

IN THE MATTER OF Order in Council 1662/2003, dated November 12, 2003;

AND IN THE MATTER OF a Commission of Inquiry pursuant to the *Public Inquiries Act*, R.S.O. 1990, c. P.41, as amended;

AND IN THE MATTER OF an Inquiry into the events surrounding the death of Dudley George and the development of recommendations directed to the avoidance of violence in similar circumstances

SUBMISSIONS ON BEHALF OF THE ONTARIO PROVINCIAL POLICE

AND ITS SENIOR OFFICERS

PART I

Mark J. Sandler
Andrea E.E. Tuck-Jackson
COOPER, SANDLER & WEST
Barristers & Solicitors
439 University Avenue
Toronto, ON
M5G 1Y8

Tel.: (416) 585-9191
Fax: (416) 408-2372

E-mail:
msandler@criminal-lawyers.ca
atuckjackson@criminal-lawyers.ca

Counsel for the Ontario Provincial
Police & its Senior Officers

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PART I

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PROLOGUE

The death of Dudley George was tragic. It would also be tragic if lessons were not learned from it.

The Ontario Provincial Police is prepared to learn. This is reflected in how the OPP has evolved and grown in the years since Ipperwash. There is much to be positive about.

The OPP and First Nation leadership agree on many things. Indeed, many of the OPP's recommendations draw upon the perspectives and aspirations of First Nation peoples: the desire for a timely and fair resolution of outstanding claims, for respectful relationships between police and First Nations, for bias-free policing, for the capacity for First Nations to police themselves, for the peaceful resolution of disputes when they arise.

The OPP came to the Inquiry prepared to listen. And it came to the Inquiry prepared to contribute to the healing process.

Commissioner Boniface said this:

My final comments are to the First Nation community. Firstly, and particularly, to Sam George and his family. Firstly, I want to reiterate my predecessor, Commissioner O'Grady's deepest apology and sympathy to you and your family for the loss of your brother, Dudley.

Sam, as I've watched your persistence to, firstly, get an Inquiry, and secondly, attend here every day, I'm so impressed by your commitment for change. T-shirts, mugs and inappropriate comments, more T-shirts, I know have caused you further pain and I deeply regret that.

A friend of mine once said to me a few weeks ago, We must look forward. And I assure you and the First Nation community I've done my best to move the OPP to the forefront of policing in our ability to understand aboriginal issues.

I await Commissioner Linden's report and commit the OPP to working towards further change. I also acknowledge that through our own officers' testimony, in my own observation, that there have been errors made and we will ensure that we look forward in continuing the change that we have. I make that commitment to you, Sam George, to your family, to the First Nation community and to the Province of Ontario.

Former Commissioner O'Grady said this:

...[A]s we all know, Kenneth Deane was a member of the OPP in 1995 and he was charged with criminal negligence with respect to the death of Anthony O'Brien, commonly known as Dudley George, following an investigation by the Special Investigations Unit.

At that time, I gave Mr. Deane the presumption of innocence until proven guilty, and I think any person is entitled to that and I said so, publicly.

In due course, however, he was found guilty and over the years his case was appealed at all levels. His conviction was upheld.

The justice system operates slowly, on occasion, and it can strain the patience of those who await its final conclusions.

During the relevant period of time, I was Commissioner of the OPP and, as such, I was responsible for all of its members and that included Mr. Deane.

I've been a police officer, as most people know, for many years and like a lot of my colleagues I quickly learned that to deal with disturbing instances which you're exposed to, should conceal your emotions, whether that's wise for your health or not, I'm not sure.

But many police use that as a coping mechanism. I want to assure you, Mr. George, that I deeply regret the death of your brother.

This Inquiry, it appears to me, is a good public forum for me to apologize to you and the George family and the First Nation at large with respect to the death of Dudley George.

The current and former OPP officers on whose behalf these submissions are made – Commissioner Gwen Boniface, former Commissioner Thomas O'Grady, Deputy Commissioner John Carson, former Chief Superintendent Chris Coles, former Chief Superintendent Tony Parkin, former Superintendent Ron Fox, Detective Inspector Mark Wright, Detective Inspector Don Bell, and Inspector Scott Patrick, without exception, demonstrated through their approach to this Inquiry a willingness to learn, acknowledge error and contribute to the healing process, sometimes even in the face of vigorous cross-examination.

Healing requires parties – every party – to listen and learn, not just be heard; to be introspective, not just adversarial; to be forward looking, not exclusively fixed on the past.

The OPP is proud of its progress in the years since Ipperwash. It is also proud of its officers who are committed to ensuring that this progress continues.

The OPP looks forward to the Inquiry's recommendations.

ACKNOWLEDGEMENTS

Counsel for the OPP wish to acknowledge those members of the OPP who have contributed to their work during the course of the Inquiry, and in the preparation of these submissions.

The following OPP officers were of exceptional assistance to counsel and to the Inquiry, particularly during Part I:

Detective Superintendent Mark Vanzant – Director, Criminal Investigations Branch

Inspector Andy Karski – Detachment Commander Caledon

Detective Sergeant Randy Craig – Anti-Rackets Section

Detective Sergeant Ted Hurren – Detective Sergeant Central Region

Detective Sergeant Ed Kodis – Intelligence Bureau

Detective Sergeant Greg Rutledge – Detective Sergeant Northeast Region

Detective Constable Brigitte Brousseau – Protective Services Section

Detective Constable Shawn Evans – Detective Constable Nottawasaga Detachment

Greg Duncan - Evidence Management Unit, Anti-Rackets Section

Mark Blocksdorf – Technical Services Section

Dave McClocklin – Intelligence Bureau

Josh McFadden – Evidence Management Unit, Anti-Rackets Section

Cathy Jaques – Anti-Rackets Section

Brenda Van Dyk – Investigations Support Bureau

In particular, OPP counsel wish to acknowledge the special contribution of

Detective Constable Evans, whose expertise, good cheer and virtually constant presence throughout the entire Inquiry facilitated both the work of OPP counsel and the Inquiry itself.

The following OPP officers and employees were of exceptional assistance to counsel and to the Inquiry, particularly during Part II:

Superintendent Brian Deevy – Commander, Field Support Bureau
Superintendent Brad Blair – Commander, First Nations and Contract Policing Bureau
Superintendent Ron George – Aboriginal Liaison Officer – Operations
Acting Superintendent Glenn Trivett – Acting Commander, Human Resources Bureau
Inspector Robin Jones – Manager of Emergency Management and Planning, Field Support Bureau
Acting Detective Staff Sergeant P.J. (Pat) Morris – Provincial Anti-Terrorism Section Intelligence Bureau
Gail Jackson – Human Resources Bureau, Workplace Support Unit
Julie Grimaldi – Operational Research and Development Bureau
Sergeant John Kelsall – OPP Academy
Sergeant Rob Brennan – Field Support Bureau
Brenda Van Dyk – Investigations Support Bureau

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PART I

I. OVERVIEW

1. The Ontario Provincial Police and its senior officers were granted standing at Parts I and II of this Inquiry. These submissions are similarly divided into Parts I and II. The Part I submissions immediately follow.

2. Chief Ovide Mercredi noted that, “It’s not easy being a police officer”. Ipperwash makes the point all too well. The challenges of policing the occupation of Ipperwash Park and the nearby area were formidable. The First Nation community was divided over the occupation, and how it should be addressed. There was no easy determination of who influenced or directed the occupation, or the role that “outsiders” played in its course. Local dynamics prevented the local First Nation Police Service from facilitating a resolution. Nearby cottagers and other property owners were both anxious and angry, and potentially

confrontational. Efforts by the police to maintain a dialogue with the occupiers, once the Park was occupied, faced considerable impediments. It was difficult to engage outside resources to facilitate resolution. The police had no ability to negotiate the substantive issues. Violence or apprehended violence outside of the Park contributed to difficulties. The changing situation, particularly on the evening of September 6, posed its own obvious challenges to the decision-making process. This included issues surrounding the deployment of the Crowd Management Unit and the Tactics and Rescue Unit and the reliability of information communicated to the Incident Commander. Restoring the peace after the confrontation between police and occupiers raised additional issues.

- Evidence of O. Mercredi, April 1, 2005, p. 155

3. The evidence at this Inquiry supports the following findings:

(1) The Incident Commander, Deputy Commissioner John Carson, was well-suited to his responsibilities. He was a skilled leader who was sensitive to, and aware of, Aboriginal issues and had built respectful relationships with the Aboriginal community.

(2) Detective Inspector Mark Wright was also a skilled officer who had similarly built respectful relationships with the Aboriginal community. He was assertive, but well appreciated his role as the second-in-command and that ultimate decisions were to be made by

the Incident Commander. Inappropriate comments made in stress during the incident, and which he acknowledged during his testimony, do not undermine his value as an officer, nor the good faith of the positions he took during the events.

(3) The OPP demonstrated a measured and neutral approach to the occupation of the Army Base and related issues in the several years that preceded the occupation of the Park.

(4) Project Maple was consistent with existing OPP policy, and was designed to contain the Park occupation and bring about, through negotiations, its peaceful resolution.

(5) The OPP engaged in good faith reasonable efforts to open a dialogue with the Stoney Point occupiers after the takeover of the Park. These efforts faced considerable impediments.

(6) The decision to deploy the CMU, supported by TRU, was in no way the product of political interference, influence or direction. Instead, it was a situational response to events occurring on the evening of September 6, 1995 and consistent with the objectives of Project Maple.

(7) The Incident Commander met and spoke with politicians, sometimes at the Command Post. Information sharing was appropriate and did not compromise the OPP operations. Nonetheless, things could have been done better to avoid any perception of political interference, influence or direction.

(8) Similarly, it was appropriate to share information with the MNR. However, things could have been done better to avoid any perception of government interference, influence or direction, and ensure the orderly and vetted flow of information to government.

(9) Whether the decision to deploy the CMU was, in hindsight, correct, it was a reasonable decision, based in good faith upon the circumstances known to Deputy Carson at the time. Even on a correct apprehension of the facts, it would have remained one option reasonably available to the Incident Commander.

(10) On September 5 and 6, 1995, the OPP conveyed to the Park occupiers, through both its words and actions, that it would not enter the Park and evict the occupiers. The Incident Commander reasonably believed that when the CMU approached the Park, it was clear to the occupiers that the CMU would not enter the Park to evict

them. The use of a megaphone might have addressed any misapprehension that did exist.

(11) There were deficiencies in the intelligence process at Ipperwash. Some had no adverse impact upon the decisions made. Nonetheless, misinformation was received by the Incident Commander, particularly concerning the Gerald George incident. Although it cannot be said with certainty how the decision to deploy the CMU would have been affected, any misinformation such as this could contribute to inaccurate decision-making.

(12) Detective Inspector Wright was not the source of misinformation regarding the Gerald George incident. Indeed, he took reasonable steps to ensure that the Incident Commander had an accurate account of this event.

(13) Deputy Carson made more than adequate provision for access to emergency medical services, having regard to the resources available to him, and the need to strike an appropriate balance between public safety and medical need.

(14) Detective Inspector Wright had reasonable grounds to believe that the vehicle transporting a gunshot victim from the Ipperwash

area shortly after the parking lot confrontation likely contained individuals who had shot at, or attempted to run down the police. Accordingly, although the arrests at Strathroy Hospital were deeply unfortunate, they were based on reasonable and probable grounds and made in good faith. Nonetheless, the OPP should have more promptly excluded the occupants as suspects, and ensured their timely release.

(15) The OPP treated allegations of misconduct appropriately. Its focus on addressing institutional failings (particularly in connection with the so-called “memorabilia”) reflected a commitment to address, both in the short-term and long-term, the OPP’s relationship with the Aboriginal community.

4. The OPP acknowledges that mistakes were made and that much has been learned since and as a result of Ipperwash. Many of these lessons have been articulated during the testimony of current and former officers of the OPP, and will be more fully developed during the oral and written submissions.

5. This learning has been reflected in a wealth of initiatives introduced since 1995 to build respectful relationships with the Aboriginal peoples, to radically change the selection and training of OPP officers and to develop best practices

respecting emergency response services, Public Order Units and Intelligence Services.

6. These best practices include the discontinuation of “shield chatter”, the introduction of a new Command Structure for Public Order events, a formalized scribe program and enhanced note-keeping, consistent practices respecting the taping of radio and telephone communications, new specialty programs or positions such as ART, MELT, Crisis Mediator and the Aboriginal Liaison Officer – Operations that emphasize relationship building, cultural competence, and preventative and proactive policing, a Framework for Police Preparedness for Critical Incidents that articulates a flexible and culturally attuned approach to Aboriginal critical incidents, Intelligence-lead policing, Aboriginal crisis negotiators, and enhanced videotaping capacity for Public Order events. Policies and practices exist that address the misuse of OPP insignia, OPP press releases for SIU-related matters, and ethics and accountabilities. A policy on access by non-police personnel to the Command Post is under development. These and other best practices are addressed in the OPP Part II Submissions.

II. APPROACH TO POLICING IPPERWASH PRIOR TO THE PARK OCCUPATION

Findings:

(1) The Incident Commander, Deputy Commissioner John Carson, was well-suited to his responsibilities. He was a skilled leader who was sensitive to, and aware of, Aboriginal issues and had built respectful relationships with the Aboriginal community.

(2) Detective Inspector Mark Wright was also a skilled officer who had similarly built respectful relationships with the Aboriginal community. He was assertive and strong, but well appreciated his role as the second-in-command and that ultimate decisions were to be made by the Incident Commander. Inappropriate comments made in stress during the incident, and which he acknowledged during his testimony, do not undermine his value as an officer, nor the good faith of the positions he took during the events.

(3) The OPP demonstrated a measured and neutral approach to the occupation of the Army Base and related issues in the several years that preceded the occupation of the Park.

BACKGROUND AND QUALITIES OF JOHN CARSON AND MARK WRIGHT

7. By the time of his testimony in the spring of 2004, John Carson was a Deputy Commissioner of the OPP in charge of field and traffic services. By 1995, he had acquired substantial experience working with First Nation people and their communities:

(1) early on in his career, he served the First Nation people who lived in White River and the nearby territory of the Pic Moberg First Nation. He also assisted First Nation officers who policed the residents of Moraviantown;

(2) in 1989, he assumed the responsibility of Detachment Commander at Forest. Over the next four years, he served the First Nation residents in and around Forest and provided administrative support to the Kettle and Stony Point Police in their policing of the neighbouring territory of the Kettle and Stony Point First Nation;

(3) he worked with Sam George of the Kettle and Stony Point Band in relation to some co-op programmes. He took it upon himself to learn about the 1942 displacement of the Stony Point people from their territory under the *War Measures Act*. To this end he attended a seminar conducted by then OPP Inspector Ron George which covered the pertinent treaties.

Deputy Carson obtained additional publications to educate himself further about the treaties, the significance and interpretation of which were central to an understanding of the land disputes within his jurisdiction during the early 1990's. When he learned of Chief Tom Bressette's concern that the OPP's use of Camp Ipperwash (the "Army Base" or "Base") for firearms training might be used to validate the federal government's purported need to retain the Base, Deputy Carson agreed and took steps to address the issue. In 1992, the OPP no longer used the Base for training. In the spring of 1993, not long before the occupation of the rifle range, he attended a week-long Native Awareness course held at Curve Lake.

It was, therefore, not surprising that around May 12, 1993, Chief Superintendent Chris Coles (now retired C/Supt. Coles) selected then Inspector Carson¹ (now Deputy Carson) to be the Incident Commander at Ipperwash. His appointee was conversant with land claim issues, First Nation culture, and building relationships with members of that community. Deputy Carson was highly skilled, and could effectively and fairly address the complex issues raised by Ipperwash.

- Evidence of S. George, April 18, 2005, p. 27
- Evidence of J. Carson, May 10, 2005, pp. 145-46, 150, 152-53, 160-62, 174-76, 188-189, 201; May 11, 2005, p. 10; June 1, 2005, p. 106; June 29, 2005, pp. 72-73
- Evidence of C. Coles, August 15, 2005, pp. 67-68

¹ For ease of reference, an officer will generally be referred to once according to his or her rank at the time of the incident and thereafter by his or her rank at the time of testimony before the Inquiry. In the case of retired officers, his or her rank at the time of retirement will be used.

8. On May 20, 1993 Deputy Carson selected then Acting Detective Staff Sergeant Mark Wright (now D/Insp. Wright) to assist him at Ipperwash. D/Insp. Wright was well situated to provide that assistance. He was then the area crime sergeant responsible for benchmark crime in Lambton County. Like his superior, D/Insp. Wright had a great deal of experience and interest in First Nation issues:

(1) as a child and teenager he spent time with an uncle who would take him and his brothers to traditional Aboriginal territories in southwestern Ontario. His uncle would teach them about treaties that the British Crown or the Canadian government had entered into with the First Nation people;

(2) when assigned to Glencoe Detachment, he gained experience serving members of the Chippewa and Muncey First Nation in conjunction with the First Nation police service assigned to the territory.

(3) as a member of the Sombra Detachment, he worked with the First Nation officers responsible for policing Walpole Island First Nation. Indeed, he became the liaison between the OPP and the Walpole Island First Nation Police Service and, in addition, served as the OPP representative on the Walpole Island Civil Authority. He successfully advocated for an increase in the size of the Walpole Island Police Service and for additional training courses for its members. D/Insp. Wright came to

know Chief Joseph Gilbert very well and described him (with great accuracy as this Inquiry has seen) as an “exceptional individual”; and

(4) when D/Insp. Wright became the area crime sergeant for Lambton County in January 1993, he provided assistance to the Kettle and Stony Point Police Service;

He ultimately became Deputy Carson’s “right-hand person” during the period of September 4 to 6, 1995 and was often referred to as his second in command or the “2 IC”. Apart from Deputy Carson, he was the person who had the most knowledge about, and continuous involvement in, the incident. As the 2 IC, he was very clear about the strict parameters of his role in the context of Incident Command:

...I took my marching orders, as it were, from Inspector Carson. And in my world, at that time, the chain of command went directly from Carson down to me as far as my concern about what I needed to do when he was there.

.....

...Well first of all, it – it wouldn’t be my call. It would be Inspector Carson’s call, number one...I would take direction from him.

.....

...-- had they come to me and we were dealing with this sort of an issue and we thought something was going to happen I would have given them to Carson and I would have taken my marching orders from Inspector Carson because it’s not my call.

- Evidence of J. Carson, May 10, 1995, pp. 238-39; May 12, 2005, pp. 27-28; May 16, 2005, p. 47; June 6, 2005, pp. 12-13, 16, 21; June 28, 2005, p. 217; June 29, 2005, p. 76
- Evidence of M. Wright, February 21, 2006, pp. 11-24; February 22, 2006, p. 58; March 7, 2006, p. 234; March 20, 2006, pp. 287-88
- Minutes of September 1, 1995 meeting, Ex. P-421, p. 2

9. Some inappropriate comments made by D/Insp. Wright on the evening of September 6, 1995 were the subject of considerable scrutiny before the Inquiry.

10. During a telephone conversation with Tim McCabe, D/Insp. Wright referred to the escalating situation as “the land of Oz” and stated, “the sh-t’s coming down right now”. In reference to a possible deployment of the CMU, he stated, “they’re coming out for a fight down to the road, so we’ve taken all the marines down now” and later “and we’ve got four ERT teams and a TRU team and two canine units going down there to do battle right now”. In discussing the implausibility of effecting service of a Notice of Application for an injunction, D/Insp. Wright stated, “we’re going to war now. We’re not going to serve anybody”.

- Transcript of Telephone Call between M. Wright and T. McCabe, pp. 2-3, 19-21, Ex. P-464

11. D/Insp. Wright very candidly acknowledged that his choice of words during that call often reflected a poor attempt at conveying that the “things were not normal”. They were “crude descriptions”. Upon reflection, he regretted using the war analogy and did not intend it in its literal sense. He acknowledged that his

language amounted to “a poor description of a situation that was escalating” and apologized for it: “it was inappropriate and a poor use of some words on my part.” He regretted the use of those words.

- Evidence of M. Wright, February 23, 2006, pp. 109, 173-74,178-79,182-183,188

12. During a telephone call with Deputy Carson not long after D/Insp. Wright had come upon a number of Park occupiers armed with bats and similar objects standing in the sandy parking lot, D/Insp. Wright said, “don’t you say we go get those f-cking guys”. D/Insp. Wright was suggesting that the police move those armed individuals back into the Park or, if necessary, arrest those who remained there. It is clear from Deputy Carson’s response, and from his testimony at the Inquiry, that Carson understood him perfectly. In respect of this and other uses of profanity, D/Insp. Wright apologized:

I’d like to apologize for the...profanity that I used. Things were rather tense there and I slipped into some language that I regret and would have preferred not to have used, but be that as it may. So my [sic] – apologize to the Commissioner and the Inquiry.

- Evidence of J. Carson, June 27, 2005, pp. 166-67; June 30, 2006, pp. 45-46
- Evidence of M. Wright, February 23, 2006, pp. 104, 109-10
- Transcript of Telephone Call between J. Carson and M. Wright, Ex. P-444B, Tab 48, p. 310

13. It is important to place these comments in context. One must consider the level of stress presented by the situation. This was well understood by Mr.

McCabe who thought he was being treated to “some police speak” by an individual under pressure:

Q: Did this reference to battle – did this dispel your impression that – as to the nature of the OPP’s approach to the occupation?

A: No, as far as – *as I understood the OPP is now faced with a – a very difficult and very threatening circumstance.* From my vantage point in downtown Toronto by my telephone, I have no knowledge of what’s actually happening there on the road to the Park and so forth that night.

Q: And even though you have no knowledge about what’s happening there, a police officer, a Peace Officer, is making references to battle, war and marines.

Did that not give you any concern about what the OPP’s approach was?

A: No, as I said before, I – *I thought I was being – that Officer Wright under some strain, was describing a – an emergency situation that was beginning to arise, and that the Police were – were having to confront at this stage.*

And as far as the, you know, the reference to marines and war, *I knew it wasn’t marines, I knew it wasn’t war, he knew it wasn’t marines, he knew it wasn’t war,* but as to why, you know, as to whether police officers habitually in terms of emergencies and so forth, use these kinds of expressions like that, I really had no experience one way or the other.

Q: Okay.

A: *I – I was listening to the man describing a difficult situation.*
[emphasis added]

14. More importantly, D/Insp. Wright was an assertive officer and valued as such. He gave his opinion to the Incident Commander, recognizing throughout that it was ultimately the Incident Commander's decision. Deputy Carson knew D/Insp. Wright to be:

...a very – very intelligent, smart, knowledgeable officer who is very able to digest information, and – and come to a conclusion very quickly, and he likes to get things done, and he's one of those individuals who is a – a very hardworking individual, and he – he does a lot of work, so *he's a go, go, go kind of person*. [emphasis added]

By the same token, then Staff Sergeant Kent Skinner (now Insp. Skinner) held D/Insp. Wright's professionalism in high regard:

Q: All right, let me rephrase it this way. You've testified that what you didn't mean when you said, "Other people here who want to do things but I don't think that will happen", what you didn't mean by that was that Mark Wright was more aggressive. You said that.

A: I – I don't think he was aggressive, sir. Anything I saw Mark do was in line with the objective of the – of the mission statement.

Q: It wasn't about Mark Wright sort of being more difficult to control; it wasn't that?

A: Mark was not difficult to control in my viewpoint, sir.

Q: As far as you were concerned, he was a steady individual?

A: Yeah, he was passionate, outspoken.

Q: But a steady individual?

A: Yeah.

.....

Q: Would you agree with me, Mr. Skinner, that if the second in command at Ipperwash was inappropriately aggressive in terms of how he discharged his duties that would be problematic for the integrity of the operation?

A: It could be, sir, but I didn't – I never saw the second in command at this operation be anything but making his actions towards the peaceful resolution of this occurrence.

.....

Q: And you know, testifying here today, if you acknowledge that you found Mark Wright to be someone more aggressive who wanted to take a different role than the steady John Carson that that would hurt the integrity or the appearance of the operation. You know that.

A: I didn't find that though, sir. I never found that.

- Evidence of J. Carson, June 27, 2005, p. 46
- Evidence of K. Skinner, April 20, 2006, pp. 29, 32-33

15. Deputy Carson, who recognized that as Incident Commander, he had the final say on operational matters, valued D/Insp. Wright as a valuable second-in-command, particularly when it came to providing operational options. That view emerged when it was suggested to him that D/Insp. Wright, in holding back the Emergency Response Team day shift, had, in effect, made the decision to deploy the CMU:

Well, he may have been the one that came up with the idea and he can come up with as many ideas as he likes. The decision to deploy and how they're utilized will come from an incident commander.

.....

No, sir. He's certainly well-versed in all the various capabilities of those teams and it may be that he's raised that point and put it forward as one of the options that should be considered. *And that's certainly something he should do.* [emphasis added]

In the following exchange, Deputy Carson makes the same point:

Q: And they know that Detective Sergeant Wright has a very long working relationship with you and one that I think both you and he have described as a good working relationship; is that right?

A: Yeah. He's – he's a very positive, quality police officer.

Q: So what he says has some credibility in the eyes of people in the command post?

A: I would hope so.

Q: Yeah. And when he says: "We should be moving some people down that way."

He's talking not about passers by off the sidewalk, he's talking about OPP officers; right?

A: Of course.

Q: And by referring to "people down that way" he's talking about down by the Park; right?

A: Yes.

Q: So he is saying that he thinks that the OPP should move some officers down to the Park; right?

A: Yes. But before you leave that, I – I don't think you can take that in context without understanding here he says: "I'm on my way back I'll give you a full rep when I get back."

What he's saying there is he's going to give the incident commander the full disclosure of what he knows when he gets back. What he's identifying is, he thinks there's some issues here that need to be addressed and he thinks we need to move some people to address it.

And as soon as I get back to the office or to the command post, I'm going to share with you what all the concerns are. So what he's doing is – is trying to help them understand that he's – he has a concern and he's on his way in to explain it away.

Q: When you say: "He's telling them, he's helping them understand that he has a concern" I suggest to you that's not what these words are conveying. It says: "I think we should be moving".

He's using words that seem to suggest he's made up his mind; isn't that right?

A: Well, he probably has made up his mind what *he* thinks should be done.

Q: Right.

A: *But as I explained before and I will continue to point out, is that it is not his decision of how we deploy crowd management, TRU or any other specialty unit. The incident commander will take the information, whether it's from Mark Wright or a whole host of sources and make the decision based on all of the information.*

Q: But what we have here, and I don't – you know, you may be quite correct, but what we have here is your credible assistant conveying to the inspector in the Command Post, that he, Detective Sergeant Wright, has his mind made up as to what he thinks should be done. And he's the only one who's been down to see it because he went by himself and he thinks that the OPP should be moving some officers down to the Park.

That's what he's conveying; isn't that right?

A: Given his experience, he's entitled to his opinion and it's a probably a fair opinion.

Q: And that's what he's telling them; right?

A: *And so he should.* [emphasis added]

- Evidence of J. Carson, June 6, 2005, pp. 98-99, 119-21

SPECIFIC LAND DISPUTES: WEST IPPERWASH BEACH AND THE ARMY BASE

16. On May 6, 1993, Stoney Point people moved onto the rifle range of the Army Base. Their occupation was the product of frustration over the delay in restoring the property to the First Nation people. Having reviewed documentation surrounding the expropriation under the *War Measures Act*, Deputy Carson concluded that "there was good reason to understand how the Stoney Point people would have a strong ...expectation that the property be returned to them at some point in time subsequent to the needs of the military." It was apparent to Deputy Carson that there was "lots of room for debate" on the issue of whether the Stoney Point people were trespassing. This was not the first time during Deputy Carson's watch that members of the local First Nation had asserted "colour of right" over a tract of land in the immediate area. The Kettle and Stony Point Band had launched a civil suit over the surrender of a portion of land which previously formed part of their territory and was now cottage property. In addition, the Ipperwash beach, which ran between the Kettle and Stony Point territory and

Central Ipperwash Road, had been the subject of an access dispute. Cottagers took the position that they could limit access to the beach front. In March of 1993, Deputy Carson sought guidance from the local Crown Attorney's Office on this issue so as to provide direction to his officers.

- Evidence of J. Carson, May 10, 2005, pp. 181-87, 227-29
- Evidence of M. Wright, February 21, 2006, pp. 69-71, 74-77

17. To a similar end, in 1994, D/Insp. Wright, with the assistance of then Sergeant Brad Seltzer (now retired S/Sgt. Seltzer), developed a mandatory training programme for Lambton County officers. As S/Sgt. Seltzer explained it, the objective was to provide training so that the officers would apply a more consistent and fair approach to each of these occurrences as they arose. D/Insp. Wright further explained that they wanted the responding officers to understand "the background of the complaint, the issue of colour of right and how to deal with what we consider[ed] were the most likely types of occurrences". The training materials emphasized the need for police to be seen as a neutral body that enforces the law in a manner that protects public peace. Despite criticism from a number of local cottagers, the OPP, under Deputy Carson's direction, often exercised discretion against laying requested charges.

- Evidence of J. Carson, May 10, 2005, pp. 189-90
- Evidence of M. Wright, February 21, 2006, pp. 75, 80-83
- Evidence of B. Seltzer, June 13, 2006, pp. 26, 31

- Lambton County Training Manual, Ex. P-1093

OPP'S GENERAL POLICY ON ABORIGINAL LAND OCCUPATIONS

18. As Incident Commander of Ipperwash, Deputy Carson was responsible for the OPP's response to any occurrences related to the occupation of the Army Base. With respect to the *occupation itself*, Deputy Carson had no intention of taking any overt action to remove anyone from the occupied territory. At the material time, it was the general policy of the OPP to require the purported landowner to obtain an injunction from court which would provide direction to the OPP. This approach was summarized in a 1991 Briefing Note for an Interministerial Policy Forum:

...In most cases the question of ownership or rightful occupation can be addressed from a police point of view if the complainant is successful in obtaining an injunction which specifies what action, if any, the police must take. It must be remembered that an injunction, being a court order, leaves the OPP no option, but to follow its direction.

.....

In the final analysis, a negotiated solution is always more desirable than one brought about by the use of force. The OPP have and will continue to employ this strategy.

Notwithstanding the contrary wishes expressed by the military, the OPP would not deviate from this policy in relation to the Army Base occupation. In the absence of an injunction, the OPP would take no enforcement action regarding the occupation of that military base. No evidence was led at the Inquiry to

suggest that the OPP departed from this approach at any time during the currency of the Army Base occupation.

