

IN THE MATTER OF THE PUBLIC INQUIRIES ACT, R.S.O. 1990, C. P. 41

**AND IN THE MATTER OF THE COMMISSION OF INQUIRY INTO THE
CIRCUMSTANCES AND EVENTS SURROUNDING THE DEATH OF ANTHONY
O'BRIEN (DUDLEY) GEORGE**

SUBMISSIONS ON BEHALF OF CHRISTOPHER HODGSON

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IPPERWASH PUBLIC INQUIRY

BEFORE THE HONOURABLE JUSTICE SIDNEY LINDEN, COMMISSIONER

WRITTEN SUBMISSIONS OF CHRISTOPHER HODGSON

Overview

Christopher Hodgson was the Minister of Natural Resources during the critical moments in the Ipperwash Provincial Park situation. Starting on August 2, 1995, when concerns were raised about a possible protest at the Park, Mr. Hodgson and his staff were reluctant participants.

Mr. Hodgson was not a participant in any discussions with the protestors in the summer of 1995. He did not know their motivation for occupying the Park, but, it was a widely held view, which he shared, that they were trying to draw attention to the failure of the Federal government to return the adjoining military base to the First Nation in a clean state.

Mr. Hodgson saw the management of the Ipperwash situation as an ONAS and a police issue once the matters of public safety of concern to MNR had been addressed by the closure of the Park and the evacuation of MNR park personnel. He was backed into a press scrum on September 5, 1995, but managed to avoid subsequent press contact even though the Interministerial Committee insisted on giving him responsibility for that over his objections and those of his staff.

Mr. Hodgson was disappointed that no efforts had been made earlier in the summer to defuse the situation, but that disappointment he laid at the feet of the Ontario Native Affairs Secretariat, which he understood to be responsible for the file, and not at the feet of the Ontario Provincial Police.

At no time did Mr. Hodgson attempt to direct the police. He was well aware of the strict separation between the policing function, which is the exclusive responsibility of the police, and the function of government.

In terms of the Commission's mandate, it is respectfully submitted that the finding should be made that Mr. Hodgson did not and made no effort to direct the police.

This submission addresses:

1. Mr. Hodgson's personal details;
2. A chronology and narrative setting out the most likely sequence of events relating to the involvement of Mr. Hodgson and his staff;
3. Differences in the evidence between Mr. Hodgson and other witnesses.

PART I - PERSONAL DETAILS

Mr. Hodgson graduated from Trent University with an Honours B.A. in history and political science. Before being elected as MPP for the riding of Victoria-Haliburton, on March 17, 1994, he worked a real estate agent. He was also the Warden of the County of Haliburton and the Reeve of the Township of Dysart. At the time of the events at Ipperwash Mr. Hodgson was the Minister of Natural Resources and also the Minister of Northern Development and Mines, two separate and distinct portfolios. (Jan 11, 2006, p. 300-306)

PART II - A CHRONOLOGY OF THE INVOLVEMENT OF CHRISTOPHER HODGSON AND HIS IMMEDIATE STAFF IN THE IPPERWASH EVENTS

On August 1, 1995, Julie Jai, Director of the Legal Services Branch of the Ontario Native Affairs Secretariat (“ONAS”) called a meeting of the Interministerial Committee to discuss the situation at Camp Ipperwash (witnesses use various names for this committee including “the emergency committee”, the “Blockades Committee” and the “Barricades Committee”). Her e-mail inviting Mr. Hodgson’s executive assistant, Jeff Bangs, among others, stated:

MNR (local) is worried because of rumours that the dissident group which forcibly entered Camp Ipperwash will take over Ipperwash Park. They are concerned about possible risks to public safety in the park and feel that we should develop an action plan in case there is a take over. (Ex. P 646)

The meeting of the Interministerial Committee convened at ONAS at 3:30 p.m. on August 2, 1995 and a briefing occurred (Ex. P 503). The meeting notes indicate that MNR and OPP staff at Ipperwash “will monitor the situation closely” (Ex. P 506, p. 5). After attending this meeting, Mr. Bangs briefed Mr. Hodgson (Bangs, Nov 3, 2005, p. 142).

Shortly after the long weekend in August, 1995, Mr. Hodgson’s office was contacted by the press for comments about an incident in Ipperwash on the weekend. Apparently, some of the native occupiers of the Ipperwash military base had taken a car onto the beach at the Park and had started to drive along the beach doing “doughnuts” in the sand. (Vrancart, Oct. 27, 2006, p. 16-17)

Mr. Hodgson was briefed by Deputy Minister, Ron Vrancart and Mr. Vrancart’s executive assistant, Peter Allen, on the history of the Ipperwash area, and in particular the native claim to

the military base. He was advised at the time that the Federal government had not properly dealt with the claim, and that a dissident group had been formed that was starting to escalate matters in order to get some action from the Federal government. He was advised that there was no land claim in relation to the Park, but there was a valid one with respect to the military base. The local council and chief were not in favour of the dissident group that had taken over the military base. He also learned that the OPP had placed officers in the Park posing as campers since there had been a few incidents between the occupiers of the base and members of the public who were camping or using the facilities at the Park. Mr. Hodgson was told it was not an MNR issue and that he should not comment on it. It was a police matter. He accepted that advice.

As a result of the various briefings, Mr. Hodgson took the view that the situation in the Park “wasn’t an MNR issue, that ONAS and the police were in charge of this issue, so it wasn’t something that we were to be involved in, other than at a local level on information sharing”.

(Jan 12, 2006, p. 60)

The Events of September 1995

Labour Day, September 4, 1995

Ipperwash Provincial Park was closed at 6:00 p.m. for the season and by 7:30 p.m. the occupiers had moved into the Park.

On Labour Day, Mr. Hodgson was closing the cottage and returning with the family to the Town of Haliburton, which is located near Algonquin Park. He received a telephone call concerning a native protest that was apparently taking place at Ipperwash Provincial Park. He believes that the caller was Deputy Minister Ron Vrancart. Mr. Vrancart told Mr. Hodgson that a group of dissidents calling themselves the “Stoney Point First Nation” had moved from the Ipperwash military base (which they had previously occupied) into the adjacent Park.

