginal peoples, as well as federal jurisdiction for law making in relation to Indians and Indian reserve lands, creates a special trust-like or "fiduciary" relationship with First Nations on the part of the federal government. To a large extent the federal government exercises its fiduciary responsibility for First Nations through the Indian Act.³⁴

This statement reveals two things about Ontario's policy on claims. First, it states emphatically that fiduciary duties to First Nations are owed by Canada. There is no suggestion that they are owed by the province, contrary to the clear decision on point in

³⁴ <http://www.aboriginalaffairs.osaa.gov.on.ca/english/negotiate/about.htm>

Haida Nation. Second, it evinces the traditional “ping pong game” in which the provincial and federal governments point the finger of responsibility at each other while First Nation claimants stew on the sidelines. That is a nasty circle that must be broken.

Surely Ontario can devise a policy that would see claims settled and any issues of responsibility or financing resolved with Canada by way of separate dispute resolution.

Lastly, many claims settlements provide for the acquisition of lands by First Nations that are to become reserve lands. As noted above, however, the federal Additions to Reserves Policy sets up a lengthy, time-consuming and not always successful procedure for this to happen. In the meantime, First Nations bank the land under some form of trust arrangement until it can be conveyed to Canada to be set aside as reserve.

Until the Harris government took power, the *Assessment Act* provided an exemption for lands held in trust for First Nations. Harris removed the exemption while “grandfathering” lands to which the provision previously applied. Today, lands banked by First Nations for claim settlement, economic development or any other purpose are taxable until reserve status is confirmed. That is unfair and unnecessary, and also generally unfunded. When one reviews the nature of properties that are exempt from assessment, it is ludicrous that lands destined to become reserve lands are not.

The Commissioner should recommend that section 3 of the *Assessment Act* be amended to its pre-Harris state.

Consultation

As court decisions such as *Haida Nation* give direction to the necessity and nature of proper consultations with Aboriginal peoples, Ontario should give a clear statement of its intent to comply with that direction.

In fact, Ontario should consider going further than *Haida Nation* currently requires. We have in mind the following passage from that decision:

The answer, once again, lies in the honour of the Crown. The Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof. It must respect these potential, but yet unproven, interests. The Crown is not rendered impotent. It may continue to manage the resource in question pending claims resolution. But, depending on the circumstances, discussed more fully below, the honour of the Crown may require it to consult with and reasonably accommodate Aboriginal interests pending resolution of the claim. (para. 27).

The decision gives guidance in relation to consultation and accommodations that are in a claims process or litigation. That would not address situations like Ipperwash Park where, although the burial ground issue was known to the province in the broad sense since the 1930's and more specifically by way of the notice to the park superintendent in 1993, no one had submitted the issue as a land claim to any formal process.

To ensure that such issues do not fall by the wayside, the policy should address consultation after notice to the province in any form of potential impact on aboriginal and treaty rights, including rights in respect of cultural sites and burial grounds.

The province should establish guidelines which require communications between the provincial government and all local First Nation Bands (within an affected area) where the province has notice of an Aboriginal land, or other related dispute, to ensure that the necessary level of consultation continues through to resolution..

Injunctions: Private Law on Public Land

A common, if not necessary, feature of demonstrations and occupations by Aboriginal protestors and claimants is the injunction. In Part I of this Inquiry, we were repeatedly told that an injunction was a necessary first step before the OPP would act to dislodge protestors. The First Nation does not need to advise the Commissioner on the standard requirements for an injunction in Canadian law, only to point out that it is essentially a private law, equitable remedy which, in this context, is applied to public land. It is also worth noting that injunctions are sought by public authorities more often *ex parte* than on notice, which only gives relief limited under the *Rules of Civil Procedure* in time and frequently, in the exercise of judicial discretion, by other terms and conditions such as provisions regarding service.

In his valuable paper on “Trespass and Expressive Rights” prepared for the Inquiry, Wesley Pue notes that the standard is somewhat different where the Attorney General seeks a “public rights injunction”, citing the decision in *Ontario (Attorney General) v. Ontario Teachers' Federation*:

The courts have consistently held that a public rights injunction, brought by the Attorney General to restrain an alleged statutory breach, will only be granted in exceptional cases, and in particular where:

- (a) there is repeated flouting of the law following determinations of illegality by the body entrusted with making those findings, or there is a serious and established risk to public health and safety
- (b) the court is satisfied that the alleged breach of law is clear; and
- (c) the enforcement provisions of the statute in question have proven ineffective.