- Evidence of J. Carson, May 10, 2005, pp. 205, 209-10, 226, 230, 252, 273; May 11, 2005, pp. 46-47, 50, 52-53, 73-77, 104; June 1, 2005, pp. 108-09
- Briefing Note for the Interministerial Policy Forum, dated November 26, 1991, Ex. P-472

19. As for occurrences *ancillary to* the Base occupation, Deputy Carson developed a protocol which identified the circumstances under which the OPP would respond. That protocol found expression in the document entitled, *Ontario Provincial Police Number 1 District Operational Plan, Occupation of Canadian Forces Base Ipperwash*, dated May 28, 1993. It was the responsibility of the OPP to protect public safety and keep the peace. In respect of minor criminal offences committed on the Base, the military police would effect an arrest and transfer the accused into the custody of the OPP at the main gate of the Base. In respect of serious offences, the OPP would assist in or take over the investigation.

- Evidence of J. Carson, May 10, 2005, pp. 265-71; May 11, 2005, pp. 50, 53, 73-74, 78, 103, 115
- *Ontario Provincial Police Number 1 District Operational Plan, Occupation of Canadian Forces Base Ipperwash*, dated May 28, 1993, Ex. P-400

IMPORTANCE OF MAINTAINING A NEUTRAL POSITION

20. Deputy Carson felt it important to make very clear to all concerned that the police and the military had distinct roles. In his view, the military was the landlord

of the property and he did not want to be seen as being supportive of either the military's issues or those of the occupiers; as a police agency, the OPP was to remain, and be seen to remain, neutral. Consistent with this position, Deputy Carson refused a request by the military to have OPP personnel assist in manning checkpoints at the Base to monitor the number of occupiers on the property. Further, as reflected earlier, the Lambton County officers were trained about the significance of remaining neutral in the execution of their duties.

- Evidence of J. Carson, May 11, 2005, pp. 128-29, 173

SOURCES OF TENSION AT THE ARMY BASE

21. In mid- to late June 1995, Deputy Carson noticed an escalation in tension at the Base which manifested itself in incidents of aggression. The change in behaviour coincided with the arrival of a number of "outsiders", including Les and Russ Jewell. It also appeared to be linked to a sense of frustration over the slow pace of negotiations towards the return of the Base to the First Nation people. By late August 1995, there was an even higher level of tension amongst the Base occupants. Deputy Carson recognized that the mounting frustration related not only to the lingering negotiations, but also to a sense of resentment on the part of the occupiers that they, and not the Kettle and Stony Point Band, ought to be negotiating with the federal government for the restoration of the land. Deputy Carson was keenly aware of the strained relationship between some of the occupiers and some members of the Kettle and Stony Point Band, including the

Band Council. It was public knowledge in the media and otherwise that the Kettle and Stony Point Band did not endorse the occupation of the Base, in part because an occupation did not represent the Band's approach to this issue. More specifically, in early July 1995, Deputy Carson learned through D/Sgt. Speck that Chief Bressette had spoken out against Glenn George. According to D/Sgt. Speck, Chief Bressette was of the view that the military should take action against the occupiers.

- Evidence of J. Carson, May 11, 2005, p. 108; May 12, 2005, pp. 26, 57, 169-70; June 1, 2005, p. 108; June 1, 2005, pp. 124, 139, 162; June 27, 2005, pp. 16-17

CONCLUSION

22. By the end of the summer of 1995, Incident Commander John Carson was well-suited to meet the challenges that the OPP would face in the days ahead. In particular:

- (1) he was committed to the principle that the OPP not move to evict First Nation land occupiers in the absence of an injunction;
- (2) he understood that the OPP should not take sides, nor be seen to be taking sides, during a land claims dispute;

(3) he understood the concept of colour of right and, in the context of First Nation land claims, acknowledged its potential legitimacy in the face of criticism by members of the local non-Aboriginal community;

(4) he was alert to conflicting viewpoints that divided the local First Nation community, and the ill will this division generated; and

(5) he was committed to keeping the peace and maintaining public safety during the course of land claim disputes.

D/Insp. Wright shared Deputy Carson's perspective, and indeed, understood and communicated the importance of consistent, fair and neutral policing to front-line Lambton County officers. His ongoing involvement in Ipperwash enhanced his ultimate role as second-in-command to the Incident Commander.

23. Throughout the period leading up to the occupation of the Park, the OPP demonstrated a measured and neutral approach, consistent with existing policy and its pre-existing relationships with the First Nation community.

III. PROJECT MAPLE

Finding:

Project Maple was consistent with existing OPP policy, and was designed to contain the Park occupation and bring about, through negotiations, its peaceful resolution.

24. Glenn George, a well-known member of Stoney Point, often spoke of certain tracts of land within Lambton County as belonging to the First Nation. Deputy Carson was aware of discussions between Staff Sergeant Charlie Bouwman, the Grand Bend Detachment Commander, and Mr. George during which George had claimed that Ipperwash Provincial Park and Pinery Park were native lands. In early August 1995, Mr. George informed D/Insp. Wright that the First Nation people rightfully owned Matheson Drive, Ipperwash Provincial Park and the farmer's field south of the Army Base. That same month, Mr. George again asserted a claim on behalf of the First Nation over the two Provincial parks to then D/Sgt. Speck. Immediately following the takeover of the built-up area of the Army Base on July 29, 1995, Deputy Carson learned that the Park was potentially the next target for occupation. This potential was again drawn to Deputy Carson's attention in mid-August, 1995.

- Evidence of M. Wright, March 7, 2006, p. 27
- Evidence of G. Speck, March 22, 2005, pp. 161-62

25. As a result, Deputy Carson met with senior OPP command staff and other officers at the end of August 1995 to discuss plans for an extended occupation of the Park. It was agreed that Deputy Carson would lead a contingency planning session to develop an operational plan for the potential occupation. That planning session occurred on September 1, 1995 and generated what became known as *Project Maple*.

- Evidence of J. Carson, May 12, 1995, pp. 176-77
- Evidence C. Coles, August 15, 2005, p. 176
- Evidence of T. Parkin, February 6, 2006, p. 150
- Evidence of M. Wright, February 21, 2006, pp. 165-68

26. *Project Maple* was intended to be sufficiently flexible that officers could respond to any of the following scenarios that might arise from a Park occupation:

(1) one or two occupiers enter the Park, refuse to leave and are treated as trespassers. They are arrested and removed;

(2) a larger group of occupiers (estimated at approximately 20) enters the Park, and refuses to leave. ERT officers co-habit with them, staying “in

their face”, trying to keep things as calm as possible and a dialogue open while the Ministry of Natural Resources seeks an injunction for the occupiers’ removal; or

(3) a larger group of occupiers enters the Park, refuses to leave and, for whatever reason, the police must withdraw from the Park and secure the area while the MNR seeks an injunction for the occupiers’ removal.

- Evidence of J. Carson, May 16, 2005, pp. 11-12, 22, 75, 96-97
- Minutes of September 1, 1995 meeting, P-421, p. 1

27. The project’s objective was clearly set out on its front page and later, on Deputy Carson’s instructions, posted on the wall at Forest Detachment where all involved officers could be reminded of it:

“TO CONTAIN AND NEGOTIATE A **PEACEFUL** RESOLUTION”
[emphasis in original]

Deputy Carson identified seven units within the OPP that would share the responsibility of ensuring this goal was achieved: (1) emergency services, which included ERT (headed up by then Sergeant Stan Korosec, now retired) and TRU (headed up by Insp. Skinner); (2) intelligence headed up by Detective Sergeant Don Bell (now D/Insp. Bell); (3) negotiations headed up by S/Sgt. Seltzer; (4) media relations led by Sergeant Doug Babbitt (now A/Supt. Babbitt); (5) communications headed up by Sergeant Bob Cousineau; (6) criminal

investigations headed up by Detective Sergeant Trevor Richardson; and (7) logistics/administration headed up by Sergeant Bill Dennis (now C/Supt. Dennis). Deputy Carson recognized their *collective* responsibility for achieving the project's objective. He tasked a representative from each unit to develop a plan for his area of responsibility that would address any eventuality which might arise.

- Evidence of J. Carson, May 16, 2005, pp. 14-15, 18-19, 44, 57, 65, 67, 73, 74, 111, 126, 130; May 18, 2005, p. 37
- *Project Maple*, Ex. P-424

28. Very late on the evening of September 4, 1995, *Project Maple* became operational. As events unfolded, it quickly became apparent that the police would be responding to the third scenario contemplated above. By the morning of September 5, 1995, the OPP had completely abandoned any notion of co-habiting with the occupiers during the currency of the occupation. Consistent with the plan's stated objective, the police immediately began working towards containing the occupation and negotiating a peaceful resolution. It was contemplated that MNR would seek a court injunction. Shortly after the occupation began, Park Superintendent Les Kobayashi assured Deputy Carson that the MNR would, indeed, be taking the necessary steps to secure an injunction. A 9:45 pm entry in the scribe notes for September 4, 1995 succinctly states Deputy Carson's overall position regarding the Park occupation:

John Carson advise lets let them refuse to leave, then we will get court injunction. We don't want anyone to get hurt.

- Evidence of J. Carson, May 16, 1995, pp. 161, 174-77, 178-80, 212-14
- Evidence of L. Kobayashi, October 24, 2005, p. 225
- Scribe Notes (typed), Ex. P-426, p. 3

CONCLUSION

29. From its inception, *Project Maple* contemplated that an injunction would play an integral role in achieving the operation's stated objective. The operational plan was, indeed, consistent with the OPP's general policy towards First Nation occupations. Equally as important, it promoted a low-key approach that discouraged the use of force. That being said, the OPP response to Aboriginal occupations or protests has been significantly enhanced since 2006. Today, a project plan would similarly stress the objective of a peaceful resolution, but would be designed in accordance with the Framework for Police Preparedness for Critical Incidents (the "Framework"). New specialty programs have been introduced such as the Aboriginal Relations Team, the Major Event Liaison Team, and Crisis Mediation. The command structure (Gold-Silver-Bronze), the on-scene responsibilities of the Public Order Unit Commander, emergency response and POU training and tactics are all significantly different than in 1995. As well, the OPP now has a more nuanced approach to the role that injunctions should play in resolving Aboriginal occupations or protests. These, and other

changes, are fully discussed in the OPP Part II Submissions. They reflect lessons learned since, and in some instances, as a result of lpperwash.

IV. EFFORTS AT COMMUNICATING WITH THE PARK OCCUPIERS

Finding:

The OPP engaged in good faith reasonable efforts to open a dialogue with the Stoney Point occupiers after the takeover of the Park. These efforts faced considerable impediments.

PRIOR COMMUNICATION WITH THE OCCUPIERS OF THE ARMY BASE

30. The OPP and Deputy Carson's dialogue with the Stoney Point people prior to the occupation of the Park is relevant to demonstrate the OPP's desire and commitment to continuing that dialogue once the Park was occupied:

(1) in mid-July 1993 a number of Stoney Point occupiers were charging tolls on Matheson Drive for access to the beachfront. Instead of immediately moving in to arrest the individuals, Deputy Carson spoke directly with Maynard T. George and Carl Tolsma, attempting to persuade them to dismantle the toll booths in order to avoid an arrest;

(2) late on the evening of August 23, 1993, someone fired at and hit a military helicopter. Instead of the OPP arriving unannounced at the Base

with a search warrant, Deputy Carson advised the Stoney Point occupiers in advance of how the OPP would respond to the shooting:

(a) he requested assistance from Robert “Nobby” George, who was from the original Stony Point reserve, to communicate to the occupiers that the police would be securing the Base pending a search. During this conversation, Mr. George indicated that he felt Carl Tolsma was at the Base and would be able to assist; and

(b) Deputy Carson then attended the Army Base and spoke with Mr. Tolsma. Deputy Carson advised him that all vehicles leaving the Base would be checked, and took the unusual step of notifying him in advance that a search warrant would be executed at the Base. In the same spirit of open communication, D/Insp. Wright met with Mr. Tolsma the following morning and discussed the anticipated execution of the search warrant.

(3) immediately following the occupation of the built-up area of the Army Base on July 29, 1995, Deputy Carson asked the Commander at the Base to advise Bert Manning, one of the occupiers, that the OPP would be going to that area of the Army Camp. He provided this advance warning to ensure “there was no misunderstanding when the police arrived [as to] what functions they would be carrying out”. Equally important, he

instructed that the police set up meetings with the occupiers to discuss specific issues. As outlined below, it was D/Insp. Wright who, on behalf of the OPP, was the constant during these meetings.

- Evidence of C. Tolsma, February 21, 2005, pp. 163, 172-75
- Evidence of J. Carson, May 11, 2005, pp. 145, 150-52; 190, 193; May 12, 2005, pp. 68, 115
- Notes of T. Parkin, Ex. P-499, p. 13
- Evidence of M. Wright, February 21, 2006, pp. 58-59

COMMUNICATION WITH THE OCCUPIERS IMMEDIATELY BEFORE THE PARK OCCUPATION

31. In the summer of 1995, the police were having difficulty identifying an obvious spokesperson for the Stoney Point people.

- Evidence of J. Carson, May 12, 2005, p. 73

32. Nonetheless, in early August 1995, specific policing issues arose which prompted discussions between the OPP and the Base occupiers. Various officers attended at the main gate of the Base, but it was D/Insp. Wright who served as the common thread throughout these visits; and during each visit, D/Insp. Wright was able to get someone to speak with him:

(1) on August 1, 1995, he met with Glenn George. They discussed various topics, including:

(a) a compromise regarding who, as between the occupiers and the MNR, would control night-time access to Matheson Drive;

(b) the issuance of a joint press release by the OPP and the Stoney Point people regarding R.I.D.E. checks;

(c) having Mr. George speak to the occupiers about the events that were aggravating the situation at the beach; and

(d) Mr. George's concern about First Nation people from other areas coming into the Base and causing trouble.

(2) on August 3, 1995, he attended at the Base and spoke with Glenn George and Les Jewell about control of the gate at Matheson Drive and the issuance of the press release. They also spoke about arranging the surrender of Cleve Lincoln Jackson on the arrest warrant issued in connection with the July 29, 1995 takeover of the built-up area. As reflected in Inspector Wright's contemporaneous notes, Mr. George spoke about the "spirit of co-operation" that had developed with the OPP; and

(3) the following day, he again attended at the Base and, in this instance, spoke with Glenn George and Rose Manning about whether the Elders had met to discuss the possible surrender of Mr. Jackson.

- Evidence of G.M. George, February 2, 2005, pp. 23, 37
- Evidence of M. Wright, February 21, 2006, pp. 127-35, 144-46, 152
- Notes of G. Speck, pp. 83, 87, 89, Ex. P-1160
- Notes of K. Bouwman, Doc. 2003357
- Press Release, Ex. P-1096
- Press Release, Ex. P-1097

ATTEMPTS AT COMMUNICATION DURING THE COURSE OF THE PARK

OCCUPATION

33. It was an important feature of *Project Maple*, described by Deputy Carson in his testimony, to maintain an ongoing dialogue with the Park occupiers. Deputy Carson assumed (with real justification given the open communications that had previously existed between the OPP and the Stoney Pointers) that the OPP would be able to re-establish a dialogue. When initial attempts at reaching out *directly* to the occupiers failed, Deputy Carson recognized the importance of finding alternate means to communicate. As reflected in his conversation with then Superintendent Tony Parkin (now retired C/Supt. Parkin) on the morning of September 5, 1995, he was trying to “get a handle on who the players [were] and who the best negotiators would be”. What follows is an outline of the various

police and non-police resources that Deputy Carson utilized to try to open lines of communication with the occupiers.

- Evidence of J. Carson, May 17, 2005, p. 140

(i) POLICE RESOURCES

34. Building on the previous success at speaking with the Stoney Point people, a number of OPP officers attempted to speak directly with the occupiers.

35. On the afternoon of September 4, 1995, Roderick George demanded a meeting with Sgt. Korosec's superiors. Sgt. Korosec gave him Deputy Carson's name and indicated that the police would be willing to meet at any time. Mr. George replied that he would contact S/Sgt. Bouwman to set up a meeting. As well, just prior to the Park takeover, Sgt. Korosec spoke with Bert Manning, who appeared interested in Korosec's offer to have the OPP meet with Manning the following day. Sgt. Korosec later told Deputy Carson that these overtures had been made.

- Evidence of R. George, November 24, 2004, p. 65
- Evidence of J. Carson, May 16, 2005, pp. 159, 193
- Evidence of S. Korosec, April 6, 2006, pp. 16-18, 24-29

36. Within hours of the Park takeover, Deputy Carson wanted to open a dialogue with the occupiers. A 9:45 p.m. entry in the September 4, 1995 scribe notes states:

John Carson: if we speak with them tonight, they will give us an idea how things are going

Deputy Carson testified that he was trying:

to get a sense from the occupiers what their intentions may or may not be and basically I was trying to get a temperature on, you know, if they had anything to say or what – what they intended to do.

If we get down there and have some dialogue, we might get some sense of, you know, what we could expect.

- Evidence of J. Carson, May 16, 2005, p. 181
- Scribe Notes (typed), Ex. P-426, p. 3

37. *Project Maple* provided for the utilization of a formally trained negotiation team. While they were skilled as *crisis* negotiators, it was contemplated that S/Sgt. Seltzer and his officers could also be useful in a *non-crisis* situation. S/Sgt. Seltzer explained that his role was not limited to that traditionally performed by a police negotiator:

Q: ... And can we take from that that there is meant to be some flexibility in so far as that role?

A: As far as the negotiator?

Q: Yes.

A: Flexibility in a sense that – that as police officers present in the Command Post, the Incident Commander may direct other responsibilities of those officers.

And certainly being communicators outside the role of crisis negotiators, as communicators those individuals may be called upon to communicate the message of the Incident Commander.

Deputy Carson, also an experienced crisis negotiator, recognized that S/Sgt. Seltzer had “a very high ability to establish relationships and...speak to people.” Deputy Carson did make use of S/Sgt. Seltzer’s ability to listen and his approachable manner. S/Sgt. Seltzer first arrived on the scene at 11:43 p.m. on September 4, 1995. Early the following morning, Deputy Carson tasked him with establishing contact with the Park occupiers. In furtherance of this task, S/Sgt. Seltzer enlisted the assistance of retired Constable Lorne Smith who had supervised the First Nation policing programme at Kettle and Stony Point for years. Deputy Carson felt that Smith had “a very high knowledge of the area and the people involved”, in addition to “a very sound understanding of the local politics”. This was likely enhanced by the fact that Smith had lived in the area for many years. Indeed, Deputy Carson had proposed to S/Sgt. Seltzer that Smith become involved during the September 1 planning meeting.

- Evidence of J. Carson, May 10, 2005, p. 150; May 11, 2005, pp. 17-18; May 16, 2005, p. 129; May 17, 2005, p. 58
- Evidence of B. Seltzer, June 13, 2006, pp. 76, 82-85; 91, 101

38. Shortly after 8:00 a.m. on September 5, 1995, Deputy Carson advised Chief Tom Bressette that the police were going to try to find out what the occupiers' plans were. True to Deputy Carson's word, at 12:00 p.m. D/Insp. Wright, who had enjoyed recent success in speaking with the occupiers at the Army Base, together with S/Sgt. Seltzer and Les Kobayashi, headed to the Park fence to speak with the occupiers. S/Sgt. Seltzer (whose role was to first learn the identity of the contact person) stood back while D/Insp. Wright and Mr. Kobayashi approached the fence. Unable to make any progress at the Park boundary, they headed to the main gate of the Army Base where D/Insp. Wright was able to speak with Bert Manning. Amongst other things, he advised Mr. Manning that the occupiers were trespassing, that the MNR would be applying to the court for an injunction and that the occupiers may have the right to make representations to the judge hearing the application. As it turned out, this would be the *only* occasion when a Stoney Point person would respond to an overture to open a dialogue. D/Insp. Wright apprised Deputy Carson of what little information he had learned from Mr. Manning: the people were satisfied to have their land and burial site back. This encounter left both D/Insp. Wright and S/Sgt. Seltzer with the impression that the occupiers were both very nervous and disorganized.

- Evidence of N. Cottrelle, January 18, 2005, pp. 69-72
- Evidence of L. Kobayashi, October 25, 2005, pp. 229-31
- Evidence of J. Carson, May 16, 1995, p. 244
- Evidence of M. Wright, February 22, 2006, pp. 149-56

- Evidence of B. Seltzer, June 13, 2006, pp. 103-05, 107, 111-13
- Transcript of Telephone call between J. Carson and T. Bressette, Ex. P-444A, Tab 3, p. 2
- Transcript of Telephone Call between M. Wright and T. McCabe, Ex. P-464, pp. 10-11
- Transcript of Injunction Application, dated September 7, 1995, Ex. P-467, p. 10
- Scribe Notes (typed), Ex. P-426, p. 35

39. First thing on the morning of September 6, 1995, Deputy Carson met with S/Sgt. Seltzer again to discuss how the police could effectively reach out to the occupiers, this time using a less direct approach. The Incident Commander suggested that S/Sgt. Seltzer and Lorne Smith go over to Kettle Point to speak with Robert “Nobby” George. Deputy Carson’s thinking was as follows:

-- I felt that Bob would have influence. I felt the occupiers did not want to have any discussion with Chief Bressette that there was certainly some animosity there because of public statements that had been made.

But I felt Bob George had influence with the occupiers, or at least knew people who were of influence who may be able to assist us in dialogue.

So in – in my view, there was a – a great difference in regards to the ability to influence depending on which individual we’re speaking to.

.....

And my intent here is that even if we can’t make direct dialogue, I wanted the message to be delivered, however that might occur, that we intended to keep this peaceful and make Bob or whoever they could speak to, aware that we did get ambushed last night.

And you know, we’re looking – you know, to try to keep this under control.

As reflected above, Mr. George had proven to be helpful in opening a dialogue in the past. In reference to Deputy Carson's instructions on this point, S/Sgt. Seltzer's notes reflect the Incident Commander as having said, "we do not want confrontation. We want to settle this with genuine concern for the community".

- Evidence of J. Carson, May 18, 2005, p. 107
- Evidence of B. Seltzer, June 13, 2006, pp. 129-30, 136,
- Notes of B. Seltzer, Ex. P- 1704, p. 89

40. Before meeting with Robert George on the afternoon of September 6, S/Sgt. Seltzer and Lorne Smith reached out to Earl Bressette, another Elder in the Kettle and Stony Point community. S/Sgt. Seltzer was briefed in advance by Lorne Smith. S/Sgt. Seltzer understood that Mr. Bressette deserved a great deal of respect, and that Seltzer was to earn the right to speak. Mr. Bressette did, indeed, provide them with some insight on how to approach the Park situation, in addition to a historical context for the dispute.

- Evidence of B. Seltzer, June 13, 2006, pp. 137-41

41. D/Insp. Wright attended the Park again at approximately 3:00 p.m. on September 6, 1995, this time in the company of Sergeant Marg Eve, a trained crisis negotiator on S/Sgt. Seltzer's team. Recognizing that women often assume

decision-making roles within First Nation culture, it was thought that Sgt. Eve might be better received by the Park occupiers. They attended at the fence line and attempted to get someone to speak with them.

- Evidence of R. George, November 23, 2004, pp. 134-38
- Evidence of I. Doxtator, November 25, 2004, p. 167
- Evidence of M. Wright, February 22, 2006, pp. 228-42
- Notes of M. Eve, Ex. P-1108, p. 43
- Scribe Notes (typed), Ex. P-426, pp. 66-67

42. At about the same time, S/Sgt. Seltzer and Lorne Smith met with Mr. Robert George at his home. They were later joined by Mr. George's son, Ron, who was then practising law. Both suggested to S/Sgt. Seltzer that perhaps Glenn George or Roderick George might be willing to talk if the police agreed not to execute any outstanding arrest warrant that each faced.

- Evidence of B. Seltzer, June 13, 2006, pp. 144-49

43. Shortly after 6:30 p.m., S/Sgt. Seltzer returned to the Command Post. He advised Deputy Carson that he had made some inroads at Kettle Point and felt he was going to be able to establish some dialogue the following morning. At 9:50 p.m. that same evening, S/Sgt. Seltzer received word from Lorne Smith that Roderick George was going to speak to his people to see if it was agreeable to meet with S/Sgt. Seltzer in the morning. Mr. George stipulated certain conditions,

each of which related to his concern about being arrested and charged. Upon receiving this information, S/Sgt. Seltzer immediately contacted Robert George to advise that Seltzer would check on whether he could meet the proposed conditions. Later that evening (around the time that CMU moved down East Parkway Drive), S/Sgt. Seltzer left Deputy Carson an update regarding Roderick George. For obvious reasons, Deputy Carson did not receive the update that night.

- Evidence of J. Carson, May 19, 2005, p. 72; June 28, 2005, p. 147
- Evidence of B. Seltzer, June 13, 2006, pp. 149-52

(ii) POLICE RESOURCES: ABORIGINAL

44. Shortly after his arrival as Detachment Commander in Forest, Deputy Carson learned that he had a number of officers of First Nation ancestry under his command, one of whom was then Constable Vince George (now Sgt. George) of Kettle and Stony Point. Throughout his assignment at Forest, Deputy Carson sought out Sgt. George's perspective on First Nation issues and how to deal with them. Accordingly, Deputy Carson utilized Sgt. George as a resource during the Park occupation.

- Evidence of J. Carson, May 10, 2005, p. 163

45. On the morning of September 5, 1995, D/Insp. Wright suggested that Sgt. George meet with the Park occupiers at noon that day. S/Sgt. Seltzer also suggested that having Sgt. George be the constant as negotiator (although, admittedly, he was not formally trained as such) would be productive. While Deputy Carson saw merit to this suggestion, he was ever mindful of placing this officer, who had roots in the community and who was related to many of the occupiers, in an uncomfortable position. This concern is recorded on six different occasions in the scribe notes. (See Appendix "A" herein for a summary of the references.) Deputy Carson elaborated on this concern at the Inquiry:

...Vince George is a constable, at that time, with the OPP Detachment at Forest, and I was concerned that he would be seen in a negative light by the occupiers for having the intermediary type role. And I didn't want him to face community issues after these events were completed.

If we go back to some of our discussion earlier in regards to the relationship with the officers at Kettle Point, there was already some strain in the community, particularly with Miles Bressette, around Vince George and Luke George coming and going on Kettle Point. And I – I certainly didn't want to aggravate some tenuous relationships that already exist.

Deputy Carson ultimately asked S/Sgt. Seltzer to approach Sgt. George about paving the way for a negotiator to proceed. In this respect, Sgt. George's role would be lower in profile. However, Deputy Carson was emphatic that no pressure be placed on the officer to accept the assignment. After consultation with his own family, Sgt. George did agree to facilitate discussions between the occupiers and Sgt. Eve. Indeed, on the morning of September 6, 1995, Sgt.

George met with a confidential informant in this regard. As events unfolded, Deputy Carson's concern proved to be well-founded. Immediately after news of Dudley George's shooting spread through the local First Nation community, the OPP communications centre received death threats against three First Nation OPP officers, including Sgt. Vince George.

- Evidence of J. Carson, May 16, 2005, p. 194; May 17, 2005, pp. 68-69, 122, 124-26
- Evidence of V. George, April 5, 2006, pp. 81, 110
- Evidence of B. Seltzer, June 13, 2006, pp. 121-22, 126-28, 136
- Transcript of Telephone call between M. Wright and the Chatham Communications Centre, Ex. P-1121
- Transcript of Telephone Call re Threat, Ex. P-1293

46. It was suggested at this Inquiry that the Kettle and Stony Point Police represented another avenue of assistance. Unfortunately, as outlined below, local issues effectively prevented the utilization of the Kettle and Stony Point Police in this way.

47. Prior to Deputy Carson's arrival in Forest as Detachment Commander, his superiors brought a concern to his attention regarding the relationship between the OPP officers at Forest and their colleagues at Kettle and Stony Point. The issue was

...that some of the OPP officers were going onto Kettle Point taking enforcement and there was a strong sense that they shouldn't be

doing that. They shouldn't be spending their lunch hours visiting people on Kettle Point, that they should only go there to – when they had permission from the – First Nation officers who were working.

Deputy Carson explained that while the officers from the two Police Services worked well together, the source of friction appeared to be Miles Bressette:

Well, I would suggest that relationship with the officers, generally, was very positive that the – that the constables themselves got along pretty well. And there was certainly mutual understanding and respect for their work and there was no hesitation for either the OPP officers or the First Nation officers to help one another.

The big issue seemed [related] to the OPP officers going on the First Nation territory and – and that seemed really to cause some distress for Miles Bressette in particular.

Miles Bressette agreed that there were administrative conflicts between the OPP and directives issued by the Kettle and Stony Point Council. Apart from this source of strain, he cited jurisdictional disputes where he and Deputy Carson did not see eye-to-eye. In Deputy Carson's view, Miles Bressette simply did not want the former meddling in what the latter thought was his business: "...I got...the clear sense that he wanted nothing to do with having Kettle Point officers working with OPP officers at all". Chief Tom Bressette agreed with Deputy Carson's assessment that a lot of the tension in this context was fuelled by Miles Bressette.

- Evidence of M. Bressette, February 23, 2005, pp. 215, 220-21, 237
- Evidence of T. Bressette, March 3, 2005, pp. 114-17, 122-23

- Evidence of J. Carson, May 10, 2005, pp. 162-64, 173-74, 190-92

48. In the several years preceding the Park occupation, the Kettle and Stony Point officers did not tend to become involved in matters off the Reserve, even when they involved the Stony Point people:

(1) there was a written protocol in place between the OPP and the Kettle and Stony Point Band which governed the extent to which officers from the OPP could be assisted by their colleagues from the Reserve.

According to Miles Bressette, the Kettle and Stony Point Chief and Council did not want him and his officers assisting the OPP, particularly if there were policing needs within the Reserve that had to be met; and

(2) following the shooting of the helicopter over the Army Base on August 23, 1993, the OPP asked the Kettle and Stony Point Police to assist the OPP at the Base. However, their assistance was not forthcoming.

According to Chief Tom Bressette, it was Miles Bressette who did not want to be involved. According to Miles Bressette, a directive from Chief Tom Bressette prevented him and his officers from assisting. In any event, Deputy Carson came to understand that the Chief and Council at Kettle and Stony Point did not want their officers assisting the OPP with respect to the Army Base. Interestingly enough, Miles Bressette testified that, had the OPP asked his police service to intervene at the Park occupation, he

anticipated that Chief Tom Bressette would not have permitted it. In contrast, Chief Tom Bressette testified that he would not have turned down a request for assistance. The difficult dynamics of the situation were reinforced by what later happened. Chief Tom Bressette was upset that the OPP was utilizing Constable Wally Kaczanowski of the Kettle and Stony Point Police to assist following the shooting. He was concerned that the attendance of the Band's officers would give the appearance that he and the Band Council somehow endorsed what had happened. Out of respect for the Chief's wishes, Deputy Carson immediately pulled the officer from duty.