Jeff Bangs, Mr. Hodgson's EA, also called Mr. Hodgson and briefed him again on the events of 1993 and the occupation of the lands surrounding the military base (which is immediately south of the Park) by certain individuals. Mr. Hodgson understood from the briefing that the 1993 occupation was the result of a longstanding dispute between the Department of National Defence ("DND") and the Stony and Kettle Point First Nation dating back to World War II. The band had been seeking the clean up and return of the lands, which had been occupied by DND for decades, with little success. (Jan 12, 2005, p. 81)

Mr. Hodgson learned that an escalation of the occupation occurred in late July 1995 when the occupiers moved into the built-up area of the army base. The military departed soon after the occupiers moved in, leaving the entire area under their control.

Mr. Hodgson learned that the MNR had co-operated with First Nations in the area. First Nations people were hired by the MNR to assist with Park operations, and religious and other ceremonies were allowed to take place on Park lands without charge. (Hodgson, Jan. 12, 2006, p. 78, Vrancart, Oct. 27, 2005, p. 143)

Mr. Hodgson believed that, based on the staff briefing, the dispute over these lands was an issue between a Federal Crown department and did not relate to the Park lands. He understood that the Park had been purchased by the Ontario government from a private citizen many decades earlier and was not the subject of an appropriation order under the *War Measures Act*, as had been the case with the military base. (Jan. 12, 2006, p. 82)

When Mr. Hodgson asked Mr. Bangs whether the occupiers of the Park had voiced any demands or made any land claims, he was told that there had been none to the knowledge of Mr. Bangs. (Hodgson, Jan 12, 2006, p. 22, Vrancart, October 27, 2005 p. 147, 156) It was a widely held

view that the occupation was carried out in order to focus attention on the inactivity of the Federal government in responding to the land claim in respect of the Army base.

Mr. Hodgson believes that Mr. Bangs also advised him that the local MNR presence was co-operating with the occupiers to prevent any confrontation. Mr. Hodgson agreed with this strategy.

As Minister, Mr. Hodgson's primary concern was the safety of the campers, local residents and MNR staff. (Hodgson, Jan 12, 2006, p. 85, Vrancart, Oct. 27, 2005, p. 139) The Park was closed after the Labour Day weekend and MNR staff was evacuated. The OPP were in charge and had been on the site since the August long weekend. (Hodgson, Jan. 12, 2006, p. 86)

Tuesday, September 5, 1995

On the morning of Tuesday, September 5, 1995, Mr. Hodgson dropped his son Cody off at school for his first day, and drove to Toronto.

In the meantime, the Interministerial Committee met between 11:00 a.m. and 2:00 p.m., and Jeff Bangs and the Deputy Minister's E.A., Peter Allen, attended. According to the handwritten notes of Julie Jai (Ex P 536 at page 3), Mr. Allen remarked that the occupiers were "just occupying an empty park – shouldn't take overly precipitous action". Mr. Bangs is noted as saying that, in an earlier discussion with the Minister, the concern emerged "if we get an injunction, we will be expected to enforce it – and will escalate things – could lead to a confrontation". This also appears in the notes of Eileen Hipfner (Ex. P 510 at p. 4). The Meeting Minutes (Ex P 509) note that the MNR was to act as spokesperson "in the short term". The three messages were to be: "(1) The province has valid title to the park. (2) The occupiers have been told they are trespassing and have been asked to leave. (3) The Province will take

steps to remove the occupiers ASAP ...” . “The OPP have the discretion of how to proceed with removing the stoney pointers from the park”. (Minutes, P. 509, p. 3).

Staff then prepared a briefing note for the Minister (Ex. P 918).

When Mr. Hodgson arrived at the office after 2 pm, he was briefed for about half an hour by Mr. Bangs, Mr. Vrancart and Mr. Allen. They told him that the general consensus of the ministries involved (Solicitor-General, Attorney General and Native Affairs) in the earlier Interministerial Committee meeting was that since the MNR owned the Park, it should lead the communications with the media. He was told that he was expected to handle a press conference on the Ipperwash situation. The purpose of the press conference was to advise the public as to the Ontario government’s position with respect to the occupation of the Park.

This role troubled Mr. Hodgson somewhat, since he had previously been told that Ipperwash was a police matter and was not a matter for the MNR. Mr. Hodgson had no choice, however, but to address the press since they were gathered in the lobby of the Ministry. They had not been summoned by Ministry staff. It was more of a scrum than a press conference. Mr. Hodgson’s remarks are self-explanatory (Transcript Ex. P 529).

While he was obliged to take the initial lead in addressing the media, Mr. Hodgson felt that, since the OPP were involved, this was not a matter for the control and direction of the MNR but for the police. It had not been a MNR issue all summer. Once the issues concerning public safety had been addressed by the closure of the Park, MNR had no direct need to be involved. The only outstanding issue for MNR was getting into the Park so that the water system could be winterized.

At the time of the press conference, Mr. Hodgson was not aware of any claims that the occupiers had against the Government of Ontario. Although a question was raised at the press conference, he was not actively aware at the time of the possibility that there was a burial site in the Park.

Mr. Hodgson understood that the OPP were trying to establish contact with a spokesperson for the occupiers. Pending some clarification from the occupiers as to their demands and their position, he was advised that it was the view of the band council and the Interministerial Committee that the occupiers were illegally trespassing. Mr. Hodgson remembers being told that Mr. Peter Sturdy of the Ministry of National Resources, Les Kobayashi – the Park superintendent, together with an OPP officer, had unsuccessfully tried to serve a Notice of Trespass on the occupiers.

Wednesday, September 6, 1995 - Morning

At the beginning of the day, Mr. Hodgson was briefed by Mr. Bangs (Jan. 12, 2005, p. 131). He does not recall the precise nature of the briefing, but does remember expressing to Mr. Bangs his determination not to be the government spokesperson on an issue for which he did not have responsibility.

There was an Interministerial Committee meeting in the ONAS Boardroom at 9:30 a.m. which continued until 11:45 a.m. Jeff Bangs and Peter Allen attended, among others (Minutes, Ex. P. 509).

Julie Jai, the Director of Legal Services Branch of ONAS made handwritten notes of the meeting of September 6, 1995 (Ex P 536). Those notes contain the following entries:

MNR – now view this as a police issue (p. 1)

Jeff – we did what was agreed re: messages – he stuck to the script – their Minister doesn't want to carry this – especially if it spreads beyond the park – feels this is quickly spiralling out of MNR's hands – OPP should be spokespeople (p. 2)

...