The First Nation would add consideration of aboriginal and treaty rights and government's duty to consult to the factors to be considered by a court in the case of a public rights injunction involving an Aboriginal protest or dispute. A recommendation to that effect by

the Commissioner will undoubtedly be persuasive to that end.

A very recent decision of the Superior Court of Ontario in *Platinex v. Kitchenuhmaykoosib Inninuwug et al.* (Court File No. 06-0271 -Thunder Bay- July 28, 2006 per G.P. Smith, J.) illustrates the kind of considerations argued for here and it is commended to the Commissioner for his review. The same considerations should, of course, be applicable in contempt proceedings as well.

The First Nation is keenly aware of the danger that an injunction may give the appearance of being determinative of rights and that it may give rise to an expectation that it will be enforced regardless of police discretion. The rush to an injunction, or undue haste in seeking one, may give rise to recurrences of the type of incident the Commissioner seeks to forestall, or to judicial intervention as currently being witnessed in Caledonia, which is focused on the injunction and not on the merits of the claim.

Even so, the injunction – properly obtained in light of all proper considerations – has its place. As the Commission has heard, the First Nation itself had recourse to one in 1997 to remove protesters from its Administration Building. There was no violence.³⁵

The First Nation does not advocate breaches of public order, but a democracy that recognizes conflicting constitutional imperatives is a sloppy business and rights to protest and to occupy public space are among those imperatives. Public safety is a different issue, but the old saying is that “perfect public order leads to perfect public horror”.

³⁵ Henderson examination of Chief Bressette, March 3, 2005, pp 283-84.

Policing

Major strides have been made since the 1970's in providing more, and more appropriate policing services to Aboriginal communities. Without diminishing those achievements in any way, this Inquiry has learned that more needs to be done. The most urgent need is to eradicate the twin malignancies of racism and stereotyping from the realm of law enforcement.

As noted above, Canada has a lengthy history of racist policies. Aboriginal people now in their fifties can remember a time when Indians could not vote in federal or provincial elections, could not sit on juries or otherwise exercise fundamental rights as members of civil society. It was not surprising that officially sanctioned racism would spill over into the private sphere. And it did.

For reasons now obviously repugnant and arbitrary, Indians had to suffer the indignity of enfranchisement in order to be matriculated citizens and to sever all legal ties to their own nations to achieve that. In most cases, enfranchisement was involuntary and brutal, extending its reach over several generations.

If this explains why the types of attitudes, actual words, symbolic representations and stereotypes that manifested themselves in the Ipperwash incident, it does not excuse them. First Nation and all Canadians have higher expectations of the people they arm to protect them.

Only education can overcome the habits and attitudes of a lifetime, coupled with actual and respectful interaction with Aboriginal communities and individuals. And education is where the process must begin. The Royal Commission on Aboriginal Peoples expressed the need in this way:

The Commission believes it is vital that Canadians understand what happened and accept responsibility for the policies carried out in their names and at their behest over the past two centuries. To this end, the next several chapters explore in greater detail four policy directions based on false assumptions leading to abuse of power: the various *Indian Acts*, residential schools, community relocations, and the treatment of Aboriginal veterans. This historical legacy also inevitably takes up a substantial part of the agenda for change that we map out in subsequent volumes of our report. It is an agenda that addresses the need for a change in assumptions, principles and policy directions, which are rooted in a dynamic of colonialism that has been profoundly wrong and harmful.

This recommendation is directed at broader public education and the First Nation supports a recommendation for provincial policies, strategies and curricula developed with First Nations to address public education

1. Training

The Manitoba Justice Inquiry provided a detailed list of the types of training that law enforcement officers should receive:

The curriculum of the cross-cultural training course should include the following matters:

- The History of Aboriginal Peoples. This should include a review of the early pre-contact history of Aboriginal peoples, the number and variety of Aboriginal cultures and tribes in Canada, the Aboriginal use of land and traditional tribal forms of organization.

Early contact with the Europeans, their relationship with Aboriginal peoples up to Confederation, and the circumstances leading up to and including the negotiation of the treaties should be reviewed. It is particularly important to ensure that non-Aboriginal people understand and appreciate how Aboriginal people feel about their historical rights and why.

The history of residential schools and the child welfare policies of the 1950s, 1960s, 1970s and 1980s, and how these affect today's parents and children, are important to understand.

- Aboriginal Culture. The role of men and women, the role of chiefs, elders, the

family and extended family, and the role of children in Aboriginal society should be explained. Ethical principles, such as non-interference, acceptance, truthfulness, silence, emotional restraint and sharing, are important to understand.