(3) in fairness to Chief Tom Bressette, it was his understanding, as reflected in the minutes of the August 1, 1995 Band Council meeting, that a court ruling had indicated that officers from a First Nation police service have no jurisdiction off the Reserve.

- Evidence of W. Kaczanowski, February 23, 2005, pp. 68, 73
- Evidence of M. Bressette, February 24, 2005, pp. 43, 98-101
- Evidence of T. Bressette, March 2, 2005, p. 133
- Evidence of J. Carson, May 11, 2005, pp. 205-07; May 31, 2005, p. 32; June 29, 2005, pp. 113-14
- Transcript of Telephone Call between J. Carson and T. Bressette, Ex. P-249
- Scribe Notes (typed), Ex. P-426, p. 84
- Band Council Minutes of August 1, 1995, Ex. P-43, p.13

49. Deputy Carson provided his perspective as to how the relationship between the two police services precluded him from utilizing them as a resource prior to the unfortunate events of September 6, 1995:

Q: And, what about on the evening of September 5, Miles Bressette and engaging the police officers from Kettle and Stony Point?

A: Well, from the ongoing issues we had there, Miles Bressette certainly made it clear that he didn't want his officers working off of Kettle Point and that precluded my ability to request them to go the Military Base or the Park and I didn't – I didn't feel given Miles' ongoing position around that issue and his relationship with our officers, generally, that he would be supportive or assist us in any way, particularly in this type of incident.

Q: And, so that's why you didn't ask?

A: Correct.

Q: And, you didn't ask on September 6th?

A: No, I didn't.

At no time prior to the evening of September 6, 1995 did the Kettle and Stony Point Police Service offer to assist in any capacity. Apart from the expectation that Chief Tom Bressette would not have permitted their involvement, Miles Bressette testified that he did not consider the occupation of the Park to be a policing issue for his service as the land fell within the territorial jurisdiction of the OPP. In this respect, Chief Tom Bressette's testimony was similar:

I was always told the jurisdiction for that was the OPP and the Park and I mean, why – why bump heads with something that was strained relations at the time?

I don't think it would have got anywhere.

- Evidence of W. Kaczanowski, February 23, 2005, pp. 159-60
- Evidence of M. Bressette, February 24, 2004, pp. 95-96
- Evidence of T. Bressette, March 3, 2005, p. 123
- Evidence of J. Carson, May 18, 2005, pp. 21-22

50. There was an additional factor that must be considered. As described by P/C Kaczanowski, there was a tension between the Stoney Point occupiers and the Kettle and Stony Point Police Service. It was apparent that the occupiers did not want to be policed by them and, accordingly, would not recognize their authority or potential value. No evidence was heard before the Inquiry to indicate that any Stoney Point occupiers asked for the Kettle and Stony Point Police to intervene. Indeed, Cecil Bernard George acknowledged that when he attended at the Park and spoke with the occupiers, no one made a request to speak with someone from that service.

- Evidence of C.B. George, December 8, 2004, p. 16
- Evidence of W. Kaczanowski, February 23, 2005, pp. 60-62; 153,155
- Evidence of C. Tolsma, February 21, 2005, p. 152
- Evidence of T. Bressette, March 3, 2005, pp. 124-25

(iii) NON-POLICE RESOURCES

51. On the morning of September 5, 1995, Deputy Carson advised Chief Bressette that he would be happy to hear from him at any time if he or the Band Council had questions or concerns respecting the occupation. Deputy Carson emphasized that he wanted to keep the lines of communication open between the police and the Kettle and Stony Point Band. On September 5 and 6, 1995 Chief Bressette did not offer to mediate or otherwise facilitate a dialogue with the Park occupiers, nor was he realistically in a position to do so, given the very public position he had taken about the occupation and occupiers.

- Evidence of J. Carson, May 16, 2005, pp. 248, 251
- Transcript of Telephone Call between J. Carson and T. Bressette, Ex. P-444A, Tab 3, pp. 4, 6

52. A number of witnesses described Chief Bressette's disapproval of the Army Base and Park occupations. This tone of disapproval was evident in the telephone call that Chief Bressette had with Deputy Carson on the morning of September 5, 1995. Referring to the Park occupiers, Chief Bressette stated:

And ah, I don't know, I think you are going to continue to have problems with our group until somebody ah enforces a law against them.

.....

Well to be honest with you John ah the council here is tired of those folks here.

.....

Well you know it's too bad you you guys in the defence or the federal people couldn't get together and try and clean this mess out because that's what's causing all this trouble that they've allowed to overstep their boundaries in many ways and ah their just using that as a method and it's sort of building them enthusiasm in 'em to continue on doing what their doing.

Around noon on September 5, 1995, A/Supt. Babbitt reported to Deputy Carson that Chief Bressette was on the radio indicating that he did not support or condone the occupation. Gerald George, a Band Councillor, had also spoken out publicly against the Stoney Point occupiers, referring to them in a letter published in the *Forest Standard* as “animals” and “jerks”. Mr. George confirmed at the Inquiry that the Band Council did not approve of the Base occupation. Some of the Stoney Point occupiers obviously held antagonism towards the Chief and certain members of the Band Council. (Indeed, this was manifested in the incident between Gerald George and Stewart George). It was understandable that Deputy Carson did not regard Chief Tom Bressette or the Band Council as a source of assistance in negotiating with the occupiers. As he stated:

It was very clear to me in discussions with Chief Bressette and as a result of the information that other people who had discussions with him that there – there was certainly not a very harmonious relationship, I guess, with the occupiers and the Kettle Point Band; some of that had – had been well articulated in the media coverage; some of the statements made by the Band Council in relation to the activities at the Military Base. And that didn't seem to be a viable option that would work.

- Evidence of Gerald George, January 12, 2005, p. 169
- Evidence of M. Bressette, February 24, 2005, p. 58
- Evidence of C. Tolsma, February 9, 2005, p. 211; February 21, 2005, p. 101
- Evidence of J. Carson, May 17, 2005, pp. 160-61; May 18, 2005, pp. 20-21
- Transcript of Telephone Call between J. Carson and T. Bressette, Ex. P-444A, Tab 3, pp. 3, 5
- Letter to the Editor, dated August 30, 1995, Ex. P-73

53. On August 3, 1995, the OPP received word that the Assembly of First Nations (the "AFN") Grand Chief might come to Ipperwash area to mediate. No mediation did occur. Deputy Carson was aware that Chief Mercredi's overture had been rejected and it explains why he did not reach out to Chief Mercredi or persons of his stature for assistance during the Park occupation:

A: It appeared that even earlier in the month, the Grand Chief had been in the area in August and there –

Q: That's Mr. – Chief Ovide Mercredi?

A: Correct.

Q: Yes.

A: And that, despite his status nationwide and his influence, there didn't appear to be any appetite for a discussion with the occupiers. I got – I certainly had the impression that Mr. Mercredi and Chief Bressette would not be welcome at – at the Park or at Camp Ipperwash, particularly.

Chief Gordon Peters, the Regional Chief for Ontario at the material time, advised the Inquiry that even if the OPP had asked the Chiefs of Ontario, to intervene, he would have required the permission of the relevant First Nation parties before his

organization could become involved. During the Park occupation, neither the Stoney Point occupiers nor the Kettle and Stony Point Band asked him to become involved. Chief Peters was aware that Chief Mercredi's offer to mediate had been rejected by the Stoney Point people and, consequently, Chief Peters was not surprised that the First Nation people had not asked him to mediate during that time frame.

- Evidence of T. Bressette, March 2, 2005, pp. 83-84
- Evidence of G. Peters, March 31, 2005, pp. 78, 80-81
- Evidence of O. Mercredi, April 1, 2005, p. 143
- Evidence of J. Carson, May 12, 2005, p. 129; May 18, 2005, pp. 21, 24; May 31, 2005, p. 193
- Notes of M. Wright, Ex. P-1086, p. 51
- Article in *London Free Press*, dated August 4, 1995, Ex. P-247

54. Given that background, it is not surprising that no offers of help were extended to the OPP by First Nation leadership prior to the shooting.

- Evidence of G. Peters, March 30, 2005, pp. 77,140
- Evidence of O. Mercredi, March 31, 2005, pp. 246-48
- Evidence of J. Carson, May 18, 2005, p. 23

55. At approximately 4:15 pm on September 6, 1995, Deputy Carson spoke with Captain Doug Smith, the commander of the Army Base. Deputy Carson was aware that, following the military's withdrawal from the Base, Cpt. Smith

remained in contact with certain occupiers on matters relating to the physical plant. Cpt. Smith advised Deputy Carson that he wanted to meet with Les Jewell, possibly on Friday, September 8, 1995, and offered to raise anything on Deputy Carson's behalf. It was Cpt. Smith's view that Les Jewell was running things at the Park. Deputy Carson asked that Cpt. Smith contact the OPP prior to the meeting to see if they had any issues for discussion. Deputy Carson was understandably reluctant to utilize Cpt. Smith as an intermediary on behalf of the OPP. He did not want the occupiers to be under the misapprehension that the police and the military were working together against the occupiers. Deputy Carson wanted to ensure that the OPP be seen as independent of the military's issues with the occupiers.

- Evidence of J. Carson, May 19, 2005, pp. 21-23; May 31, 2005, p. 183
- Evidence of D. Smith, June 26, 2006, pp. 147-49

56. Apart from the overture by Cpt. Smith, the only other individual who came forward with an offer to facilitate discussions with the Park occupiers prior to the shooting was Cindy Elder of *Approaches Mediation*. Word of her telephone call came into the Command Post at approximately 4:00 p.m. on September 6, 1995. At the time, Deputy Carson was inundated with calls and otherwise extremely busy. Ms. Elder had no apparent connection to Ipperwash and was an unknown quantity. Deputy Carson did inquire of the staff sergeant in the communications centre if she could be of assistance:

Carson: Okay would you call her back.

Drummelsmith: Uh huh.

Carson: Say I'm extremely busy and unless there is something that she can supply you of information that ah is of urgent nature I just don't have time.

Drummelsmith: Okay.

Carson: Okay cause like I am inundated with phone calls from hell and back.

Drummelsmith: Okay.

Carson: And ah unless there's something that has ah a direct effect on this incident I don't have time today to talk to her.

Drummelsmith: Okay.

Carson: And ah the best I can do is sometime tomorrow.

Drummelsmith: Okay.

Carson: Okay.

Drummelsmith: Alright.

Carson: And, and we're not trying to be ignorant I'm just you know that's just life right now.

As a follow up to Deputy Carson's request, Staff Sergeant Drummelsmith did ask Ms. Elder what assistance she could be:

Elder: Approaches Mediation.

Drummelsmith: Yes, Cindy?

Elder: Yes.

- Drummelsmith: Yeah, it's Bob Drummelsmith calling.
- Elder: Hi.
- Drummelsmith: Ah, I was able to get a hold of John Carson and *he said unless it's something that could assist with the incident they are dealing with right now, the closest he can get back to you is tomorrow.* Ah, that's a little blunt maybe but um.
- Elder: *Well, that's why I was calling, was to offer him some assistance with the situation right now.*
- Drummelsmith: Well that's what I suggested to him.
- Elder: Yeah, no, that is definitely why I was calling him. I would not even have imposed myself on him under the circumstances knowing what he's going through but...
- Drummelsmith: Uh huh.
- Elder: *Um, yeah I think I could definitely help him out with that.*
- Drummelsmith: Okay, uh.
- Elder: If, if he wants me to.
- Drummelsmith: Yeah, I'm kind of caught in the middle here.
- Elder: Oh, I'm sure you are and that's fine. I just thought that *in light of the fact I've been working with the RCMP on the west coast with Gustafson as you know that's like really hot right now, um, you know he may want to try some of the stuff we have done to try and calm that one down.*
- Drummelsmith: Uh huh. I can.
- Elder: I am still in town right now so *timing is good.*

Drummelsmith: Okay. I can relay the message to him, he is the boss. If he's, like I don't know his itinerary. *He said he's really busy.*

Elder: Yeah.

Drummelsmith: But, anyway, *he will get back to you, but he said it may not be until tomorrow. Okay?*

Elder: Okay, that's fine. Just so that he, I just wanted him to know that, yes, I was still keeping an eye on it and –

Drummelsmith: Uh huh.

Elder: -- if he wants some help with it, we'd be happy to offer him some assistance.

Drummelsmith: Okay.

Elder: And take it from there.

Drummelsmith; Okay, Cindy.

Elder: Thanks a lot.

Drummelsmith: *I will relay the information.*

Elder: Okay, bye.

Drummelsmith: Bye now.

Regrettably, this information was never relayed to Deputy Carson. Deputy Carson did not ultimately call Ms. Elder back. This was explained by how busy he became and the lack of her specific connection with Ipperwash. Ms. Elder had first contacted him on August 15, 1995. She was from the Manitoulin area. As far as he was aware, she had not provided any specific help in relation to the military base at that point. In Deputy Carson's view, what he needed was somebody local

“who could establish something, like right now.” He did not have any sense from their previous discussion that she could do something for him imminently.

- Evidence of J. Carson, May 12, 2005, p. 157; May 18, 2005, p. 24; May 19, 2005, pp. 42-55, 84-85; June 30, 2005, 140
- Transcript of Telephone Conversation between B. DrummelSmith and C. Elder, Ex. P-444B, Tab 43, pp. 1-2
- Telephone Call between B. DrummelSmith and C. Elder, London Logger Tape 086, Track 2,15:47 (elapsed time)

UNWILLINGNESS ON THE PART OF THE PARK OCCUPIERS TO COMMUNICATE

57. Unfortunately, any good faith attempt by the police to open a dialogue with the Park occupiers was met with the attitude that such overtures amounted to “harassment”. This was the mind-set held by Roderick “Judas” George, one of the Stoney Point principal men. When the occupiers forced the OPP out of the Park on the evening of September 4, 1995, they, for the most part, also stopped speaking and listening to the police. There were numerous examples of this unwillingness:

- (1) the Stoney Point occupiers never took Deputy Carson up on his offer to meet, as extended by Sgt. Korosec on the afternoon of September 4, 1995;

(2) when Sgt. Korosec spoke with Bert Manning on September 4, 1995 about a possible meeting the following day, Glenn George intervened to indicate that there would be no meeting;

(3) Bert Manning and David George refused to approach, let alone speak, with Sgt. Vince George late on September 4, 1995 as he, along with Mr. Kobayashi, attempted to advise the Stoney Point occupiers that they were trespassing in the Park;

(4) the Park occupiers had no appetite for speaking with D/Insp. Wright, Mr. Kobayashi or S/Sgt. Seltzer, who were ignored at the Park fence line for 45 minutes on the afternoon of September 5, 1995. Nicholas Cottrelle admitted that he tried to convey to D/Insp. Wright that the Park occupiers were not interested in speaking with the police;

(5) when D/Insp. Wright did manage to speak Bert Manning at the main gate of the Army Base later that same afternoon, Mr. Manning advised him, as recorded in S/Sgt. Seltzer's notes:

Elders are not present for us to talk.

Does not know who will talk.

He refused to provide the name of a spokesperson and, as D/Insp. Wright explained to Mr. McCabe in a telephone call the next day, was unprepared

to have anything to do with the police or to recognize the legitimacy of Canada's judicial system:

...and I wanted to make it up find an individual who we could contact ah to serve and they told me this individual told me that ah *they wanted nothing to do with us*, they didn't care about what we were going to do and *they weren't going to attend ah any white man's court*. [emphasis added]

Some of the occupiers were aware that Mr. Manning was speaking with the OPP. Tina George testified that both she and her brother, Roderick George, were unhappy that he was doing so.

(6) on the afternoon of September 6, 1995, D/Insp. Wright and Sgt. Eve attended at the Park fence line. Children from within the Park used small wall mirrors to reflect sunlight into their eyes. Les Jewell, who had previously been identified as a leader, was present, but would not come forward to speak with them. A teenager approached and indicated that he would not talk to them. D/Insp. Wright asked him to tell the adults that he and Sgt. Eve wanted to speak with them. Significantly, a number of adults did approach Officers Wright and Eve, but only one spoke of future communication. He advised, "we'll do our talking with guns".

- Evidence of M. Simon, September 29, 2004, pp. 38-39
- Evidence of D. George, October 19, 2004, pp. 177-79; October 20, 2004, pp. 8, 40
- Evidence of C. George, November 8, 2004, pp. 65-67

- Evidence of R. George, November 23, 2004, p. 57; November 24, 2004, pp. 66, 71
- Evidence of N. Cottrelle, January 18, 2005, p. 210
- Evidence of G. George, January 31, 2005, pp. 71, 73-74, 157-59
- Evidence of T. George, January 20, 2005, p. 54
- Evidence of G.M. George, February 1, 2005, pp. 224-26
- Evidence of J. Carson, May 19, 2005, pp. 29-30; June 2, 2005, pp. 24-25
- Evidence of S. Korosec, April 6, 2006, p. 29
- Evidence of B. Seltzer, June 13, 2006, p. 111
- Transcript of Injunction Application, dated September 7, 1995, Ex. P-467, p. 10
- Transcript of Telephone Call between M. Wright and T. McCabe, Ex. P-464, p. 11
- Notes of M. Eve, Ex. P-1108, p. 43

58. Many of the Stoney Point occupiers who testified at this Inquiry were candid about their unwillingness to speak to the police. They offered various reasons:

(1) there was a fear that if anyone self-identified as a leader, he or she was at risk of prosecution;

(2) they felt that they were not being fairly represented in the media, and wanted to wait “for all that media hype to kind of die down before they started dealing with” negotiation as a viable option;

(3) anticipating that an injunction was being obtained, they did not want to make themselves available for service;

(4) the Park occupation had nothing to do with the police; it should be the government or a third party tribunal talking to them. It was pointless to talk to the police;

Furthermore, according to Marlin Simon, there was no discussion amongst the occupiers as to whether negotiation was even a viable option.

- Evidence of M. Simon, September 29, 2004, pp. 40, 82; September 30, 2004, pp. 16-17; October 18, 2004, pp. 20, 163-64
- Evidence of G. George, January 31, 2005, pp. 75, 160
- Evidence of G.M. George, February 1, 2005, pp. 224-26; February 2, 2005, pp. 32, 35

59. The occupation of the Park represented the first occasion that the Stoney Point people would not readily speak with members of the OPP. This impasse contrasted greatly with the working relationship that the OPP had previously enjoyed with Carl Tolsma in 1993 and 1994, and even with a handful of Stoney Point occupiers, including Glenn George and members of the Manning family, in the summer of 1995. That contrast is well illustrated by Mr. Tolsma's description of his relationship with the OPP:

A: Well I talked to quite a few of them and, like I say, I can't remember all their names but I – one of them I talked to was Carson.

And I always tried to keep a good relationship with them and let them know every move we made.

Q: All right. And was it your view that it was a two-way good relationship?

A: Yeah, I – I thought it was pretty good.

.....

Q: Okay. And I take it that one of the reasons that you kept those lines of communication open with the OPP and the DND was because you wanted to get along –

A: Yes.

Q: -- with those groups and you thought it was important in order to keep a peaceful and organized group that you keep those lines of communication open?

A: Yes.

Q: So, that if you had concerns they could be dealt with or if they had concerns they could deal with them with you?

A: Yes.

- Evidence of C. Tolsma, February 9, 2005, pp. 109-10; February 22, 2005, p. 129
- Evidence of J. Carson, June 1, 2005, p. 190

CONCLUSION

60. The OPP recognized the importance of opening and maintaining a dialogue with the Park occupiers, not to negotiate the substantive issues

surrounding the Park occupation, but to address public safety and public order concerns, and to ensure that tension amongst the occupiers was reduced.

Deputy Carson recognized, then and now, that an open dialogue works to dispel misperceptions held by various stakeholders at an occupation which, in some cases, can lead to tragic results:

Q: And would you agree with me that the beliefs and reactions, or the beliefs of both sides, then coloured their actions, and particularly on the part of the OPP?

A: I would suggest there were perceptions on both sides, and that the perceptions were probably slightly distorted from the reality.

Q: And that those perceptions fed into the problem and the tragedy that occurred on September 6th?

A: It would certainly contribute.

Q: And the communications that you spoke about would have dispelled some of the misconceptions on both sides?

A: Absolutely.

Q: And that was one of the reasons you wanted communications?

A: That's why I was working feverishly towards that.

- Evidence of J. Carson, May 31, 2005, pp. 182-83, 186

61. In summary, Deputy Carson and the officers under his command recognized the desirability and importance of dialoguing with the occupiers. They drew upon a variety of resources to do that. They repeatedly sought direct communication with the occupiers. They recognized (correctly) that the dynamics

of the situation limited the assistance they could receive from First Nation leadership or the Kettle and Stony Point Police Service. In fairness, these efforts cannot be seen through the prism of what later developed on the evening of September 6, 1995. To emphasize a point made by many parties in a different context, the situation was not urgent for much of that day. S/Sgt. Seltzer's testimony spoke to this point:

The significance, perhaps, of – of the repeated attempts to – to make contact that, you know, through myself and – and through Marg and through Vince and the people that I've commented on through the Elders at Kettle Point, for a couple of days we tried very hard to make the contact, keeping in mind that we believed we had time to make those contacts.

As was – as – I mean, an involvement of that size our intent was to slow everything down. There was no hurry. We understood that the Ministry was taking – going after an injunction. And we believed that we had time to establish a contact; to work with that person; to establish some dialogue; try to understand that situation and – and develop a rapport.

And within – looking back at it now, very few hours, two days, that was gone. We just didn't have time to do the job that we wanted to do in the – in the fashion that we wanted to.

Simply put, it was anticipated that the court proceedings would take place the following morning, and that this might generate renewed dialogue, as it had for past occupations or protests.

62. That being said, the OPP's ability to stimulate dialogue with Aboriginal protestors has been significantly enhanced since 1995. All of the OPP initiatives to build respectful relationships with the Aboriginal community, including the availability of an Aboriginal Liaison Officer – Operations, ART and MELT teams, an enhanced Crisis Negotiation Program with Aboriginal representation and language capacity, and the Commissioners' Select Liaison on Aboriginal Affairs have collectively resulted in far greater networking capacity, and the high likelihood of establishing lines of communication. That does not mean that some difficulties (including intra-First Nation division or dynamics that may limit involvement by First Nation leadership) do not persist. It does mean that the OPP has a wide array of resources to facilitate dialogue. This will be further discussed in the OPP Part II Submissions.

63. Despite the significant efforts by Deputy Carson and others to stimulate dialogue, it is only fair to acknowledge that, with the benefit of the detailed and close scrutiny of the events through the Inquiry, there were some additional ways that dialogue *might* have been stimulated. On reflection, Deputy Carson wished that he had approached former Band Councillor Bonnie Bressette for assistance in opening a dialogue. Prior to the shooting, he did not know that she had the ability to move in and out of the occupation and potentially assist the police. John McNair, who had acted for the occupiers in the past, did not come forward to offer assistance, but he might have been approached. Similarly, Bruce Elijah

or Bob Antone might have been approached. Deputy Carson did explain some of the harsh realities in trying to proactively enlist support:

And – and that’s my point is, I mean, a lot of this is, at the very best, a hit-and-miss.

You did not see people putting up their hand and say, Pick me, I’ll come and help you here. We were at our – at our own devices to try to establish inroads, and not everybody wants to be the communicator with the police when it’s unpopular with the decision within their own community.

- Evidence of J. Carson, May 31, 2005, p. 194; June 28, 2005, p. 148

V. ABSENCE OF POLITICAL INTERFERENCE IN OPERATIONAL DECISIONS

Findings:

(1) The decision to deploy the CMU, supported by TRU, was in no way the product of political interference, influence or direction. Instead, it was a situational response to events occurring on the evening of September 6, 1995 and consistent with the objectives of Project Maple.

(2) The Incident Commander met and spoke with politicians, sometimes at the Command Post. Information sharing was appropriate and did not compromise the OPP operations. Nonetheless, things could have been done better to avoid any perception of political interference, influence or direction.

(3) Similarly, it was appropriate to share information with the MNR. However, things could have been done better to avoid any perception of government interference, influence or direction, and ensure the orderly and vetted flow of information to government.

64. It has been alleged at this Inquiry that the decision to deploy the CMU was the product of political direction or improper influence by the Ontario government. This allegation has evolved somewhat. At times, it has been alleged that the government directed the OPP to evict the occupiers. Of course, the evidence clearly shows that the CMU was specifically directed not to go into the Park to evict the occupiers. Regardless, the evidence is unequivocal that the government, and indeed the Incident Commander's superiors, had no knowledge that the OPP would move down the road on the evening of September 6, 1995 before the decision was made. Whether the decision was, in hindsight, correct or not, it was situational and unrelated in any way to views expressed by government or anyone else about the occupation. The evidence only permits the conclusion that, despite all that had been said about occupation, the OPP intended to preserve the status quo up until the situation at the parking lot changed. Accordingly, allegations of even "subconscious" influence or pressure explaining the decision by the Incident Commander are unsubstantiated. It has also been alleged that D/Insp Wright, if not the Incident Commander, succumbed to government influence or pressure, again an allegation unsupported on the evidence. In summary, it is submitted that the evidence overwhelmingly demonstrates that the government did not direct or improperly influence the OPP in its operational decisions at Ipperwash, including the decision to deploy the CMU or TRU. The evidence also overwhelmingly demonstrates that the OPP – from its Commissioner to its front-line officers – understood that they were to take no political direction from the government on specific operational matters at

Ipperwash. The OPP does recognize – as did its senior officers during their testimony – that apart from actual direction or influence, things could have been done better to avoid the appearance of direction or influence. The OPP Part II Submissions make recommendations in this regard.

ABSENCE OF DIRECTION AND ADVANCED KNOWLEDGE OF THE
DECISION TO DEPLOY

65. Not a single politician or government official knew of the decision to deploy the CMU or TRU before it occurred. Indeed, any expectations were that the status quo would remain in place, pending the court proceedings.

- Evidence of R. Vrancart, October 27, 2005, p. 192
- Evidence of L. Taman, November 15, 2005, pp. 81-82
- Evidence of D. Hutton, November 22, 2005, pp. 194-95
- Evidence of C. Harnick, November 28, 2005, p. 73
- Evidence of R. Runciman, January 10, 2006, pp. 132-33
- Evidence of C. Hodgson, January 16, 2006, p. 115
- Evidence of M. Harris, February 14, 2006, p. 169; February 15, 2006, pp. 12-13

66. The Incident Commander's superiors, including Commissioner O'Grady, Deputy Commissioner Gerry Boose, C/Supt. Coles, and C/Supt. Parkin were unaware of the decision to deploy before it was made. Even the Incident Commander's immediate supervisor, C/Supt. Parkin, did not know that the CMU had been assembled until after it had been deployed.

- Evidence of J. Carson, May 30, 2005, p. 179
- Evidence of C. Coles, August 16, 2005, pp. 105, 258-59; August 17, 2005, p. 80
- Evidence of T. Parkin, February 7, 2006, p. 101; February 13, 2006, pp. 99-100

67. Deputy Carson testified unequivocally that no one instructed him to remove the occupiers from the Park. In the face of vigorous cross-examination, Deputy Carson never wavered. He was equally unequivocal that at no time did those officers who stood between himself and the Solicitor General, namely, Commissioner O'Grady, Deputy Boose, C/Supt. Coles or C/Supt. Parkin, give him any direction to take any specific action on or relating to the night of September 6, 1995.

- Evidence of J. Carson, May 19, 2005, p. 114; May 31, 2005, pp.178-79; June 2, 2005, pp. 11, 76; June 28, 2005, p. 282; June 29, 2005, pp. 190-91

68. At no time between September 4 and 6, 1995 did Deputy Carson speak with then Premier Harris or any member of his cabinet, including Ministers Hodgson, Runciman or Harnick. He did not speak with any of Premier Harris' aides or those of Ministers Hodgson, Runciman or Harnick.

- Evidence of J. Carson, May 31, 2005, p. 174; June 2, 2005, pp. 74-75
- Evidence of R. Vrancart, October 27, 2005, pp. 192-93
- Evidence of D. Moran, November 1, 2005, p. 123
- Evidence of K. Hunt, November 2, 2005, p. 66

- Evidence of L. Taman, November 14, 2005, pp. 167-68
- Evidence of D. King, November 16, 2005, p. 184
- Evidence of C. Harnick, November 28, 2005, p. 27
- Evidence of R. Runciman, January 9, 2006, pp. 155-56
- Evidence of C. Hodgson, January 12, 2006, p. 244
- Evidence of M. Harris, February 14, 2006, pp. 165-66

69. During the same time period, Deputy Carson did speak with local MPP Marcel Beaubien on one occasion. They met at the Command Post shortly after 6:30 p.m. on September 6 along with Insp. Linton and Mr. Kobayashi. At no time did Mr. Beaubien advocate a position for the OPP to take in relation to the Park occupation. There were references to Premier Harris, but not to any direction that he wanted the OPP to take regarding the conduct of the operation. According to Deputy Carson, Mr. Beaubien mentioned that he had sent a fax to the Premier and was looking for a telephone call in relation to the fax's contents. (Deputy Carson assumed the call would be coming from a member of staff from the Premier's office.) Deputy Carson, in turn, advised Mr. Beaubien that an injunction application would be proceeding the following morning. Deputy Carson assured him that the police wanted the matter resolved, but in such a way that it was peaceful and without confrontation. As for Mr. Beaubien's references to the Premier, including the comment attributed to Mr. Beaubien, "Premiers in constant touch. Good communications" in the handwritten scribe notes, they had no impact on Inspector Carson:

Quite frankly, I didn't take much from it at all. It's just a matter of his commentary that he had been in communication with the Premier's office and he was communicating to me the information as he knew it. It was just further information about what he had been doing personally.

Deputy Carson and Insp. Linton did not discuss the Premier's interest in this issue after the meeting with Beaubien had concluded. Most significant, the scribe notes reflect that, when Deputy Carson briefed Insp. Linton at the shift change that evening, he referred to the anticipated injunction application the following morning and to no change in the operational plan. Indeed, as Deputy Carson testified, he gave no instruction to Insp. Linton to take any action inside or towards the Park. Regardless of how the various parties at this Inquiry characterize Mr. Beaubien's intentions, it is obvious that they did not affect Deputy Carson.

- Evidence of J. Carson, May 19, 2005, pp. 90-105, 111-113; May 31, 2005, p. 177; June 2, 2005, p. 142
- Evidence of M. Beaubien, January 19, 2006, pp. 214-15; January 24, 2006, pp. 22, 35
- Scribe Notes (typed), Ex. P-426, pp. 69-71
- Scribe Notes (handwritten), Ex. P-427, pp. 95-99

CONTACT WITH RON FOX

70. Between September 4 and the evening of September 6, 1995, Deputy Carson spoke with then Inspector Ron Fox (now retired Supt. Fox) on a number of occasions. The Inquiry focused on two recorded telephone calls between the

officers, each occurring not long after Fox had attended an Interministerial Committee meeting and/or the dining room meeting involving Premier Harris. Instead of supporting any allegation of political interference, the content of these calls refutes any such allegation.