Local spokesperson to the OPP

Ministerial spokesperson – “MNR doesn't want it to be them” (p. 6)

“Minister Hodgson will take lead in communications as property owner” (p. 6)

Eileen Hipfner's handwritten notes of the meeting (Ex. P 636) corroborate the notes of Julia Jai. It appears from her notes that Peter Allen was the one who made the remark that “MNR views this as a police issue – MNR would prefer to take a back seat at this point”.

Her version of comments made by Jeff Bangs is as follows:

Went to Minister with plan developed at table

- he spoke to 8-10 media outlets

- the way things are escalating, Minister doesn't want to carry this, especially with threat to nearby lands

- Minister upset because situation has not been contained to military base

- gunfire, damage to park property

- are they digging trenches?

- this is quickly spiralling out of MNR's hands (Ex. P 636)

It is quite plain from these entries that neither Mr. Hodgson nor his staff thought he should play a role, despite the decision at the Interministerial Committee that he should continue to be the communications lead.

Mr. Hodgson decided not to attend the Cabinet meeting that morning, or at least not to arrive on time, so as to avoid dealing with the media who were customarily outside of Cabinet meetings prior to their commencement to scrum Ministers. As Mr. Bangs said (Nov. 3, 2005, p. 155) "he deliberately decided not to attend Cabinet that morning because he knew he would have to talk to the media if he did. And he felt strongly enough about the fact that he should not be the spokesperson that he chose not to."

In fact, Mr. Hodgson did not address the media about the Ipperwash situation after the media scrum on September 5, 1995.

Mr. Bangs telephoned Mr. Hodgson during the Interministerial Committee meeting and, in Mr. Hodgson's recollection, "said that we were requested to go to a Ministers' briefing with our deputies; sort of an information meeting at the tail end of the Interministerial Committee meeting, so we thought it would be around 11:00 to 11:30". (Jan 20, 2006, p. 140)

Mr. Bangs came back to MNR and escorted Mr. Hodgson to that meeting, which was ostensibly to be with Cabinet ministers and other senior officials to discuss the Ipperwash situation. The precise location of the meeting is unclear. Mr. Bangs remembers that it was at the Solicitor General's office on Bloor Street. Mr. Hodgson remembers the boardroom, but he does not know if it was at the Solicitor General's office or at the ONAS office. It appeared to Mr.

Hodgson to be in the same room where the IMC meeting had taken place, because it appeared to be “just wrapping up when we walked in”. (Jan 12, 2006, p. 142)

Peter Allen met them at the door and said that because the other Ministers were at the Cabinet meeting they would not be present. Room was made at the table for Mr. Hodgson and Mr. Bangs. Mr. Vrancart joined Peter Allen who was sitting on a sidewall. Mr. Hodgson believes that the meeting lasted about 15 minutes in all.

Mr. Bangs specifically recalls seeing Ronald Fox and Scott Patrick (Nov 3, 2005, p. 161).

Mr. Hodgson did not know Mr. Fox, nor did he know that he was an OPP liaison officer. At the time Mr. Hodgson believed him to be a civil servant.

Mr. Hodgson learned at the meeting that the Interministerial Committee had been involved in contingency planning leading up to the long weekend. It became clear to him that their planning had been directed at removing occupiers from the Park, not at preventing the occupiers from entering it.

Mr. Hodgson was told that the strategy was for representatives of the Attorney General to get an injunction against the occupiers using an affidavit to be sworn by a representative of the Ministry of Natural Resources.

Mr. Hodgson stated that the Ministry of Natural Resources would not be the communications lead and that he would not be the spokesperson. His view was that since the police were involved they should see to the matter. The Attorney General was responsible for getting the injunction. The MNR had a residual role as property owner and would co-operate with the Attorney General's office by providing an affidavit to support an injunction to require those who were illegally occupying the Park to leave it.

Mr. Hodgson understood from the discussion that, to be effective, the injunction had to be served on the occupiers, who might be armed. Someone, Mr. Hodgson believes it was Mr. Fox, raised the prospect of serving the injunctions on the occupiers through the use of a helicopter that would stay out of rifle range. This struck Mr. Hodgson as being dangerous both to those in the helicopter and to those on the ground. He told Mr. Fox that he thought that dropping 300 or so copies of bulky injunction materials from a helicopter might injure people.

Mr. Hodgson then related an episode from a situation comedy called “WKRP in Cincinnati” that he had seen some years earlier. As part of a commercial promotion, the television station dropped live turkeys from a helicopter, not realizing that turkeys could not fly. People were injured. He told this story to make the point. (Hodgson, Jan. 12, 2006, p. 151-152)

During the discussion of the plans of the Interministerial Committee, questions were raised by some in the room. Mr. Hodgson recalled someone asking why the police did not simply go in and arrest the occupiers as trespassers without getting an injunction. To this and other questions, Mr. Fox would raise concerns about the political optics, which Mr. Hodgson found inappropriate coming from a civil servant. (Hodgson, Jan. 12, 2006, p. 154)

Eventually Mr. Hodgson said to Mr. Fox that, just as the politicians have no authority to direct the police, the politicians were not looking to the Interministerial Committee or the civil service to give political advice. Mr. Fox responded that he was describing the reality of the situation, and Mr. Hodgson reacted by noting that the reality was that all of the contingency planning that had been done seemed to be directed at removing occupiers from the Park, not at preventing them from getting in in the first place. (Hodgson, Jan 12, 2006, p. 154)

After the meeting, Mr. Hodgson returned to MNR. There was a Cabinet meeting under way at the time that he did purposely not attend in order to avoid the media scrum.

Wednesday, September 6, 1995 - Afternoon

After the Cabinet meeting, Mr. Hodgson was summoned by telephone to attend an ad hoc meeting of Ministers and assistants concerning Ipperwash in the Cabinet dining room. He attended along with Ron Vrancart and Jeff Bangs. Also present at the meeting were Robert Runciman, Charles Harnick, Premier Harris, Ron Fox, and Paul Rhodes (and others). Mr. Hodgson believes that the meeting lasted about ten to fifteen minutes. The meeting did not start until Premier Harris sat down and it ended as soon as he stood up. To the best of Mr. Hodgson's recollection Mr. Fox was there throughout.