The philosophy, spirituality and "religious" beliefs of the various Aboriginal cultures of Manitoba should be explained. An explanation of the significance of Aboriginal sacred objects, such as the sweat lodge, the shaking tent, the Sundance, pow wows, the use of the pipe, eagle feathers, sacred medicines such as sweetgrass and so forth, should be given.

The questions of "law" and wrongdoing, and how they are dealt with, are important for those in another system to understand. The traditional methods of dispute resolution and their level of acceptance are relevant.

- **Discrimination.** Identifying racism, discrimination and prejudice is an important part of cross-cultural awareness. The existence of racism, prejudice, stereotyping and discrimination as experienced by Aboriginal people should be discussed. The tendency to make assumptions and to generalize when dealing with Aboriginal people, and the affect of this, should be explored.

How systemic discrimination works and what to do about it is an equally important part of cross-cultural awareness.

- **Statistics.** Demographic material outlining the situation of Aboriginal people should be presented. The numbers of Aboriginal people in the courts and jails, and the reasons for this, should be discussed. The reasons for unacceptable conduct should also be considered.

- **Aboriginal Community Life Today.** The current political, social and economic realities of life in Aboriginal communities should be explained. The efforts being made by Aboriginal people to improve life in their communities, and the services that are available to people and to the justice system, should be understood. Advances made in the fields of education, health and welfare, child welfare, budgetary control, alcohol reduction and abuse programs should be described.

- **Urban Living.** The realities of life for Aboriginal people in urban areas should be presented. Aboriginal-police, Aboriginal-jail and Aboriginal-court relationships should be explained from the Aboriginal perspective. The knowledge, or lack of knowledge, on the part of Aboriginal people concerning the law and the legal system should be made known.

- **Aboriginal Concepts.** Those working in the justice system need to be made

aware of the problems which arise for Aboriginal people as a result of their different concepts. That information would help justice officials to understand the reasons for Aboriginal reactions to the legal process, such as an unwillingness to testify, apparently conflicting or changing testimony, delays in answering questions and misapprehensions of the consequences of testifying. The extent to which Aboriginal people understand English, and their reaction to the police, to parole boards and to the courts, also need to be understood.

•Impact of Existing Systems. The effect on Aboriginal people of incarceration and of delays in getting a case disposed of should be explained. The cost of repeated attendances should become known.

Presentation

Those presenting the programs should be familiar with the historical and current situation of Aboriginal people, and have a good working knowledge of the legal system. We consider it essential that numerous Aboriginal people of both sexes be involved in the presentation, including men and women who have been incarcerated.

There should be an opportunity for conversation, apart from formal sessions, between justice system personnel and Aboriginal people. Those participating in the program should visit an Aboriginal community such as an Indian reserve to observe the way of life and amenities available to Aboriginal people. Similar visits to Aboriginal neighbourhoods in Winnipeg would be of value. Some cultural event might be included in the three-day program.

In our opinion, these courses should be provided to all new personnel, as well as to judges, lawyers, and service providers now working within the justice system

The First Nation supports these recommendations and commends them to the Commissioner. From the specifics of these recommendations, one can extract a few general guidelines:

- a. What's good for one is good for all, including Aboriginal officers.
- b. Meaningful training is needed, not tourism.
- c. Dialogue is more important than lecture.

- d. Understanding is the goal, not 'time served'

The First Nation also emphasizes the importance of including Aboriginal communities in the development and presentation of training programs.

2. Racism Policy

The Chippewas of Kettle and Stony Point submit that the Commissioner should recommend an amendment to the *Police Services Act* mandating a “zero tolerance” policy for all police services in Ontario.

3. Discipline

It should be clear to all officers that racist behaviour or expression in any form is a matter for discipline. The Commissioner of the OPP should develop a specific policy for such discipline and submit it for review and comment to a broad spectrum of human rights organizations, including the Chiefs of Ontario Office, its member organizations and independent First Nations. Where the inappropriate conduct involves Aboriginal people, there should be provision for an Aboriginal elder to participate in the discipline process.

The discipline policy should make it clear that dismissal is an immediate option and that continued service is probationary if remedial training or counseling are indicated on the basis of some realistic expectation of reform.

4. Review and Promotion

The policies of the OPP and other police services should include consideration of past interactions with Aboriginal persons, communities and enforcement matters with a view to

having a scoring factor that affects performance reviews and promotions. Again, Aboriginal groups should participate in the development of such policies.