71. The first recorded call occurred on September 5, 1995 shortly before 3:00 p.m. At that point in time, the occupation was stable and Deputy Carson was aware that the MNR intended to pursue an injunction, although its timing remained unclear. Supt. Fox had just left an Interministerial Committee attended by representatives of ONAS, the MNR and Deb Hutton, who appeared on behalf of the Premier.

- Evidence of J. Carson, May 17, 2005, pp. 170-72

72. During the telephone call, Supt. Fox gave an overview of the approach he had recommended at the meeting. That approach coincided with what Deputy Carson was doing: low key containment pending an injunction order. Supt. Fox also conveyed his unfavourable impressions of the provincial government of the day based upon comments made by Ms. Hutton. (The evidence later showed that many others in attendance shared his opinion.):

Fox: ...basically, ah, the ah, Premier's made it clear to [Ms. Hutton]. His position is there be no different treatment, ah, of, ah, the people in this situation. In other words native as opposed to non-native.

Carson: Okay.

Fox: And, ah, the bottom line is, wants them out and you know, was asking well what would the police do in a situation where there wasn't natives. I said well, I mean, you can't compare apples and oranges.

Carson: Right.

Fox: I said, you know, I mean, I come to your house and I plunk myself down and you ask me to leave and I don't. And you call for police intervention. Chances are I don't have Colour of Right for being there.

Carson: Right.

Fox: Whether it's actual or perceived. And I said it's a little bit different here. We're talking about land claims and treaties. Well no! I mean this is – it's solid – I mean it's our property. And I said, yes. By virtue of Letters Patent that were produced in 1929. But I said, I mean, these people refer to treaties that go back to pre-Confederation days.

Carson: Yes.

Fox: So, I said I'm not suggesting for a minute that the course of action is a course of non-action –

.....

Fox: Okay, so the bottom line is – ah, I said, you know, I'm not suggesting a course of non-action but I said my theory has always been make haste slowly.

Carson: Right.

Fox: And I said, what has to be done – I mean there's a whole whack of real world steps that I know are in place now and are being done.

Carson: Right.

.....

Fox: Well, I'll tell you, this whole fuckin' group is on some sort of testosteran [sic] or testosterone high. And I finally had to get right out and say look. I mean here's the strategy those folk will employ. The women and children will be at the forefront.

Carson: That's right.

Deputy Carson was unprepared to take a more aggressive stance with the occupiers and was uninfluenced by the apparent views of Premier Harris as conveyed by Officer Fox. This is clear from all of the evidence, including this exchange:

Fox: And I said you got to understand that the provincial police will never shirk their responsibility. But read – their hands will get dirty – read – so will the government's.

Carson: That's right.

Fox: And as long as we're prepared for that.

Carson: That's right. But I doubt if they are. We'll, I – you know doubt if –

Fox: Yeah, this – this – this --

Carson: *(Interrupting) I mean if we're going to do that over trespassing?!*

Fox: That's exactly right! And I said you know you just can't do that!

Carson: *That's right. I mean if we're going to do that – I – we have to have the force of law behind us to provide some recognition by a court in this land.*

Fox: Mmmhmm. And let's not lose sight of the fact that this is a civil matter!

Carson: *That's right. That's right!*

.....

Carson: *Well, and, and I'm ah hesitant at getting too excited about moving on, ah, the Park until we have some court injunction like ah...*

Fox: That's right.

Carson: *...For the mere trespassing is – is pretty flimsy grounds.*

Fox: Mmmhmm.

Carson: *You know, to go start arresting people.*

Fox: Yeah. [emphasis added]

The handwritten scribe note relating to this call reinforces that the Premier's ostensible attitude had no effect on the operations that day. The relevant entry reads:

15:07

JC: Ron Fox sitting on committee. Sound like they are going to get an emergency order.

Kob: Having someone search title.

JC: Premiers no different treatment from anybody else. *We're ok on right track.* Concern notice wasn't accept. Ron Fox dealing with legal issues. Checking over Press Release. Don't have paperwork for injunction going. [emphasis added]

This was just one example of Deputy Carson's acknowledgement of outside attitudes, followed by an articulation of the approach that would continue to be taken by the OPP.

- Evidence of J. Carson, May 17, 1995, pp. 214-15, 221-22, 226, 240-41
- Transcript of Telephone Call between J. Carson and R. Fox, Ex. P-444A, Tab 16, pp. 116-25
- Scribe Notes (typed), Ex. P-426, p. 37
- Scribe Notes (handwritten), Ex. P-427, p. 71

73. Commission Counsel questioned Deputy Carson as to what, if any effect, the Premier's interest in the issue had on him. His answer was unequivocal:

Q: And what, if anything, did you do as a result of this telephone conversation and the expression in the telephone conversation of the Premier's interest in this issue?

A: What did I do?

Q: Did you do anything different?

A: *It – it changed nothing in the way I was – I was going about my work.*

Q: And –

A: *We continued on. I think you'll find further on that we continued gathering information and taking the necessary steps to work with the Ministry of Natural Resources to assist them in their application. [emphasis added]*

.....

Q: Okay. And as a result of this call, did you make any changes in your approach?

A: No, sir, none whatsoever.

- Evidence of J. Carson, May 17, 2005, pp. 273, 275

74. The second call of interest occurred on the afternoon of September 6, 1995 at approximately 2:30 p.m. Deputy Carson was in the midst of a meeting involving C/Supt. Coles and C/Supt. Parkin. They attended the Command Post to show support for the officers involved in *Project Maple*.

- Evidence of J. Carson, June 28, 2005, p. 276
- Evidence of C. Coles, August 16, 2006, pp. 65, 69-70

75. Supt. Fox had attended two Ipperwash-related meetings that day prior to his telephone call with Deputy Carson. In the morning, he participated at yet another Interministerial Committee meeting involving virtually the same attendees as the previous day, including Deb Hutton. In the afternoon, he and then Acting Staff Sergeant Scott Patrick (now Insp. Patrick) attended the dining room meeting, involving Chris Hodgson, the Minister of Natural Resources, Robert Runciman, the Solicitor General, and Charles Harnick, the Attorney General. Premier Harris was also in attendance, as were three Deputy Ministers, Ron Vrancart, Elaine Todres and Larry Taman, and a handful of political aides.

76. There were various and divergent accounts of what transpired at that meeting, but certain common themes can be distilled from the evidence:

(1) nothing from Supt. Fox's words or actions suggested that he was seeking, or taking, direction from any of the attendees;

(2) the fundamental notion that government does not direct the police on operational matters was explained and emphasized;

(3) at the conclusion of the meeting, those in attendance had the impression that the OPP would stay its current course and await the outcome of an injunction application; and

(4) Premier Harris was communicating a level of frustration that the occupiers were still in the Park;

- Evidence of R. Vrancart, October 27, 2005, pp. 62, 191-92
- Evidence of D. Moran, November 1, pp. 26-27
- Evidence of L. Taman, November 14, 2005, pp. 116-18, 120-21; November 15, 2005, pp. 81-82
- Evidence of D. Hutton, November 22, 2005, pp. 190, 192-95
- Evidence of C. Harnick, November 28, 2005, pp. 73, 77-78; November 29, 2005, pp. 71-72
- Evidence of E. Todres, November 30, 2005, pp. 52-53, 129, 263
- Evidence of R. Runciman, January 9, 2006, pp. 147-48; January 10, 2006, pp. 127-28, 130, 132-33
- Evidence of C. Hodgson, January 16, 2006, pp. 77, 115
- Evidence of M. Harris, February 14, 2006, pp. 165, 169; February 15, 2006, pp. 29-30, 33, 38-39, 47

77. Supt. Fox's primary purpose in calling Deputy Carson was to inform him who would be appearing as counsel for the Province at the injunction hearing. He also was giving Deputy Carson a "heads up" that he had been identified as the person to provide the policing perspective at the hearing. As the telephone call progressed, Supt. Fox relayed what had happened, from his perspective, at the two meetings. He again conveyed his unfavourable impressions of several participants, including the Premier. The contents of the telephone call are well known to the Inquiry, and need not be elaborated upon in detail.

78. What is again clear from the call is that, even if the government wanted the OPP to take a more aggressive stance regarding the occupation, Deputy Carson was unprepared to go down that path:

Fox: 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.

Carson: Okay.

Fox: There's no question they don't give a shit less about Indians.

Carson: *All right. They just want to go kick ass.*

Fox: *That's right.*

Carson: *We're not prepared to do that yet.* [emphasis added]

Deputy Carson further explained what he meant while testifying:

Well, I was just pointing out to Inspector Fox that despite the various opinions that may be at play here, that we had no intention of going into that park, that – the long and the short of it is, until such time as we had received the appropriate injunction, that was simply wasn't going to happen.

.....

Well, technically it's my decision [as to what would happen with the Park]. As the Incident Commander, none of the troops on the ground are going to – to take any action until they get direction from the Incident Commander.

I -- report directly through Superintendent Parkin and Chief Coles. Before anything like that would have happened, I would certainly have had some discussion or there would be some concurrence of direction on an incident like this. And I think, you know, you can – you can draw from some of the discussion here that Coles, Parkin and I have all had some discussion in – during this time period around this whole event.

And I think it's pretty clear from all of us that we clearly understand that the injunction approach, even – although it's not my testimony, Coles' commentary about the Commissioner referring to some information we has as that is the way we deal with these kinds of issues.

- Evidence of J. Carson, May 18, 2005, pp. 191-92, 219-20
- Transcript of Telephone Call between J. Carson and R. Fox, Ex. P-444A, Tab 37, p. 6

79. Deputy Carson clearly understood that the police do not take direction from the Premier on operational matters, illustrated through some use of sarcasm in the following exchange:

Fox: Well, John I'm here to tell you. [The premier] is a redneck from way back.

- Carson: (laughs)
- Fox: And he came right out and said, I just walked in on the tail end of this. The OPP in my opinion made mistakes. They should have done something right at the time. And he said that will I'm sure all come out in an inquiry sometime after the fact.
- Carson: Yeah, yeah.
- Fox: *He believes that he has the authority to direct the OPP.*
- Carson: *Oh! Okay.*
- Fox: So –
- Carson: *I hope he talks to the Commissioner about that.*
- Fox: Umm pardon me?
- Carson: *I hope he and the Commissioner have that discussion.*

Deputy Carson explained this final comment as follows:

What I was getting at is that if – if there was someone, and obviously the – this discussion's about the Premier at the time, if he believes he has the authority to direct the OPP that if he's going to do so, he'll have to speak to the Commissioner and convince the Commissioner of that particular point.

- Evidence of J. Carson, May 18, 2005, pp. 192-93, 227

80. The comments purportedly made by the Premier were ultimately of no interest to Deputy Carson. The notes he took of the conversation reflect what was of significance:

...If – if I could, just in relation to this call, as I alluded earlier, the scribe was asked to leave the room, so I took a steno pad, which is the original one of the time, I have with me right now and indicated at 14:10 Ron Fox and the notes I made in regard to Ron Fox’s call is this:

“Ex parte injunction not served. Machine gun fire? Judge Lambton Gardiner tomorrow or tonight. Meeting at Leg. Building, Deputy Boose, Sol. Gen. and Premier...”

And quite frankly, my note about Deputy Boose was the wrong Deputy.

And that was the note I made in relation to this discussion. Quite frankly, the commentary that Ron Fox goes into in regards to his meetings, in my humble opinion, is the – a matter of – of personal discussion that he was sharing between someone. I would suggest that not only were we colleagues, we were somewhat friends from over the years, was – was more a blurting out of frustrations as a result of the task he was assigned to do.

And quite frankly, all of that discussion that he shared with me in regards to his meetings, they – they really lacked importance to the degree that I made no note of it. [emphasis added]

- Evidence of J. Carson, May 19, 2005, pp. 222-23, June 9, 2005, p. 213; June 28, 2005, p. 234

81. This telephone call had no effect on Deputy Carson’s actions, other than “working towards the injunction and ... attempting to get Mark Wright prepared to attend the application process for the next morning”. The use of the CMU had “absolutely nothing” to do with this or any other telephone call with Supt. Fox.

- Evidence of J. Carson, May 18, 2005, pp. 225-26; May 31, 2005, p. 177

82. Indeed, the evidence is conclusive on this point. There is no evidence whatsoever that Deputy Carson's operational approach changed between his first call with Supt. Fox on September 5, and Deputy Carson's departure from the Command Post at the end of his shift on September 6, 1995. His "reaction" to what he heard about the Premier and others, to his conversation earlier with Beaubien and to his meeting with C/Supt. Coles and C/Supt. Parkin was to leave to have dinner with friends. He did not intend to return to the Command Post that night, and intended to speak to D/Insp. Wright about the planned court proceeding the following day. He described his expectations:

My expectations, it would be a status quo, it would be similar to the evening prior. We – we would maintain the checkpoints and the patrols, and monitor the night vision, and it's outlined here in the briefing, the equipment we had, and basically sit tight. We're – See what happens with the injunction in the morning.

Clearly, the eviction of the Park occupiers later that night was the furthest thought from his mind.

- Evidence of J. Carson, May 19, 2005, pp. 113, 116; June 6, 2005, p. 201; June 7, 2005, p. 9

PURPOSE OF DEPLOYING THE CMU

83. The allegation has been made that the government wanted the OPP to immediately evict the occupiers from the Park. However, the evidence

conclusively established that the purpose in deploying the CMU was situational, and not to evict the occupiers from the Park:

(1) Deputy Carson testified that he was emphatic in his instruction to then Staff Sergeant Wade Lacroix (now retired Insp. Lacroix) that his officers were not to go into the Park. He further testified that if the occupiers moved back into the Park, they were to be permitted to do so. This direction is recorded in the scribe notes:

21:22 hours John Carson if they go back into the park Let them go

As for the purpose of the deployment, Deputy Carson had the following to say:

...And it was very clear to [Lacroix] that his instructions were to take the crowd management team, move into the sandy parking lot and not into the Park, that his task was simply to remove the people with the baseball bats and the subject of all the other issues we had, off the sandy parking lot back to the fence, but they were – it was clear and I think you'll hear evidence from now Inspector Lacroix that the direction was absolutely clear, he was not to go into the Park.

(2) Insp. Lacroix did, indeed, indicate at this Inquiry that Deputy Carson told him, "under no circumstances go into the Park",

(3) the activity of the CMU on scene was inconsistent with instructions to evict the occupiers. The CMU was in the process of withdrawing when the physical confrontation took place:

(a) the radio transmissions for the currency of the CMU's deployment speak for themselves. A copy of the transcript of those transmissions appears at Appendix "C" herein. Nowhere does it indicate that any direction to enter the Park was given. Nowhere does it suggest that the CMU entered the Park. One transmission, in particular, compels the inference that the CMU was, indeed, withdrawing once the occupiers had returned to the Park:

Lacroix: They're on the, ah, provincial provincial ah property

Skinner: Ten-four. Take up a defensive position.

Lacroix: Contact Squad, ah, back up slowly.

.....

Shield Chatter.

Hebblethwaite: TOC from CMU. Be advised that *we're at the perimeter*. The, ah, badgers are within the bounds of the Park. The badgers are in the Park. Over. [emphasis added]

(b) no officer testified at this Inquiry that a member of the CMU crossed the fence line and went into the Park. Indeed, the contrary was never put to any of them;

(c) no Stoney Point occupier testified at this Inquiry that a member of the CMU crossed the fence line and entered the Park; and

(d) Deputy Carson so advised C/Supt. Parkin by telephone shortly after midnight on September 7:

Yeah, well we were actually withdrawing from the damn thing when when they came out and charged them. They went back into the Park and that's what well one once they were back in Park, I told the guys to back out.

- Evidence of J. Carson, May 19, 2005, p. 194; May 30, 2005, pp. 74-75, 191
- Evidence of W. Lacroix, May 8, 2006, p. 194
- Transcript of Telephone Call between J. Carson and T. Parkin, Ex. P-444B, Tab 62, p. 379
- Transcript of Transmissions during CMU employment, Ex. P-438, pp. 8-9

84. It is noteworthy that *none* of the factors (later addressed) that led to the decision to send the CMU and the TRU team down East Parkway Drive in any way related to the ownership or occupation of the Park.

- Evidence of J. Carson, June 2, 2005, p. 13

IRRELEVANCE OF POLITICAL VIEWS TO THE OFFICERS AND THE
EXECUTION OF THEIR DUTIES AT IPPERWASH

85. Every police officer who was questioned on the matter testified that nothing that Deputy Carson said or did suggested that his operational decisions were in any way influenced by political views. The same could be said for D/Insp. Wright. The contemporaneous records support this testimony; for example, on the morning of September 5, 1995, Insp. Lacroix advised Deputy Carson that Mr. Beaubien was irate, intended to contact the Premier and ask that something be done about the situation. Deputy Carson's reaction showed a clear lack of interest:

Lacroix: He wants me to brief him he's going to call the Premier and say this is ridiculous.

Carson: Yes.

Lacroix: And I want something done.

Carson: *Well okay and so that you know we have 4 ERT teams. Two were on the ground all night and two new ones are in there now. [emphasis added]*

Equally significant, the handwritten scribe notes capture the lack of impact that this call had on Deputy Carson. They read:

Marcel Beaubien calling Premier
that's fine. Sit tight. [emphasis added]

- Evidence of S. Korosec, April 18, 2006, p. 21
- Evidence of K. Skinner, April 19, 2006, pp. 282-83
- Evidence of W. Lacroix, May 9, 2006, p. 140
- Evidence of T. Richardson, June 8, 2006, pp. 263-64
- Evidence of B. Seltzer, June 13, 2005, p. 180
- Transcript of Telephone call between J. Carson and W. Lacroix, Ex. P-444A, Tab 4, pp. 1-2
- Scribe Notes (handwritten), Ex. P-427, p. 22

86. Later that same day at approximately 4:30 p.m., Deputy Carson spoke with Insp. Lacroix again. He advised Deputy Carson of Mr. Harris' interest and that this was regarded not as an Indian issue, but as an MNR and Provincial issue. Deputy Carson took a very different view of the matter. He saw the occupation as an MNR issue *and* as an Aboriginal issue:

A: Well, it's just an opinion piece, quite frankly. I mean, everybody is entitled to their opinion, have their concerns. Obviously this is an MNR issue. The MNR are the, according to any documentation or information I had to that particular point, were – had colour of right, had clear title, from what we could see.

So was it an MNR issue? Absolutely.

Q: And from your perspective, was it also an Aboriginal People's issue?

A: Oh, for sure.

Commission counsel asked Deputy Carson what effect the telephone call with Insp. Lacroix and his comments about the Premier and Mr. Beaubien had on the steps taken on September 5 and 6, 1995:

We kept proceeding in the direction we had been proceeding for the two days previous, and continued to work towards an injunction.

Mr. Beaubien obviously held strong views on the subject. However, Deputy Carson did not have the impression that Mr. Beaubien was trying to give Insp. Lacroix any instructions on how to carry out police operational matters.

- Evidence of J. Carson, May 17, 2005, pp. 317-18, 323-24; June 2, 2005, p. 129

87. Another entry in the handwritten scribe notes relating to the Sept. 5/95 Unit Commander briefing reinforces the point:

Heat from political side. Made strong comments in the House.
Court injunction moving along. Advise members that court injunction is moving along. [emphasis added]

Similar to the example cited earlier, this is yet another instance where Deputy Carson acknowledged strong outside attitudes, but then articulated the measured approach that would continue to be taken by the OPP. Commission Counsel asked Deputy Carson what effect, if any, the “political heat” had on his planning:

Well, certainly what we had been planning and what we continued to plan was our approach to this incident by means of an injunction. All it meant was that we had to stay the course. I was informing people of some information that I had received.

But the reality of it all is, we simply continue to move forward and there – there may be some obstacles at the Ministry level in regards to how the injunction or what type of injunction, but that we

were going to continue to pursue our injunction process and that, quite frankly, it's just business as usual.

.....

Well, again, we just want to maintain the course, maintain the checkpoints, try – try to keep this as low-key as possible. Let's sit, hold tight, wait for the injunction and when the injunction comes, then we'll develop some strategy of how we deal with that piece.

- Evidence of J. Carson, May 18, 2005, pp. 30-32
- Scribe Notes (handwritten), Ex. P-427, p. 83

88. Counsel for some parties called into question the propriety of sharing these comments with his unit heads at Command Post meetings and his failure to specifically caution his officers against political influence. Deputy Carson responded in this way:

Q: So you think it's – it's – there's nothing untoward or problematic with you advising your command team that there's lots of political pressure, and there's strong in-house comments by the Premier and/or Solicitor General, and not also reminding them that they shouldn't permit themselves to be influenced by it?

A: I don't think there's anything untoward with me briefing our managers. And they very clearly, as you quite right outlined in the chain of command, they know who their supervisors are, what the responsibilities are.

There is – the officers know very well what their obligations are, and how they must conduct themselves. And quite frankly, their direction comes from the Incident Commander, they understand the – the command and control process that's in place.

And I would suggest that they understand implicitly that they will follow the orders as – as provided from their supervisors.

.....

Q: Well, my question however was, wouldn't it be advisable to remind them that when they are exercising their judgment in their jobs, and – and to advise them specifically to remember not to let this high degree of strong political pressure influence that judgment; that was my question.

A: Quite frankly I don't see that there's a need to remind them about that, they understand their job as a police officer, quite frankly. They – they are not accustomed to taking orders from politicians or any other non-police personnel in how they conduct their business, sir.

I mean, it's just a matter of routine. It's not – I'm not trying to flippant with you here, it's how police do their business.

Q: And do you think that so long as they are not taking orders as such, there's not a problem? Isn't there another possibility which is that their judgment will be influenced by this type of political pressure?

A: I would suggest police officers, every day, are well aware of various opinion in the community, of local politicians, of broader political issues in the province, across the country, around the world; but they still do their job as expected of them within their police agency.

They – they have to work within the confines of the *Police Services Act* and – and the command that they work within.

Deputy Carson felt that in sharing these comments with his unit commanders he was reminding them that this was a serious event, attracting a great deal of attention.

89. The criticism leveled at Deputy Carson was unwarranted. It was no secret that strongly held views were held about the occupation. This would likely have been known to officers whether Deputy Carson told them or not. He expected his officers to act professionally, and to obey the chain of command as they were trained to do. Moreover, the scribe notes reflect that on a number of occasions when he referred to outside opinions, he reiterated the “business as usual” approach to the occupation. Expressions such as “maintain the status quo” spoke volumes to the officers under his command.

- Evidence of J. Carson, June 29, 2005, pp. 221-23

90. It is also significant to note that Supt. Fox, who was quite accurately commended by a number of counsel for his candour, honesty, and integrity in 1995 and when testifying, was totally unconcerned about Deputy Carson being influenced by what he had told him or that he would capitulate to political pressure.

- Evidence of R. Fox, July 19, 2005, pp. 83-84

RELEVANCE OF THE INJUNCTION APPLICATION

91. The OPP policy on seeking an injunction before taking any enforcement action to evict occupiers, together with Deputy Carson’s expectations as to when

an injunction would be sought, also refute any allegation of political interference or influence respecting the OPP's operational decisions at Ipperwash.

92. The 1991 OPP policy has previously been referred to. As early as August 1995, when the OPP and the MNR contemplated a Park occupation, Deputy Carson expected that the MNR would seek an injunction. Despite his belief that provincial ownership of the Park (unlike the Army Base) was clear, he required an injunction to take any action to evict the occupiers. This is relevant for another reason. Extensive cross-examination was directed to whether Deputy Carson's belief concerning the Park's ownership was misinformed or whether he would have benefited from knowing, for example, about documents that supported the existence of a Park burial site. Deputy Carson made the obvious point that police should have all of the relevant information on these issues. But the evidence discloses that he was still unprepared to evict the occupiers even when advised that research yielded no support for the occupiers' position. This speaks powerfully to the OPP's commitment to resolve the dispute peacefully and makes Deputy Carson's views about the merits of the occupation largely irrelevant.

93. All of the *Project Maple* planning was predicated on the Province's obtaining an injunction. Contemporaneous scribe notes and recorded conversations again demonstrate the OPP's commitment to the injunction as a precondition for any enforcement action, even after Supt. Fox's Sept 6 phone call

with Deputy Carson. A chronological summary of this information appears at Appendix "B" herein.

94. Deputy Carson understood from various sources that the MNR would engage the injunction process:

(1) on the morning of September 5, 1995, Mr. Kobayashi and Mr. Vervoort advised Deputy Carson of their Ministry's intention to proceed before the Court;

(2) during the two notable telephone calls between Deputy Carson and Supt. Fox, Fox assured Carson that the Province would be seeking an injunction;

(3) the very reason that Tim McCabe spoke with Deputy Carson on the afternoon of September 6, 1995 was to gather information in support of the application which McCabe confirmed was proceeding the following morning.

- Evidence of J. Carson, May 17, 2005, pp. 102-03, 229
- Evidence of R. Fox, July 11, 2005, pp. 232-233

SHARING OF INFORMATION

95. The evidence demonstrates that information was shared between the Incident Commander and Supt. Fox (and through Fox to government); between the Incident Commander and politicians (some of whom attended the Command Post); and between the Incident Commander and the MNR (through attendances at the Command Post).

96. Some have relied upon this sharing of information to demonstrate government interference, influence or direction. This allegation has been disproven, largely for the reasons developed earlier. Nonetheless, information sharing raises systemic issues. To what extent should the OPP share information with government? What information should be shared? To what extent should OPP share information with local politicians? Should there be a buffer between the Incident Commander and local politicians, even if such information should be shared? When should access to the Command Post be restricted to avoid the perception, if not the reality, of political interference or influence?

97. The OPP Part II Submissions address each of these questions. In Part II, the case is made for the robust sharing of information between the OPP and government to enhance informed policy-making by government, on the one hand, and informed operational decisions by police on the other hand. A test is recommended for when information should and should not be shared, together

with the development of policies, and training to support that recommendation. Simple measures are also proposed to enhance the transparency and accountability of decision-making.

98. Access to the Command Post raises related issues. The OPP is developing a policy that addresses legitimate concerns that perception of improper interference or influence may be created when politicians and other government or non-government stakeholders have access to the Command Post. The components of that proposed policy are outlined in the OPP Part II Submissions.

99. At Ipperwash, the local politicians did not attempt to influence OPP operational decisions. In any event, having heard what they all had to say, Deputy Carson “stayed the course” and indeed, left for the day, not anticipating that the situation would compel his return. In the circumstances, it is untenable to infer that he was consciously or unconsciously influenced by the views expressed by politicians or others. That having been said, it would have been preferable not to meet with these politicians in the Command Post.

- Evidence of J. Carson, May 19, 2005, p. 104
- Evidence of M. Beaubien, January 19, 2006, p. 214

100. Similarly, there is no evidence that the MNR personnel attempted to influence OPP operational decisions. Again, Deputy Carson’s perception of his

own duties remained clear and unencumbered. It would have been preferable that MNR personnel did not attend the briefings in the Command Post. Because MNR was effectively a party to the dispute with the occupiers of the Park, the presence of MNR personnel in the Command Post could adversely impact upon the perception of OPP neutrality. That being said, it must be recognized that there will not be a perfect symmetry between the OPP's relationship with other government representatives, such as the MNR, and with occupiers or protestors. Recognizing that, the OPP has made recommendations to enhance its neutrality, to the extent possible, and the transparency of its decision-making.

- Evidence of J. Carson, June 2, 2005, p. 58
- Evidence of C. Coles, August 16, 2005, pp. 88-93

101. The MNR's presence in the Command Post raises a second, but related issue. The OPP has an obligation to evaluate *which* information it acquires during an operation should be shared with others. That obligation extends to evaluating which information should be shared with the MNR. The presence of MNR personnel in the Command Post made this "filtering" more difficult, and ultimately contributed to a flow of information from the MNR personnel at the Command Post to government directly, rather than through the OPP. C/Supt. Coles recognized this problem in his conversation with Supt. Fox on September 6, 1995, as did Supt. Fox:

Coles: Hi Ron.

Fox: Hi Chief

Coles: Yeah. I guess sitting here just listening and I haven't heard what John has got to tell me now. I've got a concern that we want to be careful what we're doing here that we don't give them – the people that you're talking to – that we don't give them the information too fast. The problem with that Ron is that if you're not careful, you're gonna run the issue there. As opposed to myself and the Commissioner running it here. So we've got to be careful. I have no objection to it – I have no objections to you phoning John but the only trouble if not, you're going to be the fastest source of information they've got. *And now with them we're going to end up in it, we're going to end up running it politically. And I don't want that.*

Fox: Yes.

Coles: *Because it's dangerous if you think about it.*

Fox: Yeah, well –

Coles: Because they're gonna – they're gonna ask you questions. You're going to try to find the answers. And the quickest way for you to do it is to come here to John. John's going to give you an honest answer. The trouble is now is all our – all what we are doing here – sometimes too much information is a dangerous thing.

.....

Coles: Yeah but there you see - there's conversation – as far as I'm concerned there's conversation going there that's operational.

Fox: Oh yeah.

Coles: That – that really – it's gonna get dangerous because now it's – that's dangerous to have that happen.

.....

Coles: So, all I know – this just – this just – and now I’m glad I talked to you because this just went through my head. I mean I’m hearing you talk to John – I have no problem with that and John I know will fill me in on what going on. But then my point is – we the OPP – it’s like me talking to Marcel Beaubien – which I’m supposed to do because he is a constituent and that. But however, he now goes and talks. And this is where – this is a problem that we have.

Fox: Well.

Coles: You know I – my [inaudible] is I will call the Commissioner. I don’t know if he’s there but I’ll call Boose’s office anyway and say you better get to the Commission[er] to say be very careful here. Because that’s what’s going to happen. We’re going to lose control of it.