Mr. Hodgson arrived at the meeting by walking through the Cabinet meeting room, which was empty except for staff clearing up the left over material, and into the dining room. He was one of the last to arrive, since the other Ministers had come from the Cabinet meeting that had just concluded. When he entered the room most of the people in attendance were seated. The Premier was standing up talking to some people behind his chair at the head of the table (Jan. 12, 2006, p. 170). There were two empty chairs to the left of the Premier. Mr. Hodgson and Mr. Vrancart sat down and Jeff Bangs sat behind them.

To the best of Mr. Hodgson's recollection Mr. Harnick began the meeting. The evidence seems clear that Elaine Todres, Deputy Solicitor General spoke, but Mr. Hodgson cannot recall that. Larry Taman, Deputy Attorney General, and Ron Fox reported on what was happening at Ipperwash. They went through a chronology of the events and then moved on to next steps, which involved their recommendation that an injunction be obtained as soon as possible. The

injunction would be pursued by the Attorney General's office in the name of MNR. (Jan 12, 2006, p. 183)

Mr. Hodgson does not recall that there was any disagreement with the recommendations as to next steps. The Attorney General was to deal with the press. Any enforcement of the injunction would be in the hands of the Solicitor General.

Premier Harris was blunt in his comments and expressed disappointment in the way things had been handled, and said something along the following lines: that he understood that this is a police matter, that the government is not directing the police, and that the government is taking staff direction on the injunction. Then he stood up and the meeting was over. (Bangs, Nov. 3, 2005, p. 100; Harnick, Nov. 28, 2005, p. 19)

Mr. Hodgson does not recall Premier Harris making any mention of removing the occupiers. The Premier made it very clear that this was a police matter.

At no time during the meeting did Mr. Hodgson say anything.

Mr. Hodgson recalls that he was one of the first ones to leave (Jan. 12, 2006, p. 203), immediately after Mr. Runciman.

As Mr. Hodgson left the room, he noticed that Paul Rhodes, the Premier's media advisor, was briefing him for an upcoming media scrum. Mr. Vrancart remarked in an aside to that it looked as though Mr. Hodgson would no longer be media lead on the issue. (Vrancart, Oct. 27, 2005, p. 78, 180; Hodgson Jan 12, 2006, p. 212)

Thursday, September 7, 1995

Mr. Hodgson learned of the shooting death of Dudley George in an early morning telephone call from Mr. Bangs. He does not recall attending any meetings regarding Ipperwash on September 7, 1995. (Jan. 12, 2006, p. 245)

Meeting with Chief Bressette

Mr. Hodgson and Peter Allen met with Chief Bressette some time after September 6, 1995. At that time the Ministry was, in concert with others, trying to find some way to defuse the situation at the Park. The Chief was very much concerned about his people. The Chief confided in Mr. Hodgson that he was personally afraid of the occupiers and the potential for violence. He indicated that he could not identify a leader and that this made it difficult to negotiate with the group. He also said he could not control them.

Mr. Hodgson indicated to Chief Bressette that he sympathised with him and would do what he could to help. Mr. Hodgson recalls suggesting that a neutral third party be brought in to try and resolve the matter. Mr. Hodgson felt to some extent that the Federal Crown was responsible for creating this situation through their failure to return the Base lands to the band council. Mr. Hodgson thereafter wrote letters to the Federal Crown to ask them to resolve the situation concerning the ownership of the military base lands.

Following up on the Chief's request, MNR hired a mediator by the name of Lloyd German to "come in and see if he could find some resolutions to some of the problems locally with an attempt to try and get the Park back into operation but also an attempt to try and engage the Federal government to address some of the outstanding issues." (Jan. 12, 2006, p. 258). Mr. German was unsuccessful in engaging the Federal government and that effort failed. Mr. Hodgson's goal in appointing Mr. German was, as he put it: "we wanted to help the First Nation

to get the Federal government involved to do what they were legally and, in my opinion, morally obligated to do, return the military base, clean it up in good condition.” (Jan. 12, 2006, p. 133 - Exhibit P1012).

PART III – DIFFERENCES IN THE EVIDENCE

This section of the submissions addresses differences between the evidence of Mr. Hodgson and his staff and others who have given evidence.

1. The comment allegedly made by Premier Harris

In his evidence, Charles Harnick, Attorney General at the time of the Ipperwash occupation, made the following statement (November 28, Vol. 1, Page 9):

A: Okay, I remember leaving the Cabinet room and as always there are a number of people milling about and I – I walked over to the – the dining room. I may have stopped to talk to people.

When I got to the dining room the – there were people there in their places around the table. And as I walked into the dining room the Premier in a loud voice said, “I want the fucking Indians out of the park.”

And I was, at that point I think, just taking my seat. I didn’t hear who had spoken previously to – evoke that comment.”

Mr. Hodgson did not hear the Premier make the comment. (Jan 12, 2006, Vol. 1, pp 199-201).

Mr. Hodgson’s evidence was that he was one of the last to enter the room and the others were seated when he arrived. If the comment was made at the time that Mr. Harnick suggests, when

Mr. Harnick was taking his seat, then none of Mr. Hodgson, Mr. Vrancart or Mr. Bangs was in the room to hear it.

2. Did Mr. Hodgson make the inflammatory remark?

Mr. Hodgson's evidence was that he said nothing during the meeting in the Cabinet dining room. With the sole exception of Dr. Todres, no one else at the meeting who gave evidence testified that they heard Mr. Hodgson say anything.

Dr. Todres testified (Nov. 30, 2005, Vol. 1, p. 57):

A: He [Mr. Hodgson] said, "get the fucking Indians out of my park."

This alleged statement is remarkably similar to the one attributed to Premier Harris by Mr. Harnick.

Mr. Hodgson categorically denies making the statement. Dr. Todres' evidence was put directly to Mr. Hodgson: (Jan. 12, 2006, Vol. 1, p. 207):

Q. Mr. Hodgson, at any time did you say in the presence of Dr. Todres "get the fucking Indians out of my park" or words to that effect?

A. No, I did not or in the presence of anyone else. I've read that quote extensively in the news media and it is embarrassing. I can assure you I absolutely did not say anything to that effect.

In her evidence, Dr. Todres recalls "a very noisy air conditioner in some corner" (Nov. 30, 2005, p. 175) and that "it was quite difficult to hear in that room", she was "straining at the edge of [her] seat to hear what was actually going on" (Nov. 30, 2005, p. 63). Dr. Todres also had

difficulty remembering the content of the meeting including the seating arrangements, or the presence of her own staff who accompanied her. (Nov. 30, 2005, p. 50, 51, 174-5) None of the other witnesses corroborate Dr. Todres on the statement that she attributes to Mr. Hodgson.