6. Incident Reports and Records

This Inquiry has learned of serious omissions in the historical record of the OPP with respect to the Ipperwash Incident. Specifically, a recommendation should be made that, in cases of CMU/TRU mobilization:

- a. All communications are to be directed through monitored lines and channels which shall be recorded.
- b. There should be duplication of recording facilities with separate switching to ensure that at least one record is made.
- c. Officers shall complete their notes with all due despatch in the circumstances and in any event within 24 hours of an incident.
- d. Officers notes shall be producible to the SIU and otherwise, as provided by law.
- e. Officers shall complete an incident report whenever they draw, point or aim a firearm at a member of the public regardless of whether or not it is discharged.

Local Incident Management Teams

Acknowledging the function and value of the Commissioner's Select Liaison Group on Aboriginal Affairs, it is recommended that the Ontario Provincial Police establish, within

each of their regions, an Aboriginal Incident Management Team. This team would be comprised of police representation from within the particular Region, and those outside the organization, including municipal officials, emergency service, First Nation community members, local Band leadership, and at least one First Nation elder.

The duties of the Team would include:

- a. advising local OPP detachment commanders on general local policing issues affecting Aboriginal people;
- b. facilitating communication, and fostering good relations between local OPP detachments and area First Nation policing services and their officers as well as Aboriginal communities generally;
- c. when there is a public order event involving Aboriginal people, or protest involving Aboriginal rights or land, advise the detachment commander / incident commander, on OPP operations, and facilitate communication between affected parties.

Ontario Ministry of Aboriginal Affairs

The province should establish a separate Ministry of Aboriginal Affairs, with a separate Minister, to have the direction of relationships between Ontario and its Aboriginal communities and members and to be charged with the implementation of the recommendations of this Inquiry.

The Ministry shall have a separate and specially-constituted advisory committee consisting of senior bureaucrats, representatives of Aboriginal communities and others. The committee shall have its role and duties specified in legislation creating the Ministry,

after consultation with Aboriginal organizations and communities.

Healing

This Inquiry has heard much about the individual and community trauma suffered by the First Nation and its members, and especially those who were in the park or army camp the night of September 6, 1995: see, generally, the submissions of the Chief Coroner on point and the examination of Chief Bressette by Mr. O'Marra on March 3, 2005, pp 259-68.

The Chief Coroner has made the following recommendation:

There is a need for provincial and/or federal authorities responsible for First Nation affairs to provide timely access to counseling services for those who experience debilitating emotional and psychological consequences from exposure to or involvement in violent and traumatic events involving police actions.

The First Nation supports that recommendation. At the same time, it notes that many of those directly involved in, or affected by, the Ipperwash Incident have never had access to or availed themselves of counseling services.

The First Nation further recommends that the province, in consultation with the First Nation, conduct an audit of counseling needs arising from the incident and develop a healing strategy for access to counseling, whether such counseling be oriented more towards conventional medical services or towards Aboriginal traditional healing.

Ipperwash Provincial Park

The Inquiry has learned that Ipperwash Provincial Park was originally part of the Treaty Stoney Point Reserve No. 43. It was sold, after a form of surrender in 1928, to an individual named Scott and subsequently purchased from him by Ontario to create the

park. The Inquiry has also learned of the fact that First Nation members have many concerns about the surrender and that it is the subject of a land claim. In addition, the Commission has learned of the treatment afforded Aboriginal human remains in the park by the Province.

Ipperwash Provincial Park has not operated as a park since it closed for the season in 1995. There is no evidence of any intention to operate it as a park or in any other public manner by the province of Ontario.

The park stands now as the historical site of the death of Dudley George.

It is within the Commissioner's jurisdiction to make a recommendation about a

disposition of this provincial land. And it is the intention of the First Nation, and part of its existing claim, to reconstitute the Stoney Point Reserve as described in Treaty No. 29.

The First Nation therefore respectfully requests a recommendation by the Commissioner that Ontario cede the administration and control of the lands known as Ipperwash Provincial Park to the Crown in right of Canada, to be set aside as, or as part of, Stoney Point Indian Reserve No. 43.

Anthony O'Brien "Dudley" George

The First Nation submits that the province should fund the establishment of a monument or memorial to the memory of Dudley George and his murder at the hands of the Ontario Provincial Police. The nature and site of this monument or memorial shall be established in consultation with the First Nation and its members together with the Dudley George Estate.

“The Lost Girl”

The First Nation further submits that the province should fund the establishment of a monument or memorial, in consultation with the First Nation, at or near the site where the remains of the young Aboriginal girl were found in 1950, commemorating her and expressing an apology for the treatment afforded to her remains.

Summary of Recommendations

It is the intention of the First Nation to submit a consolidated list of recommendations, that will include those of the other parties that it is prepared to endorse, with its Submissions in Reply.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

CHIPPEWAS OF KETTLE AND STONY POINT

(By Their Counsel)