- Evidence of J. Carson, May 18, 2005, pp. 202, 231-32; May 31, 2005, pp. 179-80
- Evidence of R. Fox, July 11, 2005, pp. 215-16; July 12, pp. 122-24
- Evidence of C. Coles, August 16, 2005, pp. 92-93
- Transcript of Telephone Call between C. Coles and R. Fox, Ex. P-444A, Tab 37, pp. 269-72

102. Some information should not be shared by the OPP with government; for example, a decision, not yet implemented, to deploy the CMU and TRU on East Parkway Drive. Or the identity of a confidential informant. The characterization of information as “operational” or “non-operational” is often an imperfect way of determining whether information should or should not be shared. This submission is fully developed in the OPP Part II Submissions. Suffice it to say at this point, the information that MNR personnel communicated to government, and which was ultimately discussed at the IMC meetings, such as reports of

automatic gunfire, might well have been appropriately shared to enable informed decisions to be made. It was not necessarily the type of “operational” information that is well recognized as problematic. It was historical information, and may have already been known to others. The difficulty was that the OPP was unable to make its own determination in that regard, or provide that information to government in a form and in a context that promoted, rather than detracted from, accurate decision-making by government. To both Supt. Fox’s and Deputy Carson’s credit, both provided context to that information when it circulated within government: in Supt. Fox’s case, during the IMC meetings and at the dining room meeting; in Deputy Carson’s case, in his candid and measured conversation with Tim McCabe.

- Transcript of Telephone Call between J. Carson and T. McCabe, Ex. P-444B, Tab 34, pp. 271-73

103. As for the sharing of information by Supt. Fox with government, on the one hand, and with Deputy Carson on the other, several things can be said:

(1) at the material time, Supt. Fox was seconded to the Deputy Solicitor General as the Special Advisor on First Nations issues. As such, he was required to advise the Deputy Solicitor General on issues involving First Nations, including policing issues within the Ministry’s mandate. He was extremely well-suited to this position. He was regarded (with good reason)

as astute, as having good judgement and as a man of integrity with a deep commitment to First Nations policing and Aboriginal culture;

(2) he served as the Ministry's delegate on the IMC;

(3) his duties required him to liaise between the Ministry, the IMC and the OPP on First Nations issues. In that capacity, he was expected to exchange relevant information;

(4) he was mindful, as a senior police officer, of the need not to share "operational" information with the Ministry or the IMC. His position, in that regard, was simplified because he was uninvolved in operational matters and consciously avoided "operational" information;

(5) when he did acquire information from the OPP, he showed excellent judgement in evaluating what should be passed on, in whole or in part, to the IMC or to the Ministry. He never passed on OPP tactical decisions; nor would he. His role was a valuable one, since he also expressed qualifications or cautions about information (whether it came from the OPP or not) available to the IMC or to the government. When information about gunfire came to the IMC's attention through the MNR, he appropriately verified its accuracy with Deputy Carson;

(6) his duties also required him to exchange information with Deputy Carson about the injunction application, including Deputy Carson's perspective on events, who would be the most suitable affiant or witness, and how contact between counsel and Deputy Carson could be facilitated;

(7) in his conversations with Deputy Carson on September 5 and 6, he performed the above duties. He also, on his own admission, vented somewhat about some of the attitudes that he observed within government. Other parties can debate the validity of his opinions. When testifying, he was candid in articulating what was actually said, and what inferences he personally drew from what was said. In retrospect, he would have sheltered Deputy Carson from some of those expressed opinions. He recognizes that sharing those opinions raises issues at this Inquiry. However, he never sought "operational" information from Deputy Carson, nor was it communicated. Nor did he have any concern that Deputy Carson was improperly influenced in any way by his conversations. This was based not only upon what Deputy Carson said, but upon his knowledge of Carson professionally.

- Evidence of J. Carson, May 12, 2005, p. 128; May 18, 2005, pp. 222, 225-26; May 31, 2005, p. 177; June 2, 2005, pp. 84, 111
- Evidence of R. Fox, July 11, 2005, pp. 14-17, 19, 35, 55, 72, 161-62; July 12, 2005, pp. 41-44; July 19, 2005, pp. 76-80
- Evidence of C. Coles, August 15, 2005, p. 162; August 16, 2005, p. 74; August 18, 2005, pp. 238, 253-54
- Evidence of T. O'Grady, August 23, 2005, p. 182

- Evidence of E. Todres, November 30, 2005, pp. 122-23; November 29, 2005, pp. 290-92, 294, 321

CONCLUSION

104. The decision to deploy the CMU, supported by TRU, was unrelated to political direction, influence or interference. This is overwhelmingly demonstrated by the evidence, including that of Deputy Commissioner Carson and his former superiors, Commissioner O'Grady, C/Supt. Coles and C/Supt. Parkin, the testimony of Supt. Fox, and all of the officers who were involved at Ipperwash. Nor is there any evidence from former Ministers, Deputy Ministers, political aides or the civil servants who worked with them to permit an inference that any opinions or statements expressed by government affected the operational decisions at Ipperwash. Indeed, the evidence is to the contrary.

105. Equally important, a careful scrutiny of the chronology of events belies any such suggestion. Deputy Carson's reaction to purported statements of pressure or influence was to "stay the course". His reaction to Marcel Beaubien and reported criticism by the Premier and others (as conveyed by Supt. Fox) was to leave the Command Post for the night, not anticipating his return until morning. What is obvious is that decisions made on the evening of September 6 by Deputy Carson, Insp. Linton, D/Insp. Wright, Insp. Lacroix and others were informed by the events as they unfolded that night. The decision to deploy the CMU and TRU

was not even contemplated until the events at the parking lot occurred. The decision to deploy those units was not accompanied by any direction to evict the occupiers or take back the Park, which one might have expected had the OPP been influenced or directed by government. On the contrary, the clear instructions (which were followed) were not to enter the Park.

106. A decision to evict the occupiers without an injunction would have been inconsistent with existing OPP policy. There is no evidence that Deputy Carson sought or obtained such instructions from his superiors. On the contrary, the fact that his superiors only learned of the deployment after the fact demonstrated that it was situational, responsive to events as they were then understood, and unrelated to any change in operational approach. As reflected in the following section, the deployment was analogous to other efforts to clear the parking lot earlier that day and the previous night.

107. Nonetheless, things could have been done to avoid any perception of government direction, improper influence or interference. These are addressed in the OPP Part II Submissions.

VI. BONA FIDE DECISION TO DEPLOY THE CROWD MANAGEMENT UNIT

Finding: The decision to deploy the CMU was, in hindsight, correct, it was a reasonable decision, based in good faith upon the circumstances known to Deputy Carson at the time. Even on a correct apprehension of the facts, it would have remained one option reasonably available to the Incident Commander.

FACTORS INFORMING THE DECISION TO CALL OUT THE CMU

108. Deputy Carson and D/Insp. Wright identified the factors that informed the Incident Commander's decision to call out the CMU shortly after 8:30 p.m. As reflected below, each is borne out by testimony (often that of the Stoney Point occupiers), the scribe notes and contemporaneous radio transmissions and telephone calls. Collectively, they support the inference that the situation had escalated and that the occupation was no longer contained within the Park boundaries.

(i) Gathering of cottagers in the sandy parking lot

109. Between 6:00 and 6:30 p.m., D/Insp. Wright stumbled upon a gathering of 20 to 40 men, women and children, including Mayor Fred Thomas, in the MNR parking lot. They had some signs. They told D/Insp. Wright that “they were about ready to march to the Park, which caused me great concern”. They were frustrated. The radio transmissions support the inference that D/Insp. Wright met with the gathering for about one hour. He reassured them as to the various steps the police were taking to maintain public safety in the area. He also cautioned them that while marching to the Park would not be illegal, “it would certainly complicate the situation”. Eventually D/Insp. Wright persuaded them to go home. He remained at the Park until absolutely certain that everyone had gone. His attendance at the parking lot was recorded in the scribe notes:

18:37 hours Mark Wright is at Lima 2 talking to Mayor Fred Thomas.

- Transcripts of radio transmissions, Ex. P-1106
- Scribe Notes (typed), Ex. P-426, p. 69

110. D/Insp. Wright advised Deputy Carson of this gathering in their telephone call which occurred approximately 30 minutes after the group had dispersed. In the context of apprising Deputy Carson what was transpiring in the sandy parking lot, D/Insp. Wright advised his superior that “I just took care of the public *for now*, but if we don’t deal with this *we’re back*”. D/Insp. Wright elaborated upon his concern to the Inquiry:

Q: And – okay. What did you mean by that?

A: I meant that if we don't deal with this the – I just dealt with the citizenry at the TOC and that I had dealt with that situation. I dealt with the public and soothed their concerns so that they left.

But if we don't deal with the sit – this situation that we have, that is those people out there, that were back, and that what I meant was my concern is that the cottagers would come back and we'd have that problem with the cottagers potentially moving upon the First Nation people out in that area or towards the Park.

As noted below, Deputy Carson shared this concern.

- Evidence of J. Carson, May 19, 2005, pp. 86-87
- Evidence of M. Wright, February 23, 2006, pp. 102-03
- Transcript of Telephone Call between J. Carson and M. Wright, Ex. P-444B, Tab 48, p. 307

111. This incident was a topic of discussion at the Command Post upon Deputy Carson's return. The scribe notes reflect that:

20:46 hours Mark Wright spoke to cottagers earlier they are very upset

20:49 hours Mark Wright reports talking to members of the public at the talk [sic]

- Scribe Notes (typed), Ex. P-426, p. 76

(ii) Presence of armed individuals in the sandy parking lot

112. Shortly after 7:30 pm, D/Insp. Wright spotted eight to ten First Nation males outside of the Park fence line, standing in a string from the fence to the edge of the sandy parking lot. Four or five of these individuals had clubs or bats. D/Insp. Wright was in plain clothes, sitting in an unmarked car by the edge of the roadway and, as such, was not readily identifiable as a police officer. Indeed, the conversation that followed suggested that the Park occupiers had no idea (at least initially) that he was an officer. One male approached D/Insp. Wright and advised him to leave, stating 'it wasn't my problem and I would best get out of there'. D/Insp. Wright asked if he could go where they were, into the parking lot. He was told "no", told to leave and, as this occurred, the men tapped the clubs in their open palms. It appeared to D/Insp. Wright that they were taking control of the sandy parking lot. The exchange took less than a minute.

- Evidence of M. Wright, February 23, 2006, pp. 21-29

113. Glenn Bressette supported D/Insp. Wright's account of this exchange:

Q: And – okay. And was there another vehicle that you recall came to the intersection of Army Camp Drive and East Parkway – Army Camp road and East Parkway Drive at or about the time of the Gerald George incident?

A: Yes, just a little bit after.

Q: And can you tell us what kind of – tell us about that, what happened?

A: He come rolling his window down, tried to talk to us too, but they just told to get the f-ck out of there, too.

Q: And when you say he came down and rolled down his window and tried to talk to you, can you – who was the person – who stopped? What kind of car was he driving, do you recall?

A: It looked like a grey Ford Thunderbird, probably a '90.

.....

...He looked really spiffy, like he's from the City or something, 'cause no-one ever seen him before.

.....

Q: And I expect that this spiffy looking individual, we'll later hear was Detective Sergeant Mike Wright (phonetic) of the OPP, okay? I just tell you that, you didn't know him at the time, I take it.

A: Okay.

Q: And what is clear is that he comes to the intersection, am I right?

A: Yes.

Q: He's driving a vehicle, right?

A: Yes.

Q: He's not in uniform, as I right?

A: Yes.

Q: And he wanted to talk to the group, right?

A: Yes.

Q: And he indicated that, that the wanted to talk to the group, am I right?

A: Yes.

Q: And – and in fairness, he wasn't threatened and no rocks were thrown at him, I – I agree with you –

A: Yes.

Q: -- in that respect, All right. But what was clear, I'm going to suggest, is that nobody within the group including Stewart George, had any interest in speaking to him. Am I right?

A: Right.

Q: Okay. And, on the contrary, he was told to get the f-ck out of here, right?

A: Right.

.....

Q: ...And what did you have in your hands?

A: Just a stick.

Q: Now, first of all, I'm going to suggest to you that regardless of the precise numbers, we can say some things for certainty about – about this. The first is, that there was a group of you generally in – at the intersection of Army Camp Road and East Parkway Drive. Am I right so far?

A: Yes.

Q: And you've indicated that you can't say precisely how many there were, but there were a number, right?

A: Yes.

Q: And what I'm going to suggest to you is that even though you don't have a specific recollection of whether you were carrying a stick or a club or whether the others were carrying a stick or club, we know that on occasions that day, some of the occupiers were outside of the fenced in area of the Park and were carrying those kinds of items. Am I right?

A: Yes.

- Evidence of G. Bressette, November 9, 2004, pp. 217-18; November 10, 2004, pp. 15-16, 18-19

114. Indeed, a number of the Stoney Point occupiers acknowledged that they carried clubs or bats in the area of the sandy parking lot at this time:

(1) Clayton George acknowledged that he was armed in this manner in the parking lot in order to assert his ownership in that land:

Q: Okay. Now, I'm going to ask you about the events on the evening of September the 6th. So that's the Wednesday, September the 6th, the day of the confrontation, all right?

And again I expect that there's going to be some evidence that at about 7:30 p.m. that evening, a group of occupiers were standing at the intersection of Army Camp Road and East Parkway Drive and four or five had what appeared to be axe handles in their hands or sticks and bats.

And – and an individual was told to get out of the area, this wasn't his fight. First of all, were you one of those occupiers?

A: Out on the road?

Q: Yeah.

A: Yes.

Q: You were. And what did you have in your hands?

A: Just a stick.

Q: And – and the reason for being out on the road at the intersection of Army Camp Road and East Parkway Drive on the September the 6th was what?

A: Just to see how far they were coming down the road.

Q: Well but they weren't coming down the road at that point in time. This – that's two hours or more before they came down the road, right?

A: Yes.

Q: Yes. So I mean one of the things that – that you were doing and being out of the road, is you were kind of asserting your ownership interest in this area.

This is our land, we'll go here if we want, we'll be armed with these items that we want because we're entitled to, right?

A: Hmm hmm.

- Evidence of C. George, November 8, 2004, pp. 92-93

(2) there were other Stoney Point witnesses who acknowledged they were armed, or saw others armed, with a club or stick:

(a) less than 30 minutes after D/Insp. Wright had this encounter, Gerald George saw an individual armed with a bat in the sandy parking lot;

(b) Nicholas Cottrelle acknowledged that he was in the sandy parking lot, armed with a stick, around the time of the Gerald George incident. Indeed, Mr. Cottrelle had seen several others in the parking lot carrying bats or sticks within an hour of Mr. George's incident;

- Evidence of N. Cottrelle, January 18, 2005, pp. 102, 214-15

- Evidence of G. George, January 17, 2005, p. 8

115. The willsays of P/C John Spencer and P/C Leo Weverink, who were in the area of the sandy parking lot at the material time, reflect that they, too, observed a number of males carrying wooden bats. Furthermore, a radio transmission they made at 7:37 p.m. confirms their observation of a gathering of four males at that time.

- Statement of J. Spencer, dated September 7, 1995, Ex. P-1152, p. 2
- Statement of L. Weverink, dated September 8, 1995, Ex. P-1158, p. 3
- Transcripts of radio transmission, Ex. P-1110, P-1111

116. After leaving the area, D/Insp. Wright attended at Checkpoint Charlie and advised the officers there to be careful, that it looked to him like things were escalating.

- Evidence of M. Wright, February 23, 2006, p. 32

117. The logger tapes confirm that D/Insp. Wright reported this incident to the Command Post at 7:54 p.m.:

Yeah, we got about a – up to eight individuals at the picnic table area. I assume you know what that is. And they're just about on the edge of the road. They've got some bats and stuff in their hand and apparently they damaged some – an individual's vehicle. So we got some mischief right now. And willful damage. And I talked to them for a while. They weren't sure who I was and it appears to me – it

appears to me that they're up to something. So can you talk to you ERT guy in there with the inspector. I'm on my way back, I'll give you a full rep when I get back but I think we should be moving some people down that way. I think we should be moving some people down that way. Almost ten away. Ten minutes away. From the Command Post.

This report was recorded in the scribe notes:

19:55 hours Mark Wright reports via police radio, 10 natives with baseball bats near the road who apparently have damaged a private vehicle.

The incident is later described in the scribe notes as follows:

20:49 hours ...Mark Wright I see 8 people at the corner and at least 4 had bats or something like that.

- Transcript of radio transmission, Ex. P-1115
- Scribe Notes, Ex. P-426, pp. 73, 76

118. Deputy Carson first learned of this incident shortly after 8:00 p.m. during a call with D/Insp. Wright who reported:

...we got a bit of a situation here...right at the curve there where the picnic tables area...they got about eight of them there with baseball bats right on the road edge you know.

The taped call reflects that Deputy Carson wanted to know if the occupiers were coming out of the Park and that he was of the firm view that "we got to deal with them, we can't let them out in that area with that stuff".

- Transcript of Telephone Call between J. Carson and M. Wright, Ex. P-444B, Tab 48, p. 306

119. This incident represented a significant turn in events:

(1) at no time during the occupation of the Army Base or the Park had the Stoney Point people come off the occupied land, *armed*, and taken a position of apparent defiance; and

(2) this was the third advance into the sandy parking lot within a 24-hour period.

(iii) Gerald George incident

120. Deputy Carson had been led to believe that shortly before 8:00 p.m., a group of First Nation men struck a car driven by a non-Aboriginal woman who had attended the earlier gathering of cottagers, causing damage to it. In actual fact, Stewart George, while in the company of other Park occupiers, struck Gerald George in the side of the head and then threw a rock at the vehicle that the Band Councillor was driving. The valid point (later addressed) that has been made during this Inquiry is that Deputy Carson's decision to deploy the CMU was informed, in part, by an inaccurate and more serious description of this event than what, in fact, occurred. However, the actual events would have properly

been considered by Deputy Carson in determining what action to take. Although Deputy Carson quite candidly was unable to say whether the decision to deploy the CMU would have been the same, the point to be made is that it represented one reasonable option available to the Incident Commander. Regardless of its details, this incident, as confirmed by Kevin Simon, represented the first occasion during the course of the Army Base or Park occupation that an occupier had assaulted a civilian member of the community outside of the occupied territory.

- Evidence of S. George, November 2, 2004, pp. 75-77, 105-06,112
- Evidence of K. Simon, December 2, 2004, pp. 177-78
- Evidence of G. George, January 13, 2005, pp. 88-95

(iv) Movement of the school bus and dump truck

121. Right around the time that the Gerald George incident was unfolding, officers radioed the Command Post to advise of an increase in movement by the school bus and the dump truck towards the roadway. D/Insp. Wright conveyed this to Deputy Carson in their 8:00 p.m. telephone call. Concerned that these vehicles would pierce the fence line and come out onto the roadway, D/Insp. Wright directed: “we want to be, want a sit rep on those things the instant they move out. I want to know about it.” Deputy Carson later discussed this issue with Insp. Linton by telephone at around 8:20 p.m. It is recorded in the scribe notes as follows:

20:22 hours Dale Linton a 10-21 to John Carson, school bus and dump truck and numerous people moving to the area.

- Transcripts of Radio Transmissions, Ex. P-1133, P-1134
- Transcript of Telephone Call between J. Carson and M. Wright, Ex. P-444B, Tab 48, p. 309
- Transcript of Telephone Call between J. Carson and D. Linton, Ex. P-444B, Tabs 52, pp. 3
- Scribe Notes (typed), p. 74

122. The presence of the school bus raised a red flag. Just a little over a month earlier, it had been employed as a weapon to ram a military vehicle, pushing it 40 feet, and the doors to the drill hall during the takeover of the built-up area of the Base.

- Evidence of H. George, January 20, 2005, pp. 154-55, 161-62, 214-15
- Evidence of J. Carson, May 30, 2005, p. 58 ; June 1, 2005, pp. 149-52, 192

(v) Fires

123. At approximately 8:20 p.m., officers on the ground advised the Command Post that “they have a good sized fire going at the west end of the Park right down by the lake...almost at the road, just maybe 1500 yards back in from the water”.

- Transcript of Radio Transmission, Ex. P-1147

124. Approximately 15 minutes following the first report, a report of a second fire “further back in” came into the TOC.

- Transcript of Radio Transmission, Ex. P-1148

(vi) Departure of women and children

125. D/C Dew, who went to the Park area to collect the statement generated by Gerald George, learned from officers at Checkpoint Delta that women and children were leaving as a group from the Army Base out of fear that ‘there was going to be trouble here tonight’. (The notes and willsay of P.C. J.M. Dellemonache, who was posted at Checkpoint Delta that evening, confirmed that he received information of a similar nature.)

- Evidence of M. Dew, April 4, 2006, pp. 75-76
- Willsay of J.M. Dellemonache, Ex. P-1285

126. A number of the Stoney Point witnesses supported the account of these two officers:

- (1) Marlin Simon confirmed that he was telling women and children to leave the area because of safety concerns;

(2) Clayton George confirmed that women and children were being evacuated from the Park; and

(3) J.T. Cousins confirmed that the women and children were told to leave the Park for the barracks as, according to Roderick George and Dudley George, the Park “was not a safe place for women and children to be at” as there was going to be a confrontation with police. He further confirmed that this was the first occasion since the commencement of the Park occupation that the women and children were warned to leave.

- Evidence of M. Simon, September 30, 2004, p. 207
- Evidence of C. George, November 8, 2004, p. 91
- Evidence of J.T. Cousins, January 12, 2005, pp. 47-48, 112

127. No one reported to the police that this “evacuation” was prompted by a concern that the police could be entering the Park.

128. Just before 8:30 p.m., D/C Dew telephoned the Command Post to advise of this new development. His report is recorded in the scribe notes:

20:26 hours Mark Dew called Dale Linton regarding native women and children moving out they report something is going to happen.

20:29 hours Mark Dew reports kids are about to be picked up as women feel something is about to happen.

- Transcript of Telephone Call between M. Dew and R. Cousineau/D. Linton, Ex. P-1136
- Scribe Notes (typed), Ex. P-426, p. 74

(vii) Intention to move into the sandy parking lot and cottage area

129. Between 1993 and 1995, the Stoney Point group incrementally enlarged their occupation in the Ipperwash area. They began with the rifle range of the Army Base in May 1993. In mid-July 1993, they attempted to take over Matheson Drive by charging motorists a toll fee for access to the beach. They pushed ahead to the built-up area of the Base at the end of July 1995. At the beginning of August 1995, they asserted control over Matheson Drive once again by taking issue with the locking of a gate on that road by the MNR. They pushed onward again on September 4, 1995 and successfully took control of Matheson Drive and the Park. Each expansion was premised on a belief that the land in question was rightfully theirs. It was reasonable for Deputy Carson to infer from the words and actions of the Stoney Point people that the next targets of expansion were the sandy parking lot to the west of the Park and, possibly, the cottage properties immediately beside it:

(1) just before the Park takeover Sgt. Korosec overheard Glenn George say that "they" were going to take Ravenswood next. Deputy Carson took

this to refer to all of the land west of Ipperwash Park to Kettle Point. This area included the cottages along East Parkway Drive;

(2) on the evening of September 5, 1995, ten to 20 Park occupiers moved off the Park into the sandy parking lot where they erected a barrier of picnic tables;

(3) in the morning hours of September 6, 1995, the Stoney Point occupiers pitched a tent, lit a fire and, once again, erected a barrier of picnic tables in the sandy parking lot. Dudley George and J.T. Cousins were seen sitting on one of the tables not long before the tables were removed by ERT personnel. Deputy Carson understood that the tables were “piled in a line across the parking lot at the road’s edge such that it would prevent vehicular traffic from accessing that parking lot”. He was concerned about the proximity of the tables to the nearby cottages – “if the tables were set on fire there would be damage to the homes”.

(4) many Stoney Point witnesses, including Marlin Simon, David George, Stewart George, Elwood George, Clayton George, Mike Cloud, Roderick George, Kevin Simon and Nicholas Cottrelle, readily acknowledged at the Inquiry that they moved onto the sandy parking lot, as early as September 5, 1995, because they believed it was their land; they wanted to reclaim it. As articulated by Mike Cloud, it was part of their “homeland”. This point

was further made when the Stoney Point occupiers told the CMU to “get off *our* land, cops” as the unit stood on the sandy parking lot;

(5) furthermore, a number of the Stoney Point occupiers claimed that the cottage properties west of the sandy parking lot were First Nation territory:

(a) Stewart George maintained that the land west of the Park, which included the cottage properties, belonged to the First Nation people;

(b) Elwood George agreed their territory extended west of the Park to Ravenswood and included the cottage properties;

(c) Stacey George also agreed that the area west of the Park to Ravenswood belonged to the First Nation people; and

(d) Clayton George held the same view. Of greater significance for this Inquiry (and its concern over the breakdown of communication during the currency of the occupation), Mr. George acknowledged that the police would have had no way of knowing that the Stoney Point occupiers did not intend to move past the sandy parking lot:

Q: Okay. So in theory, you and the others could have continued on into the cottages; right?

A: Yes, but we –

Q: Taken them over as well?

A: -- yes, but we didn't though.

Q: No, you didn't. I understand. But how did you communicate to the OPP or the cottagers or others in the area that this wasn't going to stop at the sandy parking lot area?

You didn't really communicate that at all; did you?

A: No.

Q: No. So –

A: Because we had nothing to say to the cops.

Q: Right. And one of the things that the Commissioner is going to have to address is communication and the breakdown of communication. But the –

A: Yes.

Q: -- the point that I'm really making now is that, first, you took the Army Camp, then you took the Park, then you took the sandy parking lot area to restrict access along the – public street, to restrict access to the parking lot.

There would be no way of someone to know that you weren't going to be going to the cottages next because you never communicated that to anybody; am I right so far?

A: Yes. [emphasis added]

Kevin Simon also agreed that no one within his group let the OPP know that they had no intention of pushing further west beyond the sandy parking lot.

- Evidence of M. Simon, September 29, 2004, p. 45; September 30, 2004, p. 196; October 18, 2004, p. 178

- Evidence of D. George, October 20, 2004, pp. 13, 34; November 1, 2004, pp. 11, 127
- Evidence of S.B. George, November 2, 2004, pp. 63, 105, 123,144
- Evidence of E. George, November 3, 2004, p. 161; November 4, 2004, p. 145
- Evidence of C. George, November 8, 2004, pp. 76-78
- Evidence of M. Cloud, November 9, 2004, p. 129
- Evidence of R. George, November 24, 2004, p. 57
- Evidence of K. Simon, December 2, 2004, pp. 160, 165
- Evidence of N. Cottrelle, January 15, 2005, p. 77
- Evidence of J. Root, May 17, 2006, p. 19

130. The decision to call out the CMU was informed by the combination of factors and escalating events outlined above. The movement of a number of occupiers, armed with bats or clubs, into the sandy parking lot represented a loss of containment of the occupation. This posed a serious risk to the safety and security of the cottagers and their properties. Consistent with the objective of *Project Maple* to contain and negotiate a peaceful resolution, that containment had to be re-gained. While the evidence is clear that the actual decision to call out the CMU for anticipated deployment is not explicitly recorded in the scribe notes, Deputy Carson testified that it was made shortly after his return to the Command Post and following a discussion with Insp. Linton regarding the available options:

...And so the consensus was at the – at the end of the day, that we would mobilize a crowd management team and use the crowd management team to go in and clear the parking lot and we would use the tactical team, TRU team, in order to provide visual – or to

provide the visuals and provide cover for the crowd management team.

Inspector Carson would lead the crowd management operation while Insp. Linton would handle the outer perimeter from the Command Post in Forest.

- Evidence of J. Carson, May 19, 2005, pp. 157-58, 160, 162,165, 171

FACTORS INFORMING THE DECISION TO DEPLOY THE CMU

131. Deputy Carson consistently took the position that the CMU could be called off in the event that all *armed* occupiers returned to the Park and remained there. As noted in the scribe notes, it was Deputy Carson's view that "if they're just having a campfire, let's just leave them" and "if they go back into the Park, let them go". He elaborated upon this in cross-examination:

Q: Okay. But did you – you had told the TRU team if they're simply having a campfire, leave them there. But your – as you've just told me you're telling Wade Lacroix to move the people back into the Park.

A: Correct.

Q: And can you explain the contradiction to me?

A: Well really it's not a contradiction. When we get down to the forward – or to the T.O.C. site at the MNR parking lot, the crowd management does not leave that area until I give them the order to move.

So the instruction to Lacroix is, *when* they're deployed into that sandy parking lot, that's what I expect of them. It may

be, when I get down there, that an assessment is: I don't even deploy the crown management team.

So the issue with the TRU and with the crowd management unit are two distinctly separate issues. So the TRU team observers are being put in place, looking for some information back, and we're setting up the crowd management team.

And it may be that the information comes back that they're – everything is quiet and it's not necessary to deploy the crowd management team. *If in fact the information comes back and it's certainly from the E.R.T. officers, was that there was a lot of activity down there, then we would continue with the deployment of the crowd management team.* [emphasis added]

- Evidence of J. Carson, May 19, pp. 206-07
- Scribe Notes (typed), Ex. P-426, pp. 76-77

132. As it turned out, information coming over the total access channel between the time Deputy Carson left the Command Post at approximately 9:30 p.m. and headed over to the TOC and the actual deployment of the CMU at 10:27 p.m., did support the inference that the threat posed by the loss of containment still existed.

133. An observation or Oscar team comprised of ERT officers P/C Whelan and P/C Mortimer headed out towards the Park not long before Deputy Carson left the Command Post. They periodically transmitted their observations of the area between the cottages and the sandy parking lot to the TOC. Other officers transmitted additional observations of concern:

(1) at 9:25 p.m., the Oscar team reported that there were about “12 out” and a lot of vehicle activity behind them coming from the Park. They further reported “about 20 around the fire, two over on the fence down towards the beach”. At the request of the TOC, the Oscar team advised that the fire in question was *outside* of the Park. This was the information that Deputy Carson had at the time he deployed the CMU. Despite the fact that S/Sgt. Lacroix later confirmed that the fire was, indeed, inside the Park boundary, its relative proximity to the nearby cottages still posed a threat. Approximately a minute after the first transmission, the Oscar team reported that the number of people on the road had increased to 15.

These reports are recorded in the scribe notes:

21:28 hours Reports on radio to Dale Linton a fire outside park at the bottom of the hill. Approximately 12 natives and more coming down, lots of vehicle moving.

According to J.T. Cousins, he and Leland George were told to build fires “nice and big” as part of the process of getting ready for the police;

(2) shortly after 9:30 p.m., the Oscar team reported that the fence was down and vehicles were traveling freely between the Park and the parking lot. This report is captured in the scribe notes:

21:33 hours Reports on radio that it appears fence has been taken down and vehicles traveling freely between park and parking lot.

(3) at approximately 9:40 p.m. officers at Checkpoint Delta reported that a large bonfire had just been started and that there was an increase in traffic in the area, including movement by the dump truck. The officers at that location expected “rocks to fly momentarily” at them. The relevant scribe note entries are as follows:

21:40 hours Reports lots of traffic at “D” lots of traffic.

21:43 hours Also the dump truck and fire at check point “D”. Dale Linton.