It is submitted that Dr. Todres was simply mistaken in attributing the alleged statement to Mr. Hodgson. It is respectfully requested that the Commissioner make an express finding that Mr. Hodgson did not make the alleged comment.

3. Did Mr. Hodgson know that Ron Fox was a police officer?

Mr. Hodgson's evidence is categorical. He did not know at any of the relevant times that Mr. Fox was a police officer. Mr. Hodgson recalls finding out that Mr. Fox was a police officer about three months after the incident as the result of a question in the Legislature. (Jan. 16, 2005, p. 116)

Q: Now, I just want to be clear on -- on your evidence about Ron Fox's status as an OPP officer. You testified that you were unaware that he was an OPP officer seconded to the Solicitor General; am I right?

A: That's correct.

Q: Now, you testified, in response to questions from Ms. Vella, that you thought he was from ONAS and the Chair of the Interministerial Committee Meeting and that you said that you learned a couple of hours later, at the dining room meeting, that he had been seconded to the Solicitor General, but you thought seconded from ONAS. Do I have that right?

A: That's correct.

Q: And that you only became aware of the fact that he was a police officer some three (3) months later?

A: Yeah, I could stand to be corrected on the three (3) months. I know it was a question in the Legislature about Mr. Fox and it was referred to him as a police officer. That was the first time that I'd ever heard that he was connected to the police.

It might have been even later that Mr. Hodgson found out that Mr. Fox was an OPP officer, but Mr. Hodgson thought he was a civil servant at the time of the dining room meeting.

He made this clear in his evidence. (Jan. 12, 2006, p. 159)

Q: Now you've indicated that you believed that Mr. Fox, at the time, was the chair of ONAS. Did you have any awareness that he was also acting as a liaison, of sorts, as between the Government and the OPP on this matter?

A: No. I had no idea of that.

Q: Did you have any awareness that he was in contact with the Incident Commander at the -- with respect to the Park situation?

A: Absolutely not.

Q: Had you known either of these points, would you have spoken to him as candidly as you did?

A: I wouldn't have spoken to him at all, probably.

Mr. Fox reported to Dr. Todres alone (Nov. 30, 2005, p. 122-3). Dr. Todres testified that Mr. Fox wore street clothes while seconded and did not wear a uniform. He was not addressed as an

officer. She did not understand him to retain the capacity of a peace officer during the secondment. She agreed that Mr. Hodgson would not have known that Mr. Fox was a seconded OPP officer (Nov. 30, p. 149-150).

Throughout these submissions, Mr. Fox has not been given his police title. This is not to disrespect his office, but to recognize the undeniable fact that he was not acting in the capacity of a police officer at any time during the Ipperwash situation. He had no operational responsibility whatsoever. Mr. Hodgson states unequivocally that he did not know that Mr. Fox was a police officer.

4. The timing and place of the exchange between Christopher Hodgson and Ron Fox

There is no doubt that Mr. Hodgson and Mr. Fox had an exchange of views. There is a measure of commonality around the substance of the views. There are also major discrepancies. It is respectfully submitted that the evidence of Mr. Hodgson should be preferred where the evidence conflicts.

The evidence of Mr. Hodgson is that the exchange occurred at a meeting in another location prior to the meeting in the Cabinet dining room. It is Mr. Fox's evidence, supported by Mr. Patrick, that the exchange occurred in the Cabinet dining room after the main meeting ended.

Scott Patrick, who was Mr. Fox's assistant at the time and also a seconded OPP officer (although not to the knowledge of Mr. Hodgson) gave evidence as to the set up of the exchange (Oct. 17, 2005, Vol. 1, p. 109).

Q. After you left? And what happened after the Premier left?

A. Minister.

Q. While you were there?

A. Yes. Minister Hodgson began to speak to Deputy Minister Taman.

Q. Yes.

A. And at that point, Deputy Todres gestured to Superintendent Fox and I to join her at the table.

Q. Yes.

A. So we did. And we were now seated next to Deputy Todres and we were directly across the table from Minister Hodgson ...”

None of Mr. Hodgson, Mr. Taman (who also figures in Mr. Patrick’s scenario), or Dr. Todres recalled this sequence. (Taman, Nov. 14, p. 128) The evidence of Mr. Hodgson, however, and that of Mr. Bangs is that they left the meeting by the back way immediately after the Premier stood up and did not have a conversation with anyone. Dr. Todres does not recall being present at an exchange between Mr. Hodgson and Mr. Fox. Mr. Fox, for his part, did not mention the set up of the meeting in his evidence.

The evidence of Mr. Hodgson, (Jan. 12, 2006, p. 101-2) supported by Mr. Bangs (Nov. 3, 2005, p. 100-2), Mr. Vrancart (Oct. 27, 2005, p. 79) and by the documentary evidence referred to earlier, is that he did not want responsibility for this matter. It is hardly likely that, after it was concluded in the dining room meeting that the Attorney General would be responsible for the matter, (Harnick, Nov. 28, p. 21; Vrancart, Oct. 27, 2005, p. 64; Dr. Todres Nov. 30, 2005, p. 66-7) that Mr. Hodgson would then intervene with the kind of enthusiasm suggested by Mr. Patrick

and Mr. Fox. Mr. Hodgson was looking to disengage, and the quiet and immediate exit from the dining room meeting that Mr. Hodgson describes is much more likely.

On balance, therefore, it is respectfully submitted that Mr. Patrick's recollection of the set up of the conversation between Mr. Hodgson and Mr. Fox and its timing is simply not correct and is not capable of supporting Mr. Fox's evidence.

5. The content of the exchange between Mr. Hodgson and Mr. Fox

The record of the exchange between Mr. Hodgson and Mr. Fox that is most contemporaneous with the event is the transcript of the conversation between Mr. Fox and the Incident Commander, John Carson, that occurred on September 6, 1995 (Ex. P 444A, tab 37). According to the telephone log, the call occurred at 2:00 p.m..

It is fair to say that Mr. Fox is now embarrassed and somewhat defensive about this telephone call, with good reason.