(4) within two minutes of the update from Checkpoint Delta, the Oscar team reported that there was a lot of traffic at their location and ATV’s on the beach. There were people “all over the place”. Their concern about the situation caused them to retreat: “we’re moving back a bit as it’s getting henkie”. Indeed, the Oscar team was sufficiently concerned about their safety that they asked if there was support nearby. They were advised to move out of the area if necessary. This suggestion was made a second time at approximately 10:05 p.m. and appears in the scribe notes:

22:02 hours O-Team, told to get out by Stan Korosec as natives are all around O-team is still okay staying put

- Evidence of J.T. Cousins, January 12, 2005, p. 47
- Evidence of W. Lacroix, May 8, 2006, p. 220

- Transcripts of radio transmissions, Ex.'s P-1124, P-1125, P-1127, P-1128, P-1129, P-1130
- Scribe Notes (typed), Ex. P-426, pp. 78-79
- Chatham Logger 0146, Track 12, 21:17

134. Within the same time span, reports that the Stoney Point occupiers were stockpiling clubs and rocks were coming in:

(1) at 21:28, officers seized baseball bats and golf clubs from individuals passing through Checkpoint Alpha. This is recorded in the scribe notes:

21:28 hours A checkpoint checked a vehicle with golf clubs, seized same.

(2) at 21:32, the Oscar team advised that the Park occupiers were removing objects from the trunk of a car. Although the objects were not identifiable, there was extensive evidence from the Stoney Point witnesses themselves that they were gathering various objects, including tree branches, pipes, patio bricks or paving stones, baseball bats, and rocks in preparation for the arrival of the police.

- Evidence of M. Simon, September 29, 2004, pp. 43-44
- Evidence of S. George, November 2, 2004, p. 151
- Evidence of C. George, November 8, 2004, pp. 80-81
- Evidence of G. Bressette, November 9, 2004, p. 240
- Evidence of D. Plain, November 10, 2004, pp. 61-62

- Evidence of S. George, November 22, 2004, p. 67
- Evidence of K. Simon, December 1, 2004, pp. 208-09
- Evidence of J.T. Cousins, January 12, 2005, pp. 49-50
- Transcripts of radio transmission, Ex. P-1127

135. One of the issues raised at the Inquiry was the extent to which Deputy Carson was aware of the information flowing over the radios after he left the Command Post and before he made the final decision to deploy the CMU. When certain radio transmissions were put to him some ten years after the fact he, understandably, could not recall whether he had specifically heard some of them. However, at the material time, he certainly had the opportunity to hear them, and every reason to be very interested in what they were saying. The car in which he traveled to the TOC was hooked up to the TAC channel. As for the period after he arrived at the TOC, he said this:

Q: And in the scribed notes it's reported – these items are reported in the scribe notes, but what I'm trying to understand is, with respect to these communications: (a) what your understanding of – its happening and (b) what, if anything, you were told about these particular communications that we're listening to right now.

Because at this point, you're down at the MNR parking lot.

A: Right. What I can tell you is I – I knew they were issues with our – our observation post that there was certainly activity in that parking lot. And some of the transmissions while I was speaking to the likes of – whether it's Lacroix other officers there, as – as I'm standing there I would have heard some of the transmissions over the radio as – as they were transmitted back.

Because each officer would be carrying a portable with a lapel mike, which would have been broadcasting off their shoulder, technically.

Q: So some of these you may have heard when you were there?

A: Right. And – and at one – at some point I end up moving to the TRU vehicle, and I would have heard all the transmissions from that point.

- Evidence of J. Carson, May 30, 2005, pp. 16, 28, 74, 136

136. At the point that CMU was actually deployed Deputy Carson was satisfied that he had received sufficient timely information to make a considered decision:

Q: And at this point in time, at 22:07, had you heard back from the TRU team? What information had you received from the TRU team?

A: I can't tell you off the top of my head what I heard back from the TRU team but in – I know I had requested information on – on the sight lines from the kiosk, and there was a number of transmissions to the TRU team T.O.C. vehicle.

But I – I can't tell you specifically which piece of information I had at that given time. But – but clearly I was satisfied that the activity was still present in that parking lot area between the information received from the Oscar teams, and the other information provided to me by the E.R.T. supervisors and the TRU team leader.

.....

So it's really not any one particular fact. I mean it's – it's a culmination of a number of issues that are happening all at the same time.

- Evidence of J. Carson, May 30, 2005, pp. 55-56

137. As the CMU approached the sandy parking lot, it was neither empty nor the scene of an innocent campfire. The CMU came upon Stoney Point occupiers in the parking lot, some of whom were armed with bats or clubs:

(1) P/C Sam Poole, who was at the very back of the CMU, testified that he saw at least two individuals in the parking lot, armed with sticks and clubs; P/C Kevin York, who was right at the front of the CMU, observed fifteen to twenty individuals in the sandy parking lot:

All the individuals that I saw had some sort of a bat or a club, I noted, included pieces of pipe, wood, and I've noted a steel sign.

(2) David George confirmed that there were a number of Stoney Point occupiers in the sandy parking lot as the CMU approached:

Q: And so that – did you and your whole group go back into the Park when you saw the police officers coming down the road?

A: Yes. When they got close enough everybody was in.

.....

Q: Okay, and I believe you also said – and correct me if I'm wrong – that when the officers were approaching or when you first saw them, you, and perhaps some others, were on the paved roadway?

A: Yeah, we were checking it out.

Q: And – and the purpose of being out on the paved roadway was just that – to see where they were?

A: Yeah.

Q: Okay. And if I recall correctly, Mr. George, it was at that point – at the point that you saw the officers coming down East Parkway Drive – it was then that you and perhaps the others, moved back into – inside the fence in the Park?

A: Yes.

- Evidence of David George, October 20, 2004, pp. 95-96; October 21, 2004, pp. 85-86
- Evidence of C. George, November 8, 2004, p. 104
- Evidence of C.B. George, December 8, 2004, pp. 27-28
- Evidence of S. Poole, May 16, 2006, p. 151
- Evidence of K. York, May 18, 2006, p. 55

REASONABLENESS OF MEANS TO CONTAIN THE OCCUPATION

138. Counsel cross-examined Deputy Carson at length as to whether the CMU was the most reasonable means to address the loss of containment and his public safety concerns.

139. Deputy Carson wanted to take a measured but effective approach to removing the threat. For example, as is illustrated in his 8:15 p.m. telephone conversation with Insp. Linton on the evening of September 6, he recognized that it would be inappropriate to send a TRU team down to arrest the armed occupiers. TRU was to be used as a last resort to rescue an officer in need but,

equally important, in these circumstances the use of TRU might escalate the situation. Instead, the situation required a response by ERT.

- Transcript of Telephone Call between J. Carson and D. Linton, Ex. P-444B, Tab, 52, p. 332

140. A group of ERT officers could effect an arrest but, having regard to the confrontational events of the two preceding evenings, Deputy Carson reasonably concluded that this was not a feasible option.

141. A third option was the deployment of a CMU comprised of two ERT teams. Deputy Carson reasoned that the mere presence and psychological effect of the unit would push the armed occupiers back into the Park. Deputy Carson alluded to the use of this unit in his telephone call with Insp. Linton:

Carson: Well what what are you going to achieve by using TRU that E.R.T. can't do?

Linton: Well...

Carson: If somebody goes down then then what are you going to do?

Linton: Like I think you got a build up ah inside and that's my concern, it's not going to arrest these eight guys, we were going...

Carson: Oh oh...

Linton: With E.R.T. once we got a statement. My concern is that you have the school bus moving down there, you've got the dump truck moving down there and you've got people in the kiosk pulling the blinds all

down and I think there's ah you know a threat here of maybe sniper fire or like they're doing something inside getting ready for us.

- Carson: Okay well okay well that's fine and let's evacuate those houses if you think...
- Linton: Okay.
- Carson: There's a threat of that nature, but don't go in there with TRU If you go in with TRU and somebody gets hurt we have nobody else to get them out.
- Linton: No, what I'm doing is I'm getting TRU to come here.
- Carson: Well I wouldn't even do that.
- Linton: No.
- Carson: If you if you if you bring that team up you got to be ready to deploy them. They're...
- Linton: Well...my thought
- Carson: They're...
- Linton: Is if I send my if I sent the E.R.T. guys in to arrest these eight people...
- Carson: Yeah.
- Linton: And all hell breaks loose...
- Carson: Yeah.
- Linton: And I've got TRU suited and close by.
- Carson: Well that's fine but I would leave them in the Pinery Park, they're closer from the Pinery than they are from from Forest and then you're going to create a Media event with the TRU Team truck sitting in town here.
- Linton: Okay so...
- Carson: So...

Linton: I'll suit them up and leave them in Pinery then.

Carson: I I wouldn't do any more than that for the time being.

Linton: Okay. And then we'll do the arrest with the E.R.T. guys?

Carson: *I would I'd call out all sixty of them if you have to.*

Linton: Yeah.

Carson: Whatever's necessary we'll do that but I would I I...

Linton: Alright.

Carson: I tell you keep them in reserve. [emphasis added]

On the evening of September 5 and the morning of September 6, 1995, the occupiers did respond to the presence of the police and retreated into the Park; it was reasonable that they would respond the same way in the face of the CMU. Anticipating that the deployment of a CMU might be the response ultimately selected by the Incident Commander, D/Insp. Wright, who was familiar with the capabilities of such teams, held back the day shift ERT officers to ensure that there were resources available should a full CMU be deployed.

- Evidence of J. Carson, May 19, 2005, pp. 144-48
- Transcript of Telephone Call between J. Carson and D. Linton, Ex. P-444B, Tab 52, pp. 333-34

142. A further indication that Deputy Carson wanted to take the least aggressive approach is apparent in his instructions to S/Sgt. Skinner regarding the narrow role that the TRU teams would serve. As reflected in the scribe notes,

Deputy Carson indicated at approximately 8:50 p.m.: "...all we are doing is observation, we are not going tactical, let's get that straight". Deputy Carson elaborated on this important distinction at the Inquiry:

A: I didn't want any doubt about what the role that TRU was going to be deployed in.

Q: Yes, and when you say "not going tactical", you were referring to what?

A: That the TRU team's role was in observation and support of the crowd management team, and that this wasn't a TRU team tactical operation where – such as a normal containment might be, in regards to a barricaded gun person.

Q: Perhaps you could just explain that to me again, as a layperson; I don't understand it.

A: Okay. Normally what happens is the TRU team usually secures the inner perimeter where there is a – a situation, a threatening situation, or a person is threatening violence, or threatening suicide, or there's firearms involved, or other potential weapons. And the TRU team set up the inner perimeter, and they're prepared to, if necessary, literally become proactive and take aggressive action to deal with the threat.

And what I was trying to point out here is they are not going to be going tactical and addressing the threat. That was going to be done with the crowd management unit.

The crowd management unit would deal with the personnel in the parking lot, and it would be TRU who would be posted – or positioned on either side of the roadway so that they could observe what's going on and provide information back, and provide the cover in the event that the crowd management came under fire. [emphasis added]

143. Deputy Carson genuinely believed that the deployment of the CMU would prevent, not generate violence:

Q: Am I correct that the – one of the -- one of the reasons for involving the CMU is to prevent situations from becoming violent, by demonstrating a presence at the scene?

A: Very much so. And I guess an example of that would be this past November in Ottawa. We deployed a number of crowd management officers in regards to the President Bush visit to the city.

And it was – they were deployed for that very purpose.

Q: And the – the mere presence of the Force is – was – is not a projection by the OPP of a message that they – they're looking for a fight, it's a projection of an intent to avoid problems?

A: With any luck at all, the mere presence would be the deterrent effect.

- Evidence of J. Carson, June 2, 2005, pp. 162-63; June 27, 2005, p. 124

144. Counsel challenged Deputy Carson as to why he did not simply evacuate the immediate cottages, pull back the police and erect road blocks to prevent other members of the public from entering the area. With respect, the erection of roadblocks would not have addressed the problem as Deputy Carson fairly saw it:

...We're getting information from the Oscar team that there has been activity in the area of the – the beach, coming up from the beach, that the individuals had bats or bat-like objects and there

was concern about the cottages in the area that they would be broken into.

We certainly had a lot of information that continued to come our way from the occupiers themselves that the cottages were next.

Furthermore, the emotion shown earlier to D/Insp. Wright at the gathering of cottagers, combined with their willingness to march towards the Park to demonstrate their level of frustration, compounded the problem. If the cottages were, indeed, damaged by the occupiers, “this issue was going to be most difficult to try to address”. Deputy Carson took that view:

[b]ecause quite frankly I don't think I could have imposed any control on the group of people that Mark Wright met with. They were determined and I think it was his persuasion that convinced them to let the police work with this to – we're making sure we have adequate resources to address it.

And just stay calm here and – and he tried to reduce the tension. And I think if – if the cottages were broken into or damaged in any way, that our credibility would have been absolutely lost and that the cottages would have taken it into their own hands quite frankly. I think their confidence level was on edge.

He was concerned that the cottagers might take the law into their own hands, thereby exacerbating the situation.

- Evidence of J. Carson, May 30, 2005, pp. 56-57, 66-67; June 7, 2005, p. 237; June 20, pp. 72-75, 148-49, 192; June 27, 2005, p. 242; June 29, 2005, p. 127

IMMEDIATE RISK TO PUBLIC PEACE AND SAFETY

145. Deputy Carson's view that activity in the sandy parking lot required an immediate response was reflected in his telephone conversation with Supt.

Parkin on the morning of September 6, 1995:

Carson: But I think we've got to get [the picnic tables] out of there, because if they set a fire, we can't get the damn fire department in there to , you know, to prevent it from spreading to the next door house, if it – if it's the way I think it is.

Parkin: Yeah. So I guess there'd be somebody (inaudible) house, (inaudible) the cottage or something?

Carson: Well I think it's – I think it's not a year round residence, I don't believe.

Parkin: Yeah.

Carson: Okay. But it – but it's a significant cottage in cottage terms.

Parkin: Right, right, yeah.

Carson: *And so you know, from a public perspective I think that we've got to address that quick, quick.*

Parkin: *No, that's great.* [emphasis added]

- Evidence of J. Carson, May 18, 2005, p. 70, p. 150

146. What might have occurred in the absence of the CMU's deployment is open for speculation. However, in the face of a threat to public safety, Deputy

Carson reasonably believed that it was unfeasible to wait for daylight to take action.

FACTORS INFORMING DEPUTY CARSON'S DECISION TO DEPLOY TRU

147. Deputy Carson deployed TRU because there was a risk that firearms could be used against the members of the CMU. As reflected in Section VIII, Insp. Skinner agreed that the mere risk of the presence of firearms was sufficient reason to deploy his team as cover for the CMU.

148. Despite Deputy Carson's belief that the Park occupiers would not likely fire on his officers, he had a reasonable concern that they had access to firearms:

(1) hunting was a well-known part of the lifestyle of the Stoney Point people;

(2) on the afternoon September 4, 1995, P/C Whelan spotted what appeared to be the butt of a rifle in the trunk of a car belonging to one of the Stoney Point occupiers. Sgt. Korosec advised Deputy Carson of this sighting later in the day and a report of same is recorded in the scribe notes:

21:33 hours ...Green Ford/ Mercury, grey on trunk had butt of rifle in trunk, advised to put it back – without incident.

(3) late the previous night, P/C Parks heard 50 to 100 rounds of automatic gunfire from the back of the Army Base. As reflected in the scribe notes, Deputy Carson learned this when he came on duty on the morning of September 6, 1995:

06:01 hours Insp. Linton advised of 3 vehicles damaged by rocks, hearing 50 – 100 gun shots...

06:34 hours ...Const. Parks of 50 – 100 rounds of auto fire.

(4) shortly before 6:30 p.m. on September 6, Checkpoint Alpha advised the TOC that they had heard “what sounded like one gunshot and if it was, it’s a small calibre”. The TOC, in turn, relayed this information to the Command Post and it was recorded in the scribe notes:

19:10 hours John Carson advised small fire approximately 1 hour ago near the back of the camp

(5) at 8:20 p.m. later that night, Insp. Linton advised Deputy Carson by telephone that “they’re in the kiosk with the windows down, so they’re waiting for us to do something”. Insp. Linton reiterated that there were people in the kiosk pulling the blinds all down and he thought there was a threat of sniper fire or they were doing something inside to get ready for the police. This posed a concern for Deputy Carson and prompted him,

upon his return to the Command Post, to deploy the Sierra TRU teams to attempt to get a sight line from the kiosk to the sandy parking lot. Once again, the scribe notes record these events:

- 20:14 hours Stan Korosec reports one person in Kiosk and closed blinds.
- 20:29 hours John Carson arrived
Trevor Richardson reports person in Kiosk...
John Carson we should have TRU dropped off at neighbouring area and make their way up...
- 20:37 hours ...Potential of sniper in kiosk, evacuate cottages in area and get a "S" team. Drop team off in trailer park work their way in and use night vision glasses and observe. What do you think, Kent Skinner we can drop off at the talk [sic].
John Carson our primary concern is evacuating the cottages and see what's up with the kiosk.
Can we get the sniper team. Kent Skinner, ya, I'll take care of it.
- 20:49 hours Kent Skinner I can get the sniper team to search it out. John Carson, okay you can take care of this
...John Carson why don't Mark Wright look at video to see if the kiosk is in view.

(6) at around 8:35 p.m. that same evening, D/C Dew advised Sgt. Graham by telephone of a report of numerous guns, rounds and gas bombs that the Park occupiers have. This report is recorded in the scribe notes as follows:

- 20:43 hours Reports of numerous guns, 4 s.k.f.'s, 30 detach. Clips, 10 fixed Rd. Clip, 2 ruger 14's, 3 ord. Clips, hunting rifles, gas bombs.

Deputy Carson placed little weight on this report. In his view, any firearm posed a threat.

- Evidence of J. Carson, June 30, 2005, p. 117-18
- Evidence of S. Korosec, April 6, 2006, p. 21
- Transcript of radio transmission, Ex.'s P-1226, 1227
- Transcript of Telephone Call between J. Carson and D. Linton, Ex. P-444B, Tabs 51, p. 325
- Scribe Notes (typed), Ex. P-426, pp. 2, 47, 72, 74-76

CONCLUSION

149. Looking at decisions in retrospect is, of course, the work of any Inquiry. It is upon close scrutiny and considered reflection (not often available to a decision-maker at the time) that recommendations can be made.

150. That being said, hindsight cannot figure too prominently in the evaluation of such decisions.

151. Cecil Bernard George was candid in acknowledging his role in the events that led to Dudley George's death. Had the occupiers remained in the Park after the parking lot was clear, the CMU would have continued to withdraw, and the tactics employed would likely have been successful. Had the CMU not been deployed, and the occupiers armed with bats and clubs encountered and clashed

nearby cottagers, the OPP would have been justifiably criticized for failing to take measures to preserve public safety and order and prevent the confrontation.

152. Deputy Carson did not testify that he remains certain that the decision he made was the correct one. This is not surprising given his strength of character and the fact that a tragedy has occurred. Nor is it surprising given the revelation that some of information he had (most particularly respecting the Gerald George incident) was wrong.

153. Whether the decision to deploy the CMU was, in hindsight, correct, it was a reasonable decision, based in good faith upon the circumstances known to Deputy Carson at the time.

154. Some parties have vigorously challenged Deputy Carson's recital of the factors that informed his decision. They have noted that, in the past, Deputy Carson focused upon the Gerald George incident as explaining his decision. This challenge is misdirected.

155. The benefit of having recorded telephone conversations and scribe notes is never more pronounced than here. *Every one* of the factors identified by Deputy Carson (and by his second-in-command, D/Insp. Wright) finds expression in statements made at the time and before the CMU was deployed.

156. The most significant factor that informed that decision was that occupiers armed with bats and clubs were in the sandy parking lot. When Deputy Carson and D/Insp. Wright spoke shortly after 8:00 p.m., Wright described the situation involving the occupiers with baseball bats on the road edge. Carson's response was that "we got to deal with them, we can't let them out in that area with that stuff." It was clear to him that the presence of occupiers brandishing weapons outside of the Park had to be addressed as a public safety issue. This determination was not based upon the misinformation about the Gerald George incident that has figured prominently at this Inquiry: the identity of the driver; where the driver came from, the use of bats to damage the vehicle. The situation had to be dealt with, whether or not the occupiers ever damaged a vehicle.

157. The occupiers armed with baseball bats later merged with the Gerald George incident as a single event. Therefore, it is perhaps not surprising that the Gerald George incident was cited to summarize, in brief, why the CMU was deployed. But the taped conversation with Mark Wright demonstrates, without a doubt, that the presence of armed occupiers outside the Park, together with the factors contemporaneously recorded, explained Deputy Carson's decision.

158. Two final thoughts about the Gerald George misinformation: First, Deputy Carson has never denied that the misinformation left the impression that the event was more serious than portrayed. However, the incident was troubling even on a correct understanding of what transpired. While outside of the Park,

one of a group of occupiers, some of whom were armed, punched Gerald George and threw a stone at his car. They undoubtedly felt provoked by Gerald George's public comments about them. Nonetheless, the message being conveyed was the potential for armed occupiers to physically confront perceived adversaries (whether police, cottagers or Kettle and Stony Point Band councillors or members) outside of the Park. Viewed objectively, this could only be regarded as a possible threat to public safety.

159. Second, Deputy Carson's strategy – again reflected contemporaneously – was to deploy the CMU down the road, but with instructions what to do if the threat to public safety had dissipated when the CMU arrived. In other words, he built into his strategy the ability to end the deployment if the facts were not borne out by what the CMU found, or if the facts had since changed. This strategy recognized the possibility of misinformation or new information and addressed it.

160. As previously indicated, the inability to communicate with the occupiers was undoubtedly a significant impediment to resolving this incident without violence. The avoidance of unnecessary confrontation with protestors through proactive and ongoing dialogue supported by the Framework and trained specialty teams has gone a long way to addressing communication failures.

161. As well, current best practices for Public Order deployments have addressed lessons learned since or as a result of Ipperwash. Some police

services continue to use “shield chatter.” The OPP has discontinued that practice, recognizing that shield chatter, particularly in the context of Aboriginal occupations or protests, may not reduce the likelihood of violence. The current command structure enhances informed decision-making. The Bronze Commander, who now has training as a Level 2 Incident Commander and as a POU Commander, makes decisions on the scene that back in 1995, might have been made by the Incident Commander who was not right there. ERT or POU members also have access to additional non-lethal options, not available in 1995. These and other best practices are referred to in the OPP Part II materials, Tab 5 (OPP Public Order Units: A Comparison of 1995 to 2006). What they mean, amongst other things, is that a Commander now has options and tactics available to him or her that were not available in 1995.

VII. COMMUNICATING THAT THE OCCUPIERS WERE NOT AT RISK OF EVICTION FROM THE PARK

Finding:

On September 5 and 6, 1995, the OPP conveyed to the Park occupiers, through both its words and actions, that it would not enter the Park and evict the occupiers. The Incident Commander reasonably believed that when the CMU approached the Park, it was clear to the occupiers that the CMU would not enter the Park to evict them. The use of a megaphone might have addressed any misapprehension that did exist.

162. Poor communication between the OPP and the occupiers has been identified as one theme at this Inquiry. The impediments that faced the OPP in its efforts to establish a dialogue have been previously addressed and need not be repeated here.

163. The failure to establish that dialogue may well have contributed to misunderstandings of what each other's intentions were.

164. That being said, there is considerable evidence that the OPP did convey to the Park occupiers, through both its words and actions, that it would not enter the Park and evict and occupiers. At the very least, this evidence demonstrates

that the Incident Commander reasonably believed that when the CMU approached the Park, it was clear to the occupiers that the CMU would not enter the Park to evict them.

165. Some of this evidence emanates from the Stoney Point occupiers themselves:

(1) Elder and former Band Councillor, Bonnie Bressette, who attended at the Park on September 6, 1995, testified:

Q: Okay, and did you have any discussions with Mr. Dudley George – while you were at the – in the Park?

A: Yes.

Q: And what did Mr. Dudley George tell you?

A: Well, first when we were sitting there talking – because I was feeling uneasy with the policemen behind with all the guns and the helicopter overhead and they had a gun there and Dudley says, Don't be afraid. I – I actually started crying and he said don't be afraid.

He said, they're not going to – they're not going to do anything to us in here...[emphasis added]

(2) Tina George reported that Russ Jewell made a similar observation in the early evening of September 6, 1995:

Q: Okay. Did Russ Jewel tell you anything about Police activity going in – going on around the Park in – in the early to mid evening of Wednesday, September the 6th?

A: Yes, he did.

Q: Can you tell me what – what he told you?

A: There was on more than one occasion, when he come back from the vicinity of the Park store, he come back saying that all he heard down there was containment, containment. That's all I heard was containment.

Q: Did he tell you where he heard that – that phrase?

A: No, he never, or from whom.

Q: All right. Did he explain to you what that term meant?

A: He said that – he said that everyone would be safe as long as they stayed inside the fence.

Q: Inside the Park fence?

A: yeah.

(3) Marlin Simon admitted that, during the confrontation with police in the sandy parking lot on the evening of September 5, 1995, the occupiers left the sandy parking lot and returned to the Park to avoid problems with the police:

Q: Were there any attempts made to arrest any of the members of your group at this time?

A: Let me think. I think there was some more police offices [sic] showed up, and then they kind of got into formation a bit and started moving towards us, *so we figured, well, we thought maybe we might get arrested or something, so everybody kind of jumped into the Park.* [emphasis added]

(4) Clayton George agreed that the occupiers felt safe while inside the Park:

Q: ...But one thing is clear and that is that there was a feeling of being safe while inside the fenced Park; right?

A: Yes.

Q: Okay. And – and that was obvious to you, that – that you had some safety while you remained within the fenced Park; right?

A: Yes.

Q: And – and the reason, one of the reasons why you felt that there was some safety within the confines of the fenced Provincial Park was that you knew from the history of the dealings with the OPP that when it came to the Park and the Camp itself, they'd never press the point, they'd retreated; right?

A: Yes.

(5) David George understood that there was safety within the Park, after the events on the evening of September 5, 1995:

Q: And why, after the – the Ontario Provincial Police attempted to move the picnic tables, did you not simply stay in the Park and not put the picnic tables back out in the sandy parking lot?

A: It was just kind of a group decision. That's pretty much it, because that – that roadway's on our land too. That's the understanding I had.

Q: Pardon me?

A: That was the understanding I had that that was our land there too.

Q: Okay.

A: And so that's why we were there.

Q: *Isn't it fair to say, however, that as long as you were inside the Park at this time, the Ontario Provincial Police were not coming into the Park?*

A: *Yeah pretty much so, yeah.* [emphasis added]

(6) a number of the Stoney Point occupiers acknowledged that the CMU was successful in keeping them within the Park and that the police did not touch them as long as they stayed behind the fence line. Glenn Bressette said this:

Q: Okay. Fair enough. And immediately before Cecil Bernard George left the fenced in area of the Park, so I want to take a snapshot just before he left, all right? The police were not moving forward at that point.

They had already stopped and they had backed right up once all the occupiers were back within the fenced in Park, am I right?

A: Right.

Q: Okay. So, until Cecil Bernard George charged outside of the Park, the police formation had been successful in keeping the occupiers within the Park, am I right?

A: Right.

Q: Okay. Kokomo Joe told us that the police didn't touch the occupiers as long as they remained behind the fence line, and that's true, isn't it? You've just said as much.

A: Yes.

Clayton "Kokomo Joe" George did, indeed, testify to that effect:

Q: Now, a few more questions about the actual confrontation. When the police rushed the fence, there were occupiers outside of the fence; we know that, right?

A: Just that first time when my uncle's dog got kicked.

Q: Okay. So there were occupiers outside of the fence. The police come up to the fence and the police withdraw once you're all behind the fence; am I right so far?

A: Yes.

Q: And they never do come into the Park; do they?

A: No. Not – not past the Park fence.

.....

Q: And they didn't touch us – or they didn't touch you when you were behind the fence line; is that right?

A: Yes.

Q: And when you started going over the fence and throwing stones at them, they were backing up; am I right?

Q: Yes.

- Evidence of B. Bressette, September 22, 2004, pp. 16-17
- Evidence of M. Simon, September 29, 2004, pp. 54-55
- Evidence of D. George, October 20, 2004, p. 34
- Evidence of C. George, November 8, 2004, pp. 79-80, 103-04
- Evidence of G. Bressette, November 10, 2004, p. 25
- Evidence of T. George, January 19, 2005, pp. 204-05; January 20, 2005, pp. 55-56

166. Apart from the evidence of the Stoney Point occupiers, the words and actions of the OPP before and during the Park occupation demonstrated that the OPP was not coming into the Park:

(1) during the course of a two-year occupation, the OPP had not evicted the occupiers from the Army Base. Similarly, at no time between the takeover of the Park and the moment the CMU appeared in the sandy parking lot did the OPP attempt to remove them from the Park. Indeed, the OPP had withdrawn from the Park, rather than challenge the takeover when it occurred;

(2) each time the OPP officers approached the Park to open a dialogue with the occupiers, they respected the boundary established by the fence line and did not cross it;

(3) indeed, at no time between the withdrawal from the Park on the evening of September 4 and the decision to deploy the CMU did the police even step foot back into the Park. It was obvious that the police were respecting that boundary and would not cross it;

(4) the two occasions when the police removed picnic tables from the sandy parking lot are described in Section VI above. In Deputy Carson's

view, their removal sent a clear message to the Park occupiers. In respect of the September 6 intervention, Deputy Carson stated:

...-- this occupation had moved from the Military Base into the Park proper and that, you know, one of the bi-products of removing the picnic tables that morning was sending a message that they needed to stay in the Park, that coming out of the Park the – the picnic tables and the camping sites were not going to be allowed to continue.

.....

...I think the message was clear the day before the issue in regards to the picnic tables on the threshold and the sandy parking lot where we removed those tables the morning before that there was a clear message that they wouldn't be able to carry on in the sandy parking lot.

Deputy Carson's view was proven accurate: both Dudley George and J.T. Cousins ran into the Park as the officers approached to remove the tables;

(5) on the evening of September 5, 1995, P/C Gransden unequivocally told the occupiers to leave the parking lot and go back into the Park or risk facing charges. Marlin Simon and Isaac Doxtator supported this testimony;

(6) the actions of the CMU itself demonstrated that the OPP had no intention of going into the Park, let alone going in and evicting the occupiers. This is explained by Sgt. George Hebblethwaite:

Q: Can I ask you why [a message] wasn't conveyed at that time?

A: Well, from the Members in the unit, it would have been next to impossible with our shields down, and we did not have persons with megaphones on this particular scene. I can advise the Inquiry that it – it is now equipment that is available with Public Order Units.

I draw an analogy between this and what your question is between making an arrest of an individual who is combative, assaultive, and has to be dealt with physically, over an extended period of time and then someone asked me, why didn't I read them their rights? Well, I was rather busy.

Did they know what they were under arrest for? Well, they were in the middle of assaulting me. So yes, they should have known, but I didn't tell them specifically.

So, the scenario here was a little bit similar in that – in that regard because we have individuals that have come over the fence and come towards us to engage us, intently.

And if it was our – it was not our intent to enter the Park; that was clear right from a couple or three hours beforehand. It was clear when we got to the park line; we backed up, we disengaged and then we were engaged.

None of the members of the CMU who testified at the Inquiry were challenged on the assertion that the CMU members never moved into the Park; and

(7) it is readily apparent from the evidence heard at the Inquiry that any time there was a confrontation between the occupiers and the police it was over the sandy parking lot;

- Evidence of M. Simon, September 29, 2004, pp. 49, 185; September 30, 2004, pp. 184, 186
- Evidence of S. George, November 3, 2004, p. 165
- Evidence of C. George, November 8, 2004, p. 58

- Evidence of C. George, November 8, 2004, p. 104
- Evidence of G. Bressette, November 9, 2004, p. 240
- Evidence of G. Bressette, November 10, 2004, p. 25
- Evidence of S. George, November 22, 2004, p. 159
- Evidence of R. George, November 24, 2004, pp. 46-47
- Evidence of I. Doxtator, November 25, 2004, p. 130; November 29, 2004, pp. 59-62, 130
- Evidence of K. Simon, December 2, 2004, pp. 156-57
- Evidence of C.B. George, December 7, 2004, p. 50
- Evidence of W. George, December 9, 2004, p. 11
- Evidence of N. Cottrelle, January 18, 2005, p. 213
- Evidence of J.T. Cousins, June 12, 2005, p. 109
- Evidence of J. Carson, May 18, 2005, p. 165; May 30, 2005, pp. 124-26; May 31, 2005, p. 194; June 27, 2005, p. 198
- Evidence of G. Hebblethwaite, May 11, 2006, pp. 208-09

CONCLUSION

167. There was considerable evidence that the OPP had demonstrated, during the occupation of the Army Base and the Park, its intention not to evict the occupiers in the absence of court direction. D/Insp. Wright told Mr. Manning that the MNR was seeking the injunction; the occupiers took steps to avoid being served with the trespass notice. They also articulated concerns about being served with the court papers as one reason why they chose not to communicate with the police. When the occupiers engaged in activities outside of the Park, the OPP responded each time by addressing the outside activity and allowing the occupiers to withdraw to the Park. That approach had taken place as recently as

the morning of September 6. Even during the confrontation on the evening of September 6, the CMU did not follow the occupiers into the Park.

168. Several conclusions follow. A misunderstanding of the OPP's intention to enter the Park may not explain the occupiers' conduct once the confrontation began. Second, it is understandable why the Incident Commander reasonably believed that when the CMU approached the Park, it was clear to the occupiers that the CMU would not enter the Park to evict them.

169. Nothing that has been said here diminishes the importance of establishing good communications or ensuring that the mutual expectations of the parties are well known. This point is addressed in current best practices, described in the OPP Part II submissions.

170. As well, Deputy Carson was questioned about why he did not employ a megaphone to communicate the message that the police simply wanted the Stoney Point people to remain within the Park. Although noting his view that the message would have been met with expletives at the time, Deputy Carson quite properly conceded that, in retrospect, it may have been productive to use a megaphone. Having said that, Deputy Carson's failure to consider the use of a megaphone must be put in temporal context. At the time, the CMU equipment did not include a megaphone. The POU equipment now does.

VIII. ROLE OF INTELLIGENCE AND THE COMMUNICATION OF INFORMATION

Findings:

(1) There were deficiencies in the intelligence process at Ipperwash. Some had no adverse impact upon the decisions made. Nonetheless, misinformation was received by the Incident Commander, particularly concerning the Gerald George incident. Although it cannot be said with certainty how the decision to deploy the CMU would have been affected, any misinformation such as this could contribute to inaccurate decision-making.

(2) Detective Inspector Wright was not the source of misinformation regarding the Gerald George incident. Indeed, he took reasonable steps to ensure that the Incident Commander had an accurate account of this event.

DISTINGUISHING INTELLIGENCE FROM INFORMATION

171. Intelligence is the end product of information that has been subject to the seven-stage cyclical intelligence process: planning/direction, collection, collation, evaluation, analysis, reporting and dissemination, and re-evaluation. It is a value-added product that the police use in planning and decision-making.

- Evidence of D. Bell, June 6, 2006, pp. 237-242
- Evidence of W. Wawryk, June 9, 2006, pp. 133, 150-52
- *Police Intelligence for Public Order Operations in 1995*, Ex. P-1683
- *The Police Intelligence Process Chart*, Ex. P-1639

172. Assigning a level of reliability to information is one way of adding value to it. Depending on the complexity of the information presented, this evaluative process can be quite simple or complicated. Clearly, some information is inherently reliable by virtue of the circumstances in which it was obtained and requires no analysis before it can be used to support an operational decision.

- Evidence of D. Bell, June 6, 2006, pp. 244-250

173. It is a misnomer to suggest that unverified information is of no value. One can act on unverified information; the question is *how* one acts on it. Deputy Carson had unverified information that the activity in the kiosk might involve a sniper. While he could not, and, indeed, did not, rely upon this information, for example, to “storm” the kiosk, it quite properly served as a basis to deploy a Sierra team to ascertain the sight line from the kiosk.

THE ROLE OF INTELLIGENCE AT IPPERWASH

174. From the outset, Ipperwash was not an intelligence-driven operation. Rather, Deputy Carson used intelligence to “confirm, deny or support other suppositions or facts”. He would not make an operational decision based solely on intelligence. This approach to policing reflected the accepted practice of most large police services in the mid-1990’s. (Indeed, as confirmed by Wayne Wawryk, intelligence-led policing did not come into fruition until after the events of 9/11, some six years following Ipperwash.) In addition, in Deputy Carson’s view, the classic intelligence model would be redundant at Ipperwash. The situation in Ipperwash was a little different “from the point of view that [the police] certainly had the ability to know who the participants were, for the most part”:

...And we had a number of officers who could provide us some of the background information on – on some of the individuals because the officers had worked there their whole career, and some of them had grown up here themselves.

- Evidence of J. Carson, May 31, 2005, pp. 195-96
- Evidence of W. Wawryk, June 9, 2006, pp. 247-48

175. In addition to local OPP officers, Deputy Carson relied upon the following sources for information about who the Stoney Point occupiers were, and what they were doing: the occupiers themselves; the residents of Kettle Point; members of the Kettle and Stony Point Police Service; various military channels, including their command staff at the Army Base and their intelligence branch; and

ERT officers who were assigned to patrol the Ipperwash area in July and August 1995.

176. *Project Maple* contemplated a limited role for the intelligence officers assigned to the operation: it called upon them to identify the people in the Park and the Army Base. There was no trained analyst involved at Ipperwash until after the shooting. That is to say, in the period leading up to the shooting, no one individual was *formally* assessing the reliability of information and feeding it to the Incident Commander. However, in Deputy Carson's view, he had a great deal of established *facts* at hand. The questions generally addressed, at the time, by the work of an analyst had already been answered in Ipperwash:

...You – we – the biggest difficulty we had was knowing who was in there.

We knew why they were there. We knew what they were doing, for the most part. And it was a matter of identifying the appropriate – identifying the occupiers for the injunction.

So from the who, we ere able to identify those, you know, with – for example, some of the outsiders, some of the behaviours they brought with them.

So I would suggest, at the end of the day, the product isn't much different. It's just that getting to the finish line is different in this case because of the amount of information we know at the outset, as opposed to a group of unknown people; you're trying to establish that level of familiarity.

- Evidence of J. Carson, May 31, 2005, pp. 195, 197-99
- Evidence of D. Bell, June 7, 2006, pp. 18, 155-57
- *Project Maple*, Ex. P-424, p. 28

177. D/Insp. Bell was the primary intelligence officer assigned to *Project Maple*.

He agreed with Deputy Carson's assessment of the uniqueness of Ipperwash:

...Inspector Carson – sorry, Carson, because of his experience and his background in the area in 1 District and Forest and Chatham had a great deal of contacts that he had developed within the policing community and within the community at large.

He also pointed out that, in effect, Deputy Carson served as his own analyst:

... It was a situation where I don't think anybody was in a better position to assess the information that was being processed to him.

As such, it was my opinion that – and my belief that he took – made himself more or less the central repository for the information and processed the information that he saw fit to determine where he was going with his tactical priorities.

.....

It was my opinion that Detective Inspector Carson had a...sound grasp of the occupation and the community and basically a...feel of what was going on. As I alluded to you yesterday I didn't think there was anybody more prepared to deal with the occupation as far as intelligence and information that he'd received.

It was clear to me that he was going to utilize intelligence for the role that we were specifically assigned, to assist him in – in particular with the outsiders; the – the people that he did not know, that he did not have that information. But as far as making operational decisions, especially tactical, I believe that he was going to make that independent.

He would have that in his – be part of his memory bank, part of the information, part of the data that he had available to him, but he wasn't going to be making it based solely on that information.

- Evidence of D. Bell, June 6, 2006, pp. 230-31; June 7, 2006, pp. 36-37

DEFICIENCIES IN INTELLIGENCE GATHERING AND ANALYSIS

178. D/Insp. Bell did not find that the analysis done at Ipperwash was deficient.

As reflected above, “John Carson...had the tools that he needed to make the necessary decisions”. The post-shooting use of a trained analyst and a more formalized model of intelligence was not a recognition, at the time, of a failing pre-shooting. Circumstances had changed. The formalized system was implemented to compensate for the loss of traditional sources previously enjoyed by Deputy Carson:

Q: And who and what do you believe prompted that change to a more formalized intelligence process as you have described it?

A: Myself.

Q: And what prompted it?

A: Well, *certainly the dynamics of the incident changed*. I – I think I’ve explained it in some detail what my opinions and my beliefs were with regards to the intelligence process prior to the incident of – unfortunate incident with Mr. George.

In that case I felt that Inspector Carson could fulfill the role of an analyst, could digest the information and make the appropriate tactical decisions and tactical priorities based on the local officers, his knowledge, and the information that was being provided from the various, for lack of a better term, intelligence tentacles.

Certainly they – at that time we had a good grasp of what was going on in the Park with regards to the occupiers and as I alluded to earlier I felt that in many cases the information

that we were dealing wasn't intelligence but information that was fact, based on the local knowledge.

Post September 6th the dynamics changed and as we've indicated in the early stages here we've seen that there is a definite interest from outside First Nation territories and certainly there was support from non-First Nation people.

The dynamics were changing and we were going to have a whole new group of people that possible were attending; individuals that the local law enforcement community or the local community as a whole would not be in a position to assess what kind of people they are.

Q: Hmm hmm.

A: Whether they were not in a position to judge, whether they were there in a peaceful support or they were there with some other alternative means.

As such, I thought it was incumbent to put measures in place where we could have a formal process, where we could do the collection and more importantly the evaluation collation in analysis, because we weren't in a position now to have that one central figure that could do that.

And in doing so, I felt that that would be to better prepare the Incident Commander to make the appropriate tactical decisions that he maybe forced to face in the future.

.....

Q: And in your view, did this new system, if you will, enhance the subsequent Incident Commander's abilities to make informed decisions?

A: In my opinion, I don't believe it enhanced his position to make decisions, but I believe it provided him the – an opportunity to make informed tactical decisions based on the information we were providing.

I don't want to make that to seem as though he was in a better position now than he was before, because *as I eluded to you before, with the exception of the tentacles, I still believe he was in a position to be the central repository and make the appropriate decisions.*

.....

After the events of September the 6th, the personnel – the roadblocks, people weren't stopping the vehicles. And that was one of the points I put on for points of discussion.

So certainly we lost the ability to have dialogue with people coming and going and lost the ability to have dialogue with people coming and going and lost the ability to see anything that may be in plain view. Because certainly at no time were we searching these vehicles when they were going through the checkpoints but at least you got a chance to have plain view observations as to what you – what was inside the vehicle.

- Evidence of D. Bell, June 6, 2006, p. 313; June 7, 2006, pp. 162-63, 167, 194

179. However, D/Insp. Bell did readily acknowledge, with the benefit of hindsight, the operation's intelligence deficiencies:

(1) in 1993, the OPP and the Joint Management Team failed to give Ipperwash sufficient priority amongst the projects assigned to the London Joint Forces Operation. Resources were limited. They prioritized on the assumption that the Ipperwash problem was going to be resolved and the land returned;

(2) the collection phase should have begun as early as 1993 and should have utilized the intelligence process to its fullest degree. They should have set up video equipment, conducted surveillance, and developed police informants and police agents;

(3) all information should have been filtered through one person up to the Incident Commander:

...I had previously stated that I didn't see a formal – an analysis by a trained analyst to provide much use to Inspector Carson with regards to establishing tactical priorities.

What I could see a trained analyst providing to Inspector Carson, is because of their organizational capabilities, to put a package together, a nice tight package, where he'd have all his information properly outlined, detailed, although still not be able to put much reliability on it because it's still difficult to – because of my collection concerns, to do that, but he'd have that tight package where he'd have one shop – one shop - stop stop - shopping to assist him in taking his tactical priorities forward.

- Evidence of D. Bell, June 6, 2006, pp. 310-13, 333-34; June 7, 2006, pp. 201-02; 220-21

IMPACT OF INTELLIGENCE DEFICIENCIES ON THE OUTCOME OF SEPTEMBER 6

180. It has been suggested that Deputy Carson would not have deployed the CMU if he had received accurate information about the Gerald George incident; this purportedly illustrated a failing of intelligence. The incongruity between what occurred and what was thought to have occurred may have had a bearing on the evening's outcome. Having said that, as argued in Section VI above, the decision to deploy the CMU was an available option on the accurate version of the

incident. As earlier submitted, this incident was only *one* of a number of factors, that informed the decision:

- Evidence of J. Carson, June 28, 2005, p. 49; June 30, 2005, p. 75

181. Deputy Carson did not know how the accuracy of the information about this incident was compromised. It has been alleged that D/Insp. Wright was the source of confusion as to what transpired during the incident. With respect, the sequence of information flowing over the radio transmissions negates this allegation. See Appendix "D" herein for a summary of the flow of information conveyed by D/Insp. Wright. At no time did D/Insp. Wright communicate to Deputy Carson or the Command Post that:

(1) the occupant of the vehicle is a woman; indeed the transmissions refer only to a male party;

(2) the occupant of the vehicle is non-Aboriginal, let alone attended at the MNR parking lot an hour earlier;

(3) the vehicle was struck with a bat or club; indeed, D/Insp. Wright's transmissions refer to stones.

- Evidence of J. Carson, June 30, 2005, p. 75

182. In addition to communicating a summary of the incident to Deputy Carson and the Command Post, D/Insp. Wright took steps to ensure that a first hand account of what occurred made its way to the Command Post. He tasked an officer to collect Mr. George's statement and bring it back to the Command Post. In this way, the account's accuracy would not be compromised by being transmitted through multiple parties:

...At some point, my recollection is I send someone down there to get the statement and bring it back, and I talked about *there was a question about having it relayed back and I didn't want that happening. I wanted it brought back by one person.*

And my recollection was that Dew was the one who was going to bring it back, Mark Dew. [emphasis added]

The combined testimony of Sgt. Richardson, D/C Dew and D/C Poole establishes that D/C Dew was tasked with and, indeed, did collect the statement that D/C Poole took from Mr. George. While D/C Dew could not recall when he returned to the Command Post, his notes suggest that he arrived sometime before 10:00 p.m. The scribe notes indicate that he was reviewing the contents of Mr. George's statement with Insp. Linton at 10:44 p.m.

- Evidence of M. Wright, March 21, 2006, pp. 32-33
- Evidence of M. Dew, April 4, 2006, pp. 75, 77, 87, 316
- Evidence of S. Poole, May 16, 2006, pp. 75-76
- Evidence of T. Richardson, June 9, 2006, p. 73
- Notes of M. Dew, pp. 32-34, Ex. P-1069
- Scribe Notes (typed), Ex. P-426, p. 79

183. Counsel have also alleged that Deputy Carson should not have relied upon Gerald George's inventory of firearms in or around the Park as a basis to deploy TRU. It is accurate to say that this information was not formally analyzed. However, Deputy Carson did not deploy TRU on the basis that there *were* firearms accessible; he deployed TRU because there was a *risk* of firearms. Furthermore, as outlined Section VI above, Gerald George's account was only *one* source of information which established that risk:

Q: ...So that brings me back – and I'm going to say – to suggest to you, that the information, this information about the guns was acted upon without anybody checking to see if it was correct, as a matter of fact.

A: That's – that's not really a fair assessment of – of the information. The information came through to the command post and that's *one of the reasons* we put TRU team in as a cover team for the crowd management team was as a result of the *potential* of weapons that were readily accessible according to that information.

.....

...The use of TRU team as a cover team is used as a precaution because of the availability or *the potential availability of weapons*.

It's not because we felt that any individual was going to do something overt towards us. [emphasis added]

Insp. Kent Skinner confirmed that the mere *risk* of firearms justified the deployment of TRU:

Q: ...And at that time of their deployment, was your TRU team still operating on the understanding that...there were a number of assault weapons, such as you've already discussed, *probably present* in the Park?

A: There was that *potential*, yes.

.....

Q: And with the CMU was there a decision to also deploy Alpha?

A: Yes, ma'am.

Q: And what was the role of Alpha in – at this stage I the plan?

A: Alpha was to provide cover for the CMU should they run into an armed confrontation.

Q: All right.

A: Because of the equipment CMU members are carrying it's difficult to respond to an armed threat.

Q: Okay. And at this stage in the game given the information you had and that you passed on to your TRU team members there was a – *a risk of firearm conflict from your perspective* –

A: Yes.

Q: -- *that warranted the deployment of TRU?*

A: *Yes, ma'am.* [emphasis added]

- Evidence of J. Carson, June 28, 2005, pp. 45-46, 58-59
- Evidence of K. Skinner, April 19, 2006, pp. 187-94,193-94

CONCLUSION

184. D/Insp. Bell identified deficiencies in the intelligence process at Ipperwash. In large part, these were typical of police practices in the mid-1990s. The evolution of OPP Intelligence Services since 1995 has been fully addressed in the OPP Part II materials, Tab 7 (OPP Intelligence Services: A Comparison of 1995 to 2006). The key changes are highlighted at pages 23-29 and in Appendix A (Summary of Changes to Intelligence 1995-2006).

185. These changes recognize the need to implement a more strategic approach to intelligence, and to establish clear priorities for intelligence gathering. Analytical resources have increased dramatically in line with recognized best practices. When intelligence becomes an integral partner to a critical incident, an analyst is attached to act as the filter/advisor to the Incident Commander.

186. Misinformation concerning the Gerald George incident made its way to the Incident Commander. This misinformation was not attributable to D/Insp. Wright, who took reasonable steps to ensure that the Incident Commander had an accurate account of this event. Although the origin of this “broken chain” of communication may be impossible to trace, it is reasonable to infer that it is explained, in part, by the sheer volume of activities taking place within the Command Post. This has now been addressed through the current command

structure (Gold-Silver-Bronze) for Public Order events. This structure, identified as a best practice in England and by Wayne Wawryk distributes responsibilities previously assumed by a single Incident Commander to multiple Commanders within a formalized structure. The more formalized structure for OPP integrated responses was demonstrated during the OPP Incident Simulation. These structures reduce the risk that information will “fall between the cracks” or be “lost in translation”.

187. Concerns were also raised at the Inquiry about untested or potentially unreliable information making its way to the Incident Commander, particularly where the factors that might impact upon reliability were not known or shared. In fairness, Deputy Carson had a healthy appreciation of the risks associated with unproven information, as reflected in his contemporaneous responses to certain information. However, it is clear, for example, that factors that could impact upon Gerald George’s reliability were not known or communicated to the Incident Commander.

188. The misinformation concerning Gerald George’s altercation with the occupiers was not grounded in Gerald George’s purported unreliability, but in the breakdown in transmitting his story. Untested information from Gerald George about the weaponry was discounted by Deputy Carson. He placed no reliance upon its accuracy. That being said, this concern has been addressed since 1995 in a variety of ways. First, as previously noted, analysts serve as filters for the

Incident Commander. This enhances the ability to collect and disseminate analyzed information to its ultimate “consumers” through a single officer. Second, key consumers of intelligence, including Incident Commanders, now receive training on the utilization of intelligence – including evaluation techniques and the difference between intelligence and information. OPP frontline officers also receive intelligence training at annual In-Service training sessions.

189. Some information is not easily verified or discounted. Where unverified information raises safety concerns, an Incident Commander is entitled – as Deputy Carson did – to take measures to address those concerns, as long as the reliability of the information is not presumed.

190. Finally, it was suggested that Officers Dyke and Whitehead were unlikely to provide unbiased intelligence to the Incident Commander, given their comments about Aboriginal peoples captured on videotape. There is no evidence that any information they provided affected any operational decisions of the Incident Commander; indeed, the evidence is to the contrary. That being said, diversity and cultural awareness is now a prized asset in intelligence personnel. A number of Bureau members have taken the Native Awareness Training, and it is a priority to increase this number.

IX. OPP'S FACILITATION OF MEDICAL ASSISTANCE

Finding: Deputy Carson made more than adequate provision for access to emergency medical services, having regard to the resources available to him, and the need to strike an appropriate balance between public safety and medical need.

AVAILABILITY OF AMBULANCES

191. Although the objective of *Project Maple* was a peaceful resolution without violence, the OPP had to plan for a worst case scenario. Indeed, that was, and remains to this day, a “best practice” for police services generally. As a result, in preparation for the September 1, 1995 contingency planning session, Deputy Carson considered what medical support was available in the Ipperwash area. He wanted to ensure, for example, that his unit commanders would be aware of the procedures to be undertaken if an air ambulance had to be requested. During the September 1, 1995 planning session, the availability of ambulance services “after hours” was specifically discussed. The logistics unit was tasked with the responsibility of arranging ambulances if required. Deputy Carson understood that the ambulance service had been notified that the officers were in the area and that there was a potential for altercation.

- Evidence of John Carson, May 12, 2005, pp. 192-93; May 16, 2005, pp. 78-79; June 2, 2005, p. 173

192. As of 9:25 a.m. on September 5, 1995, Deputy Carson believed that he had a fully-equipped St. John ambulance on site for 24-hour coverage. It was not until after the incident that he learned that the vehicle in question was a van loaded with equipment to support the trailer parked in the MNR parking lot. In any event, there was no evidence led to suggest that ambulance assistance was required prior to their arrival on site on the evening of September 6.

- Evidence of J. Carson, May 17, 2005, pp. 63-65; June 2, 2005, pp. 159, 165-67

193. At around 9:00 p.m. on the evening of September 6, Sergeant Steve Reid, a logistics officer from the Command Post, alerted the local ambulance service of the potential need for emergency medical services. By the time the CMU had been deployed, there were two fully-equipped ambulances, staffed with a total of four paramedics, on stand-by in the MNR parking lot. The radio transmissions reflect considerable ambulance movement to ensure there were appropriate ambulances on standby in key locations. If necessary, *ten* further ambulances were available to head to the site. In addition, there was a St. John Ambulance unit equipped with supplies for the two volunteers in attendance in the MNR parking lot to administer first aid. A chronology of events concerning the requests for, and arrival of, ambulance units is contained in Appendix "E", herein.

-- Affidavit of Gerry King, Ex. P-1333

194. Apart from ensuring available ambulance services, the police were able to administer a certain amount of medical care themselves:

(1) every police officer in attendance had basic first aid training and access to a first aid kit in every police vehicle;

(2) the TRU team assigned to be on stand-by for Ipperwash had its own paramedic who was also a registered nurse;

- Evidence of J. Carson, June 2, 2005, pp. 169-70

ACCESS TO AVAILABLE AMBULANCES AND MEDICAL PERSONNEL

195. Immediately after shots had been fired, a call came in from within the Park requesting the assistance of an ambulance. In addition, Gina and Tina George requested ambulance care for Nicholas Cottrelle at the main gate of the Army Base. At this stage, tensions were understandably high and the situation was volatile. The police had a responsibility to ensure the safe passage of the ambulance attendants. The police did not permit an ambulance to go into the Park or the Army Base. Nor should they have, given what they understood at the time. Instead, those who requested ambulance services were advised to bring

the injured off the property to where an ambulance was located. Deputy Carson, who had no part in this decision, nonetheless found it to be reasonable:

Q: And, for example, it would not be safe or appropriate to have medical personnel or ambulance go into the Base or the Park at that time?

A: Particularly unescorted.

Q: Yeah. And we've heard some evidence about a requirement, when an ambulance was needed down by the main gate for the person to be brought outside of the Base and brought out to the ambulance outside.

A: Correct.

Q: And, I take it that that would be something that would be reasonable in the circumstances?

A: I believe it would be, yes.

- Evidence of J. Carson, June 1, 2005, pp. 211-12
- Evidence of Mark Wright, February 23, 2006, pp. 241-43, 277-79
- Transcript of Telephone Call between B. Cousineau and Wallaceburg CACC, Ex. P-1119

196. Sergeant John Slack was at the main gate of the Army Base when Mr. Cottrelle's mother and aunt sought ambulance assistance. Sgt. Slack explained the "catch-22" he faced and the interests he was attempting to balance at that point:

Q: ...Now, you testified that you didn't want the ambulance to go into the Park for safety concerns. I just want to clarify, this was because you believed that First Nation people would

shoot at medical personnel that entered the Park to help one of their members?

A: Shortly before that there had been a confrontation –

Q: Right.

A: -- at East Parkway Drive and Army Camp Road. I don't know if the ambulance would have gone into the Army Camp on their own.

Therefore it would have been incumbent upon us to escort them for their safety. If we took an ambulance or two ambulances and a police car or two police cars in the main gates of CFB Ipperwash shortly after the shooting, a gun fight – I felt that would have been extremely provocative, it probably would have been interpreted the wrong way and was extremely dangerous and I didn't entertain that thought for a moment.

- Evidence of J. Slack, June 5, 2006, pp. 298-99

197. No ambulance attendant suggested that the OPP interfered with his ability to administer care to a patient. Indeed, as illustrated by the testimony of Mark Watt, safety was the only concern that the ambulance attendants had:

Q: ...I'm going to suggest to you, at no point, did an OPP officer prevent you from assisting anyone who had been injured down towards the area of the Park?

A: Towards where – the day the conformation all happened?
The only concern that we had is we wanted to remain in the MNR parking lot because we didn't know the safety.

Q: Exactly. You had some security concerns for yourselves –

A: Yes. [emphasis added]

John Tedball was equally concerned about his safety:

Q: And you talked a little bit about your concerns for your safety that night?

A: Yes.

Q: And I take it in your view, that you would not, and you should not need to go where there is a concern that you would be unsafe; that's not part of your job?

A: That's right.

- Evidence of M. Watt, April 25, 2005, pp. 96-97, 113
- Evidence of J. Tedball, April 25, 2005, pp. 211-12
- Evidence of C. DiCesare, April 25, 2005, pp. 298-300
- Evidence of M. Gilpin, April 27, 2005, pp. 151, 236

198. Security precautions were also taken at the Strathroy Hospital. The presence of additional officers at Strathroy Hospital resulted in heightened anxiety for some hospital personnel. However, the physicians and nurses who testified at the Inquiry agreed that their ability to administer care to Dudley George, Nicholas Cottrelle or Cecil Bernard George was in no way compromised by the officers' attendance.

- Evidence of A. Marr, April 26, 2005, pp. 167, 206-08
- Evidence of E. Saettler, April 26, 2005, pp. 330-31; April 27, 2005, pp. 23, 29-31
- Evidence of J. Derbyshire, May 9, 2005, p. 183
- Evidence of J. Carson, June 20, 2005, pp. 258, 260, 262
- Evidence of J. Carson, June 27, 2005, pp. 25

CONCLUSION

199. The OPP made more than adequate provision for access to emergency medical services. Public safety compelled an approach that balanced public safety, including the safety of ambulance and medical personnel, and medical need. That balance was appropriately struck based upon what was known at the time.

200. In 1995, a medical plan was part of CMU operations, but generally limited to notification of ambulance services and possible standby. As well, in 1995, the Emergency Medical Technician – Tactical (EMTT) program was formally adopted in the OPP. The program is comprised of three members (one Registered Nurse and two Medical Doctors) who respond, when available to Level 2 incidents and provide medical support. Ted Slomer served in that capacity in 1995.

201. Now, medical and decontamination plans are part of all Public Order Unit operations. Toronto EMS advanced paramedics are assigned whenever possible. They have a unit that is POU trained and equipped. Further enhancements to existing EMTT policy are now under consideration by the Commissioner's Committee, including the contracting for, and training of, a limited number of full-time critical-care paramedics for high-risk and Public Order events. These developments are reflected in the OPP Part II materials, Tab 4

(OPP Emergency Response Services: A Comparison of 1995 to 2006) and Tab 6 (Summary of Changes to POU 1995-2006).

X. REASONABLE AND PROBABLE GROUNDS FOR THE ARREST OF NICHOLAS COTTRELLE, CAROLYN GEORGE, PIERRE GEORGE AND J.T. COUSINS

Finding: Detective Inspector Wright had reasonable grounds to believe that the vehicle transporting a gunshot victim from the Ipperwash area shortly after the parking lot confrontation likely contained individuals who had shot at, or attempted to run down the police. Accordingly, although the arrests at Strathroy Hospital were deeply unfortunate, they were based on reasonable and probable grounds and made in good faith. Nonetheless, the OPP should have more promptly excluded the occupants as suspects, and ensured their timely release.

202. This Inquiry heard the details of the heroic effort by Pierre George, Carolyn George and J.T. Cousins to rush Dudley George to the hospital for medical treatment. There can be no doubt that by the time they arrived at the hospital, they were terribly distraught about the condition of their brother and friend, and wanted to remain by his side. Their arrests at the hospital made that impossible. Deputy Carson, D/Insp. Wright, Commissioner O'Grady and Commissioner Boniface agreed that this was a very unfortunate circumstance. D/Insp. Wright said this:

... it's a very unfortunate thing, it's a tragic incident. I'm not making light of it. I couldn't imagine how those poor people would feel being in custody when their brother is, you know, dying and they are pulled away from him.

It's a tragic – it's a tragic thing that happened and I – you know, it's – it's a very unfortunate set of circumstances.

And I don't have any problem saying, you know, that I wish I had had more information.