In the call he telescoped two meetings that occurred at different times, one involving the Premier, and the other involving Mr. Hodgson. Mr. Hodgson's recollection of the exchange is set out earlier in the submissions. Mr. Fox's version is set out in the transcript.

Mr. Fox gave evidence on the meeting with Mr. Hodgson. (Jul. 12, 2006, p. 72)

A: In my capacity as an advisor, I offered up a suggestion and the suggestion was that perhaps in-roads could be made with the First Nation with respect to Ipperwash Park in terms of co-management, and I do recall examining the Park at the -- that was managed by the Cape Croaker First Nation and the Park managed at Serpent Mound First Nation as well. And it was at that point, and I believe that's what would have driven me to believe,

was the comments of Minister Hodgson, who indicated to me that we have just been told that we can't direct the police, so you don't bother worrying yourselves or yourself or words to that effect, with politics.

Q: All right. And that was in response to your proposal that one -- that the Government consider a co-management arrangement with the First Nation in relation to the Ipperwash Park?

A: That's correct.

Later in his evidence, Mr. Fox was explaining the content of his conversation with Inspector Carson (Jul. 12, 2005, p. 117-118). He said:

A: It - to put it in context, I had had the conversation with Minister Hodgson, where I was questioned with respect to the automatic gunfire and certain information that he had, in terms of police operation. I took the liberty of providing him my opinion, rightly or wrongly, of what my view would be at some future time.

Q: All right. And then following you say words to the effect:

"Well I've just been told that I can have no influence over the police doing their job, so I'm suggesting you let me worry about the political ramifications."

Q: Do you recall saying words to that effect?

A: That's correct.

Q. And who did you --were you attributing that -- that statement to or that message to?

A. Minister Hodgson.

Both of these excerpts contain testimony that is correct and that corresponds to Mr. Hodgson's evidence.

The difficulty, however, is with Mr. Fox's invocation of the Serpent Mounds example as something that he testifies to having raised in that conversation. This adversely affects his credibility.

Mr. Fox was in no position to bring forward the Serpent Mounds co-management precedent in his conversation with Mr. Hodgson because it was not then even a possibility. The Serpent Mounds occupation occurred over the Labour Day weekend and the co-management solution did not come until later in the fall. The evidence of Mr. Hodgson and Mr. Bangs (Nov. 3, 2005, Vol. 1, p. 42) is categorical. The prospect of co-management on Serpent Mounds did not arise until well after the incident at Ipperwash, Mr. Hodgson (Jan 12, 2006, p. 27), Mr. Bangs (Nov. 3, 2005, p. 40), and Mr. Vrancart (transcript Oct 27, 2005, p. 22). The co-management agreement was therefore reached sometime after the incident at Ipperwash. Mr. Fox is making part of the conversation up, in an effort, one assumes, to cast himself in a more favourable light. (Page 166-170) (Jan. 12, 2006, Vol. 1, pg. 210)

In his conversation with Inspector Carson, Mr. Fox made a derogatory statement (July 12, 2005, p.105-106):

Q: Thank you. Now, I wonder if you would kindly go to page 4 of your documents, it's part of the transcript. About half way through, when you make comment and again, this is an imperfect transcription, but something to the effect of:

"Okay, well, then let me just give you the -- I went through this meeting. John, we're dealing with a real redneck government. They are fucking barrel suckers, they just are in love with guns."

Now, does that reflect what you said at that point in the conversation?

A: I believe it's an accurate transcription, yes.

There was no basis in the discussion at the meeting on September 6, 1995 for Mr. Fox's statement that Mr. Hodgson had a love of guns and confrontation. Mr. Fox testified that Mr. Hodgson did not ever suggest that he loved guns (Jul. 13, 2005, p. 168). During the time that Mr. Hodgson was at the meeting there was no discussion about guns or gunfire that he can recall, apart from the reference to keeping the helicopter out of rifle range (Jan. 12, 2006, p. 151-153) and that there had been reports of gunfire inside the park (Jan. 12, 2006, p. 185).

There was clearly a misunderstanding between Mr. Fox and Mr. Hodgson that is rooted in the ambiguous status of Mr. Fox. Mr. Hodgson was critical of the actions of the Ontario Native Affairs Secretariat, but Mr. Fox, mentally wearing his police hat, thought Mr. Hodgson was being critical of the OPP.

Mr. Hodgson explains the discussion in a way that clarifies it: (Jan. 12, 2006, p. 153- 157)

Q: Did you specifically join in that question or raise that question?

A: No, I did near the end of the discussion though.

Q: What did you say at the end of the discussion?

A: The answer to one (1) of the questions or a number of the questions was, well, that the optics wouldn't be good around that or that the police could do that but the people would be released within twenty (20) minutes. It's a futile attempt and it would be all over the front page of the paper and it wouldn't look good.

Q: All right. And who said that?

A: That was Mr. Fox's response to a number of these questions.

Q: And did you make any response to that observation about the political optics?

A: Well, I thought that, you know, some of the questions were touching on policing operations and I pointed out that I didn't think, we as a group, as I said "we," should be talking about police issues or matters. And I didn't feel that Mr. Fox should be talking about politics, that, you know, we could move on, basically.

Q: All right. Now, based on -- well, let me ask you this: Did anything else of significance transpire in -- during -- in your presence, during the balance of the meeting, that you were --

A: Yes, Mr. Fox responded to that statement by saying that he wasn't talking about politics, he was talking about reality and that's the reality of the situation. I recall that quite clearly.

Q: All right. How did you --

A: And then I chipped in and responded that the reality of the situation was you knew there was an issue brewing here for some time and it's easier to prevent these situations, in my opinion, than it is to try to remove people.

Q: And when you made that comment to Mr. Fox, were you intending to query why it was he and those he was working with hadn't done more to prevent the occupation?

A: I wondered what he'd been doing, as Chair of this committee, to prevent the situation from occurring when we knew it was or assumed it was a -- a federal issue with the Military Base, if they had talked to any of the local people involved or any of those kinds of issues. And that was the nature of my question. It was obviously misunderstood and completely, totally misunderstood by Mr. Fox because he proceeded to give me a long answer of -- in response to my inquiry of what they'd been doing and my experience is it's easier to prevent these situations than it is to remove people once they're there. He talked about a thousand (1,000) police officers linked arm to arm around the Park wouldn't have stopped the occupation.

Q: All right.

A: And --

Q: Do you recall anything else about his response?

A: No, that was a long response, but that was the gist of it. And at the end of it I do recall just looking at him, I was kind of surprised that he gave a policing answer to a question. I was talking about what ONAS was doing, but he obviously -- in hindsight, I can understand exactly why he misinterpreted what I was talking about but, I probably wasn't clear enough.

Q: Did you make any further response or did you reply to Mr. Fox's response or explanation to you?

A: No, I did not and I'd already made it clear that I wasn't going to be the spokesperson. So I felt that I'd delivered the information I was going to share, and I'd heard enough.

Q: You heard enough? All right.

A: And the meeting was wrapping up. There was people closing binders behind us and that and we proceeded to leave.

Q: All right. Now, based on your interaction with Mr. Fox and -- and your observations during the course of that meeting, did you form any impression about what his -- what his reaction was to the questions you were raising and -- and the queries you were -- you were raising in relation to the possibility that there may have been a prevention of the Park and the methodology of service that was being discussed?

A: No, I didn't. I thought Mr. Fox was very professional, actually. He was very calm and I wouldn't have even remembered this exchange if I hadn't heard his tape some years later. I didn't remember the incident in 2001. I only remembered it after hearing his tape.

Mr. Hodgson now understands Mr. Fox's concern and his defensive posture in hindsight. (Jan. 16, 2006, p. 101-102)

Q: So, when you say that he gave a police answer to a -- to a question, the perspective he gave to you in responding to the question was apparent -- apparently being defensive about whether the police were at fault for the occupation having occurred?

A: That's fair. We were --

Q: Fair.

A: -- we weren't communicating very well.

Q: All right. And -- and you appreciate now that, knowing that he's a police officer, that that could reasonably be taken as a criticism of the police operations that had taken place to-date?

A: In hindsight I can see exactly where he's coming from today. And I probably should have made myself a little clearer at the time, but I had no idea that he was a police officer or acting as a police officer.

As noted earlier, there was clearly a misunderstanding between Mr. Fox and Mr. Hodgson that is rooted in the ambiguous status of Mr. Fox. Mr. Hodgson was perplexed about the nature of Mr. Fox's responses, because he did not know that Mr. Fox was a police officer. Mr. Fox, for his part, was defensive about the situation because he was a police officer and thought that Mr. Hodgson was criticizing the police operation, which was not the case. This explains the significant emotion in Mr. Fox's subsequent conversation with Inspector Carson, which led in turn to warnings from Commissioner Coles to Mr. Fox to, effectively, cool down, be careful and stay away from operational concerns. (Coles, Aug. 16, 2005, p. 208-214) Mr. Fox no longer had any direct communication with the command post after his conversation with Commissioner Coles, in which he admitted being told "to keep a lid on it". (Fox, Jul. 13, 2005, p. 202)

Regrettably, Mr. Fox confused his civil service role with his police identity and completely misconstrued Mr. Hodgson's comments as attacks on the police, for whom he became quite defensive. His evidence during the inquiry, buttressed only by his loyal assistant, fellow OPP officer Scott Patrick, was an effort to retrospectively justify what he said and did. His evidence was not candid and the effort must be seen to have failed.

It was put to Mr. Hodgson that the discussion about the service of the injunction might have taken place on September 7, 1995, when Mr. Patrick's notes place him at a meeting discussing the Ipperwash situation (Jan. 12, 2006, Vol. 1, p. 229). Mr. Hodgson was clear that he only ever had one exchange with Mr. Fox and that he did not see Mr. Fox again after September 6, 1995. Mr. Fox does not mention another meeting with Mr. Hodgson. Although the method of service might have been discussed on September 7, 1995, Mr. Hodgson was not present at the meeting, according to his evidence, (Jan 12, 2006, p. 69) nor was he present at a meeting on September 8, 1995. He was in his riding. (Jan. 12, 2006, p. 252) The subject of the method of service would have come up quite naturally at any time that an injunction application was under discussion, either as to the service of the motion material or the service of the injunction itself. The most telling point on the issue of timing, however, is that Mr. Fox's heated conversation with the Incident Commander, John Carson, took place on September 6, 1995.

6. Did Mr. Hodgson direct the police?

Mr. Hodgson denies ever directing the police, and there is no evidence that he did so. Any remarks that he may have made to Mr. Fox were not directions to the police, since he did not know that Mr. Fox was a member of the OPP. In any event, Mr. Fox had no operational responsibility in respect of the incident. Mr. Fox agreed that neither Mr. Hodgson nor his staff instructed him to direct the OPP. (Jul. 13, 2005, p. 168-169)

It was Mr. Hodgson's understanding that there is a bright line between the policing function and the ordinary business of government. (Jan. 12, 2006, p. 38) This was apparently underlined by Dr. Todres at the meeting in the Cabinet dining room on September 6, 1995. In response to questions about the infamous transcript of the conversation between Mr. Fox and Inspector Carson, Mr. Hodgson testified: (Jan. 16, 2006, p. 51):

Q: And where Mr. Fox states:

"He believes he has the authority to direct the OPP."

A: Yeah.

Q: Did you hear Premier Harris say anything that would -- that gave you the impression that you were of the view Mr. Harris thought he had the authority to direct the OPP?

A: Quite the opposite. As I testified, the meeting somewhat concluded with the Premier stating, unequivocally and in a rather loud voice, that it was a police matter, that no politician, including himself, should be directing, and we're accepting the advice of the Attorney General. That's how the matter was left and that was pretty clear in the meeting, in my recollection.

There was an exchange between OPP counsel Mark Sandler and Mr. Hodgson around the propriety of Mr. Hodgson talking to a police officer. (Jan. 16, 2006, p. 81-82):

Q: Right. And the reason why, according to you, you would not have said that to Ron Fox had you known that he was a police officer, is that a comment that it's easier to avoid these situations by preventing occupations from occurring than to remove people afterwards, is that it would be taken, potentially, as a criticism of the police conduct to date; fair enough?

A: I believe my concern was even more basic than that. Are we making an assumption that he had operational responsibility?

Q: Well, I've just asked you if you -- if you feel you can't answer the question, that's fine. What I've just suggested to you is --

A: My answer --

Q: -- a fairly self evident proposition, which is that the reason why you wouldn't be saying that to a police officer is for fear of being interpreted as critiquing the police operation. Now, am I right or am I wrong about that?

A: I wasn't thinking of it in those terms when I answered the question earlier. I was thinking of it in terms of a police officer with operational responsibilities, I wouldn't have talked to.

Mr. Hodgson was aware of this standing caution not to talk about police operational matters.
(Jan. 16, 2006, p. 92)

Q: Right. So I go back to my original question. At an Interministerial Committee Meeting, on your evidence, what was it that Ron Fox or anyone else was saying that according to you was inappropriate and --b and had to be shut off by a caution from you? I don't understand that.

A: That was questions around, Could you not just go in and make arrests? They started to ask different questions from different parts of the room and Ron answered with a lengthy answer about how it wouldn't look good in the papers. And that's when I just chipped in that piece of advice.

Q: Now, you're aware that nobody else who was at that Interministerial Committee Meeting recalls you providing some sort of a caution not to talk about -- not to talk about police operational matters? You know that?

A: I'm -- that's fine.

Q: And -- and I read to you a little earlier on that Ron Fox described you as saying:

"I've just been told that I can have no influence over the police doing their job."

Now, stopping there for a moment, we've heard evidence that at the dining room meeting that the Deputy Minister Elaine Todres and/or Deputy Minister Larry Taman provided that caution to the Ministers at the meeting. Do you deny that?

A: No, that's possible. That caution was issued and it was common understanding in both meetings I was at.

In fact, Mr. Hodgson understood Mr. Fox to be a civil servant. (Jan. 16, 2006, p. 94-95)

Mr. Sandler questioned Mr. Hodgson about Mr. Fox's role, and the questions and answers clearly show that Mr. Hodgson was familiar with the strict separation concept, but never knew that Mr. Fox was a police officer: (Jan. 16, 2005, p. 98-99)

Q: Now, so one of the sentiments that you were expressing, and leaving aside what role Ron Fox was playing for a moment, was the concern that he had not done enough to prevent the situation from occurring, am I right?

A: Yeah, but I don't think you can leave aside his role. I assumed he was the head of the Interministerial Committee working for ONAS at that time.

Q: So, let me ask you this: If -- if you had known that he was a police officer, would you have said to him or expressed concern about what he had done to prevent the situation from occurring?

A: So, are you saying he had operational responsibility?

Q: Well, I'm just asking a question now.

A: -- for --

Q: If you'd known that he was a police officer in any capacity, would you have expressed the concern as to what he had been doing to prevent the situation from occurring?

A: No I wouldn't have.

Q: No. Why not?

A: Because I wouldn't have talked to the police. I was pretty clear on the distinction between police and -- and elected politicians on operational matters.

7. The burial site issue

Mr. Hodgson's evidence was that throughout the period of time leading to the fatal shooting of Mr. George, he was not aware that the dissident group was making a land claim in respect of Ipperwash Park. He also did not advert to the allegation that there was a burial site in the Park. The issue of the burial site did come up at the Interministerial Committee briefings and was put to Mr. Hodgson at the media scrum on September 5, 1995, but did not ripen in his mind until later. (Jan. 12, 2006, p. 46, 84, 117)

Mr. Hodgson's evidence was that the existence of a burial site in the Park would not justify an occupation of the Park in any event. The practice of MNR was to give First Nations access to burial sites on park property and, in accordance with the *Cemeteries Act*, to erect a fence around the site in order to preserve it (Vrancart, Oct. 27, p. 182). The question was asked and answered in this way: (Jan. 12, 2006, p. 242-243)

Q: And at the end of the day on September 6th, did you believe that the occupation was motivated, in any way, by an allegation that there was an Aboriginal burial ground within the Park?

A: No. I think there might have been some information starting to trickle in around potential for a burial site. ONAS, at that time -- from the information that I was receiving through the MNR and ONAS was that there was no validity to that. Even if there had been, my own view was that, if that was the motivating factor, somebody would have just phoned or written a letter or mentioned it to somebody, either before the occupation or during the occupation, when they first approached the Park. I didn't feel -- feel that you needed to have an occupation to get action on a potential sacred site or a grave site. That that could have been done -- the Park was closed for the season, it wouldn't have been a big deal for the staff to say, Sure, we'll do an examination and refer to the Cemeteries Act and go through the proper process.

He came back to the issue later in his evidence: (Jan. 12, 2006, p. 256-267)

Q: All right. Had you known about the existence of this correspondence would that have altered your assessment of the actions of the occupiers as an illegal trespass?

A: We would have probably had more questions, but I don't think it would have changed our perception given the fact that -- that there's believed to be a grave site. I don't consider that as a reason to have an occupation. You can just make a phone call or talk to the Park staff officials and express your concern. The Park was closed for the season, it was scheduled to be closed that day. My opinion, they would have granted

access and helped with the -- the process of -- through the Ministry of Consumer and Commercial Relations under the Cemeteries Act.

Closing observations

Mr. Hodgson gave his evidence without hesitation. His evidence was not shaken despite extensive cross-examination, nor was his evidence contradicted in material part by the credible evidence of other witnesses. Mr. Hodgson's testimony establishes conclusively:

- Mr. Hodgson saw the protest as caused by the inaction of the Federal government in failing to return the military base to the proper First Nation in a clean state, as obligated. He thought that the Park occupation was about the military base, and not about the Park itself, either in terms of a land claim or the possible presence of a burial site.
- Mr. Hodgson saw the protest as a police matter. His participation in the media scrum was forced on him.
- Mr. Hodgson understood the strict separation between the policing function, which is the sole responsibility of the police, and the functions of general government. He knew that it was inappropriate for politicians to direct police. He did not do so, nor did he attempt to do so.
- Mr. Hodgson's conversation with Mr. Fox could not be interpreted as a direction to the Ontario Provincial Police in relation to the Ipperwash situation. Mr. Hodgson did not know Mr. Fox to be an OPP officer, nor did Mr. Fox have operational responsibility for the Ipperwash situation. Mr. Hodgson had no contact with the police in connection with the Ipperwash situation.

- Later, Mr. Hodgson tried to assist Chief Bressette in finding a solution, but the refusal of the Federal government to engage in the effort doomed it to failure.
- Mr. Hodgson did not make the statement attributed to him by Dr. Todres.

DATE: July 28, 2006

ALL WHICH IS RESPECTFULLY SUBMITTED

Plauwers

Peter D. Lauwers and Mark Frederick