- Evidence of J. Carson, June 20, 2005, p. 275
- Evidence of T. O'Grady, August 24, 2005, p. 92
- Evidence of M. Wright, March 21, 2006, pp. 74-75
- Evidence of G. Boniface, June 15, 2006, p. 43

203. Inspector Wright acknowledged that the direction to effect their arrests, and the foundation for those arrests, originated with him. The same was true for the arrest of Nicholas Cottrelle who emerged from the Army Base, wounded by gunfire, within minutes of that gunfire at the sandy parking lot.

- Evidence of M. Wright, February 23, 2006, pp. 294-95

204. D/Insp. Wright remained at the Command Post throughout the confrontation in the sandy parking lot. His attention was fixed on the TAC radio transmissions which captured the events in the sandy parking lot as they unfolded. D/Insp. Wright testified as to how he formed the reasonable and probable grounds for the arrest of Mr. Cottrelle:

Q: Okay. Then there's a note: "23:25. Trevor Richardson, victim is being transported to Strathroy. Constable Speck and Mark Dew en route." And did you have anything to do with the decision to send Constable Speck and Mark Dew to Strathroy?

A: My – yes, I sent them there. That's my recollection.

Q: And why did you send them there?

A: Well, because an individual had been shot, complaining of a gunshot wound, had been picked up in the ambulance at Army Camp Road and 21 Highway, I believe that's what that relates to.

And we had just been involved in an incident down at – on East Parkway Road where gunshots had been exchanged between OPP officers and unknown individuals. And my understanding, at the time, was that OPP officers down on the road, there was an attempt to run them over and there's – and there was an attempt to murder them with res – with guns as well.

There were shots fired at OPP officers and the OPP officers returned the fires – the fire directly back at the car and the bus. So I thought it reasonable that the individual who was suffering an apparent gunshot wound would be involved in that altercation, and I sent Dew and Speck to the hospital.

In respect of the occupants in the white car who arrived at the Strathroy Hospital, he had the following to say:

Q: Well, you tell me again why you instructed him to arrest the individuals in the car?

A: Well, there was an altercation at – earlier that evening where OPP officers were almost run over and had been shot at; that was the information I had at the time.

And the OPP officers had returned fire into a vehicle and a bus as a result of being fired upon, initially. And then we have a vehicle who shows up in and around the general

area, Nauvoo Road, shortly thereafter that incident with an individual complaining of a person in the vehicle suffering a gunshot wound and on their way to hospital.

So I would – in my opinion, the reasonable and probable grounds existed to draw the inference that that person who was in the vehicle and suffering from the wound was – and all the other individuals in that vehicle was involved in the, either A) attempting to run over the OPP officers or firing upon the OPP officers.

So that was, as far as I was concerned, the – the reasonable, probable grounds that existed to effect that arrest.

- Evidence of M. Wright, February 23, 2006, pp. 294-95, 312

205. The radio transmissions do, indeed, convey sufficient information to support the existence of reasonable and probable grounds to support the arrests that were ultimately made. The sequence in which the information came in over the TAC is summarized in Appendix “F” herein.

206. The reasonableness of D/Insp. Wright’s conclusion was supported by his superiors and the officers he commanded:

(1) while Dep. Comm. Carson played no role in the decision to make the arrests, he did concur in D/Insp. Wright’s assessment that there was a basis, in all of the circumstances, to make them:

Q: I see. So, it was your understanding, sir, that these people who were transporting the unknown person to hospital were to be arrested; is that correct?

A: I would expect that to be done.

Q: That was your understanding as to what you expected to have happen on that night sir, is that correct?

A: Correct.

Q: And, sir, again I would put to you that would have been without any possible reasonable and probable grounds to place them under arrest.

And, I would ask you, sir, if I'm wrong, for you to tell me what charge you thought you had reasonable and probable ground to arrest those people on?

A: *If there was someone involved in a shooting as – as the information was that someone had – had been struck and ran back into the Park, I think it's fair assumption that that person was probably loaded into the nearest vehicle and conveyed to the hospital. It is very reasonable and probable to think that the parties involved in that vehicle were part of the incident that had just taken place.*

So, they're all part and parcel of that until the officers are able to determine exactly what has happened.

.....

Q: ...So, at the time, what were the reasonable and probable grounds the officers might have had, sir?

A: *I think it's reasonable to believe that the persons who – who took him to the hospital were the ones directly involved right – right with him and very well may have been armed as well as – as what was believed.*

So, I don't know what more I can say. I mean, it seems sensible –

Q: So that –

A: *-- it seems reasonable that the first person right there involved in the incident, whether it was the persons who were driving the bus, driving the car, or anybody else who*

may have been injured maybe were all part and parcel of this incident.

And until it could be sorted out, I don't know how you could delineate which person had which piece of involvement when they first arrived at the hospital. [emphasis added]

.....

Q: So – putting things in context for a moment, if – if the police believed at the time the following series of facts: that individuals have come out of the Park in a car and in a bus; right?

A: Correct.

Q: That shots were fired at officers from those vehicles –

A: Right.

Q: -- right?

A: Right.

Q: Which, stopping there, would constitute attempted murder?

A: Right.

Q: That shots were returned by the officers?

A: Yes.

Q: That those individuals, some or more of those individuals were injured as a result of the return of fire by the officers?

A: Right.

Q: Right. And that now a car from within the Park is going directly to the hospital, containing an individual or individuals who have been shot in that altercation?

A: Correct.

Q: Right?

A: Yes.

Q: And – and have bypassed an ambulance but gone directly in a private car –

A: Correct.

Q: -- right? Are there reasonable grounds to arrest the occupants of that vehicle?

A: I believe there is.

(2) D/Insp. Wright directed D/Sgt. Richardson to arrest those individuals who were headed to the hospital, and provided him with the grounds to do so. D/Sgt. Richardson concurred with his superior's assessment of the sufficiency of those grounds:

Q: Did he advise you as to what the grounds for that arrest would be?

A: Just I described before, the fact that shots were fired. The car appeared to be similar to the one that might have been down at the sand lot that tried to run the – the officers over, the E.R.T. team over.

Also I understand that this vehicle would have come out of the Camp, ran the checkpoint that was there, almost hit somebody, apparently, and took off.

Q: All right. So those were the grounds as you understood them?

A: Yes.

Q: And in your opinion, if proven true were those adequate grounds for an arrest?

A: I believe so, yes.

(3) D/C Dew also agreed as to the sufficiency of the grounds for arrest:

- Q: -- at some point within the hour of when your first learned from Trevor Richardson that these individuals were to be arrested, are you receiving information and –
- A: Yes.
- Q: -- and an understanding of the grounds to effect that arrest?
- A: yes.
- Q: All right. And what is the information that you're receiving?
- A: As I recall it, the information was, and part of it is, what I can recall from hearing the radio transmissions at Forest Detachment, was that –
- Q: And that's before your departure?
- A: That's before our departure, that there had been an exchange of gunfire.
- Q: All right.
- A: And then I learned that there was someone who had been injured and was on their way to the hospital.
- Q: All right.
- A: So with that, in my mind, it's reasonable and prudent to assume that if someone is on their way to the hospital with a gunshot wound, and the time is so close to that incident as to likely be part of it, that the people in that car likely had something to do with that skirmish with the police.

(4) Sgt. Korosec also believed that there were reasonable and probable grounds to arrest Nicholas Cottrelle. A careful examination of the background voices during the telephone call between Sgt. Cousineau and the ambulance service not long after the shooting reveals that Sgt. Korosec yells D/Insp. Wright's name and states, "we should have

someone go with that ambulance – this guy we will want in custody”.

Immediately thereafter, officers are dispatched to attend the main gate of the Base to accompany the ambulance; and

(5) It is most significant that, at the request of D/Insp. Wright, D/C Dew checked with Dianne Foster, a local Crown prosecutor, at 1:50 a.m. on September 7, 1995 to ensure that the officers had a lawful basis to make the arrests. As reflected in D/C Dew's notes, Ms. Foster advised him “to hold onto people in custody”. This is relevant both to the adequacy of the grounds of arrest, and to D/Insp. Wright's good faith.

- Evidence of J. Carson, May 30, 2005, pp. 188, 191-92; June 20, 2005, pp. 242-43, 252-55; June 30, 2005, pp. 135-37
- Evidence of M. Dew, April 4, 2006, pp. 161-62, 194-95
- Evidence of T. Richardson, June 8, 2006, pp. 198-99
- Transcript of Telephone Call between B. Cousineau and Ambulance Service, Ex. P-1119
- Notes of M. Dew, p. 36, Ex. P-1272

CONCLUSION

207. The arrests at Strathroy Hospital were deeply unfortunate. Nothing that is said here is intended in any way to minimize the impact of those arrests upon those affected. Nor did the OPP senior officer's, when testifying, attempt to minimize that impact. Further, both the arrests and their duration were identified

internally during the limited review that took place in February 1996 as problematic.

Inspector Goodall – issue raised that there were insufficient people to supply information and that investigators found a need to have a better understanding of what had taken place at the shooting – innocent people were placed in jail, due to lack of proper information being passed on.

.....

- were the arrests legal or not legal at the Strathroy Hospital?????
 – the decision was made by the information that was supplied at the time – issue was the amount of time that people were incarcerated, because the people that were needed and had the info had been sent home and there is a need to keep these people in order to gather all required information.

- Ipperwash Review, February 21, 1996, Ex. P-457, pp. 4-5

208. Nonetheless, reasonable and probable grounds did exist for the arrests. The arrests cannot be evaluated based upon what was later learned about the events. Nor did the circumstances – namely an alleged attempted murder of police officers – permit the arrests to be deferred.

209. The jurisprudence makes clear that the facts supporting reasonable and probable grounds must be viewed cumulatively; the cumulative facts that justified arrest were outlined both D/Insp. Wright and by Deputy Carson, although Carson was uninvolved in that decision. Other officers confirmed that the cumulative grounds were sufficient to justify arrest. However, what is of critical importance is the existence of good faith. Reasonable people can, and do, differ on whether

reasonable and probable grounds exist. That is the stuff that criminal cases are made of. But D/Insp. Wright sought advice from the local Assistant Crown Attorney on the correctness of the position taken, and that advice supported the validity of the arrest. Good faith was shown here.

**XI. INSTITUTIONAL RESPONSES TO ALLEGED AND PROVEN
MISCONDUCT ARISING FROM THE EVENTS OF SEPTEMBER 6**

Finding: The OPP treated allegations of misconduct appropriately. Its focus on addressing institutional failings (particularly in connection with the so-called “memorabilia”) reflected a sincere commitment to address both, in the short-term and long-term, the OPP’s relationship with the Aboriginal Community.

A. MUGS, T-SHIRTS, BEER CAN, BULL’S-EYE

MATTERS WHICH WERE THE SUBJECT OF THE ADKIN INVESTIGATION

210. In October 1995, C/Supt. Parkin assigned Staff Sergeant Dennis Adkin to investigate a number of complaints that Pinery Park employee, Stan Cloud, had brought to the OPP’s attention. Although Mr. Cloud was not prepared to proceed with a formal complaint, the OPP was not willing to leave the matter uninvestigated. The complaints of relevance here are as follows:

- (1) the creation and distribution of mugs which bore an OPP shoulder flash and a reference to Ipperwash '95. In some instances the crest appeared to have been pierced by an arrow;

(2) the creation and distribution of a t-shirt which bore an OPP shoulder flash above a horizontal feather and references to “Ipperwash”, “95”, “ERT” and “TRU ”;

(3) the creation of a *Labatt Blue* beer can filled with sand which bore a hole in the side, two feathers and OPP crime scene tape wrapped around it;

(4) the purchase and use of a bull’s-eye target which, when displayed, covered the letter “o” on the side of a marked OPP vehicle;

- Discipline Files – Vol. I, Ex. P-1051, Tab 16; Tab 17, pp. 6, 7, 9-10; Tab 19; Tab 20; Tab 21
- Image of t-shirt and mug logos, Ex. P-458

211. All officers who were the subject of the four complaints were not involved in the events of September 4-6, 1995, were they assigned to the Forest area during the relevant time period.

- Submissions of S. Vella, February 6, 2006, p. 14

212. Having interviewed, amongst others, the officers involved in the creation and distribution or display of the impugned items, S/Sgt. Adkin reached the following conclusions:

(1) mugs: the item was intended as a commemorative souvenir. There was “no intent to insult anyone, nor was it meant as a political or racial statement”. The generation of mementos at the conclusion of a police operation is commonplace and benign:

...Historically, in the OPP as well as many other police services, it has been tradition to produce a memento of the event. Shirts, mugs, plaques and photographs are only a few of the forms of mementos that have been distributed as a result of major events...The article produced, is something police officers keep as a reminder of that portion of their career, it deals with the camaraderie and esprit-de-corps of the people involved, not the incident itself.

Taking all of this into consideration, “the officers acted properly in their actions”.

(2) t-shirts: they were created as a memento “as is customary in major events so that officers would have a keepsake”. At no time was it intended to offend anyone. “[A]lthough there were people offended by the shirts, care and professionalism was used to attempt to ensure that people were not offended by the shirts...[T]he officer’s sole purpose was to supply a memento. Unfortunately the sensitivity of the situation did not allow for this interpretation”.

(3) beer can: the can was utilized as a prop during a presentation in honour of the kitchen staff at the Pinery Park. It was intended to represent the Ipperwash incident and not “to show disrespect for Native people”. It, nonetheless, was inappropriate.

(4) bull’s-eye: the purchase and use of the item was intended to relieve stress and raise awareness of a concern that the police were targets. It was never intended “to slander or slur First Nation persons” or “to project a negative or derogatory attitude towards” them. That having been said, the actions were inappropriate.

S/Sgt. Adkin recommended that the officers involved in the beer can and bull’s-eye incidents receive non-disciplinary discussions. He recommended no further action against the officers involved in the production and distribution of the mugs and t-shirts. In addition, S/Sgt. Adkin made two recommendations which related to systemic failings:

- (1) The Ontario Provincial Police investigate and pursue the need for cross cultural training on aboriginal issues;
- (2) The Ontario Provincial Police should consider the merits of the practice of the manufacturing of momentos as keepsakes in major events. Possibly the time has come that guidelines need to be established.

213. It was the view of Commissioner O'Grady that the factors underlying the creation and distribution of the memorabilia represented a systemic failing within the OPP organization. He elaborated upon this before the Inquiry:

...it was in the scope of my knowledge that over the years, that when the OPP forces gathered in any – any place for a project or for any large gathering with respect to activities, it wasn't – it was the usual thing that some type of memorabilia to commemorate that was made.

So it wasn't – it wasn't a surprise to me that something of – of the nature of memorabilia would be made. So the first concern I had was that, as an organization, and I say, "as an organization," since I'm responsible for it myself, I felt that I had failed in ensuring that there was perhaps some stricter policy.

I suppose, over the years, since nothing of this nature had come to my attention, I didn't see it as being an issue. But I should have foreseen that if we had a gathering of that size, that somebody is likely to do something that's inappropriate without some guidance. So I felt that we should have had some policy and that responsibility came back to me.

Secondly, because of the very contentious nature of the issues at Ipperwash, again, I should have realized that there could have been some inappropriate memorabilia made up. And I should have issued a direct order at that time, warning people of the sensitivity of the activities that they were involved in and the possibility of bringing disrepute on the force, simply because I knew that something of that nature – I should have remembered that something of that nature was a distinct possibility.

I did neither one of those things and as a result I felt that that was an organizational failing of the OPP, and that people had not been properly advised of the pitfalls of these sorts of things in advance, which might have prevented it.

This perspective, in part, informed the disciplinary response to the officers' conduct:

(1) Commissioner O'Grady found the logo on the mug to be "very disrespectful and inappropriate". The two constables responsible for their creation and distribution received non-disciplinary discussions and were directed to take the Native Awareness course.

(2) in Commissioner O'Grady's view, the logo on the t-shirt was "extremely inappropriate given that it related to a very tragic set of circumstances and a death..." He candidly acknowledged that while he had no idea at the time of the significance of the feather on its side, he "was very aware that First Nation have great reverence for the Eagle feather, and so any misuse or misrepresentation of what might be construed as an Eagle feather would be seen as very inappropriate". The constable responsible for the creation of the t-shirt received a non-disciplinary discussion and was directed to take the Native Awareness course.

(3) The constable who created the beer can and the sergeant who saw what was happening and did nothing each received informal discipline in the form of an admonishment;

(4) as was the case with the beer can, Commissioner O'Grady found the activity with the bull's-eye to be inappropriate behaviour. The two constables involved in the activity each received informal discipline in the

form of an admonishment. They were also directed to attend the Native Awareness course;

- Evidence of T. O'Grady, June 15, 2006, pp. 315-19; 324-25

The disciplinary response was, *in all cases*, greater than that recommended in the investigative report. Informal discipline was substituted for non-disciplinary discussions; non-disciplinary discussions were substituted for no action against the officers.

214. As well, four supervisory officers involved in Ipperwash, including Deputy Carson, received non-disciplinary discussions with respect to the creation of the memorabilia. The discussion focused on how to avoid the creation of such memorabilia in the future. If they had not already done so, the officers were to attend the Native Awareness training. In fairness, Deputy Carson vehemently had directed that the offensive mugs not be sold. He acknowledged that he was given a t-shirt, but tossed it in his car without paying attention to its logo.

- Evidence of T. O'Grady, June 15, 2006, pp. 326-27
- Evidence of J. Carson, June 16, 2006, pp. 94-97, 111-12, 115-20
- Letter of Deputy Commissioner Gerald Boose, dated, November 21, 1996, Discipline Files – Vol. II, Tab 105, Ex. P-1052

Commission Counsel also asked Commissioner Boniface about her view of the logos depicted on the t-shirt and mugs. She found the notion of generating a memento in the context of a death to be inappropriate and the insensitive

depiction of icons associated with the First Nation community to be unacceptable:

Q: Seeing them. And what was your reaction to seeing this T-shirt, the logo on this T-shirt?

A: I found it offensive.

Q: And why was that, Commissioner?

A: Well, the memento itself – the mementos of the death of somebody is, I think, highly inappropriate. Second, with the feather on its side to me was insulting.

Q: And why was it insulting to you?

A: Because it signalled to me – my normal way of seeing the feather would be standing upright, so it signalled to me to me the death.

Q: Pardon me?

A: It signaled to me defeat or the death.

.....

Q: And what was your reaction to either – either the mug with either of the – the crests on it?

A: Just – in a general sense I just felt there was – it was highly inappropriate to do any memento to begin with. And secondly, I found it offensive with the arrow behind the OPP crest.

215. When asked about the appropriateness of the response for the creation and distribution of the mugs and t-shirts, Commissioner O'Grady identified the additional nuances that, in his view, justified this outcome:

I felt that in all the circumstances that that was the best application. My intention was to try my best to change behaviour and at the same time *not build resentment in our officers against members of First Nation community*. And that was my intention and I thought that application, *done quickly*, was the best approach. [emphasis added]

Deputy Carson, who had served as the OPP adjudicator before his promotion to Chief Superintendent of Information and Technology, also observed that a disciplinary response ought not to focus exclusively on punishment; it should also support a path to rehabilitation:

Yes, but I think you have to look at discipline in a much broader nature than just what the penalty says. If you look at the penalty in and of itself, I don't think you really have an appreciation for the overall impact of this whole approach to discipline.

I mean, discipline has a penalty attached to it. There's also other objectives in a discipline process. One, not only does a person receive a penalty when found guilty, but the other part is taking accountability.

And there has – or hopefully where an officer has clearly understood what the transgression is, has learned from it and has moved on and hopefully continued or can be a productive employee for the organization and the public.

So the penalty, in and of itself, is only one part of a discipline process in the penalty phase, I would suggest.

- Evidence of J. Carson, June 16, 2006, p. 170
- *Curriculum Vitae* of J. Carson, Ex. P-396

216. In addition to these officer-specific responses, Commissioner O'Grady addressed the impugned conduct through a number of institutional responses:

(1) he extended an apology to the First Nation community for the inappropriate memorabilia;

(2) he prepared a letter of apology and had it hand-delivered to Sam George in July 1996 by then-Chief Superintendent Gwen Boniface. It stated, in part:

...While I am assured that it was never intended to offend anyone, [the memorabilia] ought never to have been created and is not representative of the professionalism of the Ontario Provincial Police.

(3) he issued an order (that remains in place) restricting the use of OPP insignia. It provides that:

Except where authorized by the Commissioner, no OPP image shall be created or released without the written authorization of the respective regional or bureau commander.

(4) in conjunction with the Ontario Region of the RCMP, and members of Ontario's First Nation communities, he formed *The Commissioners' Select*

Liaison Council on Aboriginal Affairs. The mandate of that Committee is “to provide expert and culturally-sensitive advice on First Nation issues in Ontario to the RCMP and the Ontario Provincial Police”. Then Chief Superintendent Boniface was instrumental in recommending and implementing this initiative. The Committee’s history, role and composition are fully discussed in the OPP Part II Submissions.

(5) he accelerated the delivery of the Native Awareness Training course and ensured that priority be given to those officers who were interacting with members of the First Nations; and

(6) as a member of the executive of the *Canadian Association of Chiefs of Police*, he brought forward a resolution regarding land claims which was ultimately passed by the association. It provides that:

(a) the Canadian Association of Chiefs of Police urge the Government of Canada, the Provinces, and Territories to work in partnership with First Nation Peoples to expedite the resolution of unresolved land claims; and

(b) the Canadian Association of Chiefs of Police encourage its members to work in partnership with Aboriginal peoples to develop

and maintain open lines of communication to help avoid conflict caused by unresolved land claims.

- Evidence of S. George, April 18, 2005, pp. 29-30, 89
- Evidence of G. Boniface, June 14, 2005, p. 124
- Evidence of T. O'Grady, June 15, 2006, pp. 320-23
- MSGCS Issue Note, April 3, 1996, Ex. P-998
- Issue Note, dated April 3, 1996, Ex. P-999
- MSGCS Issue Note, dated December 18, 1996, Ex. P-1000
- Newspaper article, *The Toronto Star*, dated December 26, 1996, Ex. P-1001
- MSGCS Issue Note, dated January 8, 1997, and newspaper articles from the *Ottawa Citizen*, dated December 27, 1996 and the *Orillia Packet and Times*, dated December 27, 1996
- Letter of Apology, dated July 17, 1996, Ex. P-336
- Memorandum from D.S. Nagel re use of OPP insignia and images, dated December 17, 1996, Ex. P-1723
- News Release, dated September 25, 1996, P-620
- First Nation Land Claims Resolution, Ex. P-622

DISCLOSURE OF ADDITIONAL T-SHIRT

217. On May 9, 2006, it came to the attention of the OPP that a second commemorative t-shirt had been generated in relation to the events at Ipperwash. The logo of the shirt depicted a broken arrow between the TRU emblem and anvil labeled with the acronym "ERT". Constable William Klym, a member of the TRU team which supported the CMU on the night of September 6,

1995, came forward to acknowledge responsibility for the t-shirt's design and creation.

- Evidence of W. Klym, June 6, 2006, pp. 125-26, 138-39
- Photograph of t-shirt logo, Ex. P-1494

218. The OPP's response to this disclosure was swift. Within two days of first learning of the additional t-shirt, Commissioner Boniface initiated an investigation into the matter through the Professional Standards Bureau and, through her counsel, issued an apology to the First Nation community, and to Sam George and his family, for the logo's inappropriateness. The PSB investigation is ongoing.

- Submissions of A. Tuck-Jackson, May 11, 2006, p. 16
- Evidence of G. Boniface, June 14, 2006, p. 154

219. Both Commissioner Boniface and former Commissioner O'Grady found this logo to be deeply offensive and highly inappropriate. Commissioner O'Grady said this:

Q: And what is your reaction, sir, as having been the Commissioner at the time, in 1995, to this – to this logo?

A: Well, it's probably worse than all the others that precede it.

Q: And why do you say that, sir?

A: Well, you have a broken arrow and you have an anvil and it's certainly indicates a confrontational approach between that particular unit of the OPP and First Nation.

That's – that's what I would derive if I was looking at it and I'm certain that's what the First Nation would see it that way, also.

.....

Q: And the broken arrow, what does it signify to you?

A: Well, I think it indicates something has been broken and if the – if the arrow is supposed to represent First Nation then the conclusion is inescapable.

- Evidence of G. Boniface, June 14, 2006, pp. 153-54
- Evidence of T. O'Grady, June 15, 2006, pp. 35-36; 335-36

B. DEANE FUNDRAISING PINS

220. In an effort to raise funds for the appeal of Ken Deane's conviction, a small pin which depicted the TRU logo and Mr. Deane's badge number was sold through the local branches of the Ontario Provincial Police Association to officers and others. Some officers wore the pin on their uniforms. Commissioner O'Grady took the position that the pin ought not to be worn while the officers were on duty:

Well, it was my feeling that an officer wearing that pin, and should they encounter a First Nation person in the course – ordinary course of an investigation and the First Nation person was aware of – of the background for creating the – the pin, or what the pin stood for, would certainly – could certainly form the opinion that they might not get a – an appropriate investigation or assistance or whatever might be required from the OPP at that time, that they could form that – that view the OPP was biased in that area.

And that's why I asked them to not be worn on the uniform.

In furtherance of his view, Commissioner O'Grady issued a memo on May 13, 1997 directing that the pins were neither to be worn as part of the uniform nor produced. In addition, on August 20, 1997, Commissioner O'Grady created and distributed an issue note that warned officers that they may be subject to disciplinary action if they wore the pin on their uniforms.

- Evidence of T. O'Grady, June 15, 2006, pp. 336-41
- Photograph of Ken Deane Pin, Ex. P-1608
- Notice regarding the Ken Deane Defence Fund pin, Doc. 1005375
- Record of Issuance of Memorandum re request pins for A/Sgt. Deane be neither worn or produced, dated May 13, 1997, Ex. P-1725
- MSGCS Issue Note, dated August 20, 1997, Ex. P-1726

221. Deputy Carson purchased one of these pins, but did not wear it following the first directive issued by Commissioner O'Grady. He candidly acknowledged that as a Deputy Commissioner, he now saw the issue differently:

As a Deputy Commissioner I have – I would suggest I – I probably would have had a different view on it today than I had towards it in 1997. I mean, clearly all of these things have brought a lot of issues to light.

In 1997 it was simply attempting to provide some assistance in a fundraising campaign of someone who had the legal right to go forward in an appeal. There was no intentions to be negative or have any reflection on the outcome of the incident as a result of a person's right to an appeal.

The pin itself was a TRU team symbol with a badge number, which to the general public could never be recognized as anything other than a TRU Team pin with a number. And – and unless you knew Ken Deane personally, there's no way that you could even have associated that number with Ken Deane, in any fashion.

So I – you know when you look at the other symbols, the – the T-shirts – I mean I appreciate there's relationships that bring it back to the incident. The pin was simply a pin which is an appropriate pin that had the number on it, and it was just a vehicle to assist him in their fundraising campaign.

So as a Deputy Commissioner would I support that today? No, not a chance, but as an inspector in 1997 those – those thought processes that I would certainly be mindful of today, never crossed my mind in that context...

- Evidence of J. Carson, June 16, 2006, pp. 177-80

C. DYKE AND WHITEHEAD UTTERANCES

222. During the afternoon of September 5, 1995, Constables Whitehead and Dyke posed as reporters and attended near Ipperwash Park to gather information for intelligence purposes. A video camera they were using captured a series of racist comments.

- Video tape taken by J. Dyke and D. Whitehead, Ex. P-452

223. These comments first came to the OPP's attention in July 2003 as a result of a request for videotapes under the *Freedom of Information and Privacy Act*. Commissioner Boniface immediately initiated a complaint which PSB

investigated. Detective Inspector Phil George concluded that the allegation of discreditable conduct was substantiated. At the time of the investigation, Sgt. Whitehead was assigned to the Repeat Offender Parole Enforcement Squad and P/C Dyke, who had retired from the OPP, was working on contract at the Huronia West Detachment in Central Region. Sgt. Whitehead expressed his remorse in a letter:

For the comments I have made that were captured on this video I am truly sorry.

The comments toward the First Nation people occupying the Ipperwash Provincial Park were completely unsolicited and very disrespectful. I am very cognizant of the sensitivity of the Ipperwash investigation and that unprofessional comments made by members of the Ontario Provincial Police reflect back more on the force than they do the individual.

I apologize to all members of the Ontario Provincial Police for the potential embarrassment should these comments made by myself be revealed to the public. I am aware of the ongoing attempts to improve Police/First Nation relations through my own work and am concerned about the additional stressors that could result due to my comments.

Finally, I would like to take this opportunity to thank you for this opportunity to express my feeling of remorse and apologize to the Commissioner for my inappropriate comments.

D/Insp. George found Sgt. Whitehead to be very co-operative.

- Evidence of G. Boniface, June 14, 2006, pp. 165-66
- Discipline Files – Vol. I, Ex. P-1051, Tab 1, pp. 2-4; Tab 6, pp. 3-4

224. The OPP ended P/C Dyke's employment on contract immediately. His last work day was when he was interviewed by D/Insp. George.

225. Sgt. Whitehead was the subject of informal discipline. He was penalized 24 hours, and directed to attend the one-week Native Awareness Training course on his own time (32 hours deducted from accumulated credits). In effect, this penalty amounted to the equivalent of a \$2,800 fine.

- Evidence of G. Boniface, June 14, 2006, pp. 167-70

226. Commissioner Boniface took into consideration a number of factors when she endorsed this disposition:

A: Going back to the penalty, the factors that were included, the seriousness of the breach, mitigated by his employment history, his apology, his clear remorse. The second piece was that the informal discipline of twenty-four hours would be deducted and, in fact, he would submit an additional four days or thirty-two hours out of his bank for the purpose of attending the course at his own – on his own time.

And from a strategy perspective, because of the long delay in this coming to our attention, I was of the view that it was better to get a penalty of this sort and the commitment of First Nation awareness training. Given the time delay I was concerned I could not get any more if I went to a trial if, in fact, I was successful at the *Police Act* here.

Q: And so because of those concerns, you accepted this penalty?

A: Yes.

She also took into consideration the fact that the proposed disposition was consistent with (and perhaps surpassed) existing case law. Existing case law would not have supported dismissal. Indeed, the OCOOPS decisions tend to impose sanctions that are less tough than those imposed by OPP adjudicators.

- Evidence of G. Boniface, June 14, 2006, pp. 167-72; June 15, 2006, pp. 302-03

227. Sgt. Whitehead attended the Native Awareness Training course. His reaction to the course was very positive, as reported by its instructor to Commissioner Boniface.

D. AUDIO CLIPS

228. In preparation for this Inquiry, the OPP became aware of certain audio communications made at Ipperwash between September 4 and 6, 1995. When brought to Commissioner Boniface's attention by the OPP Ipperwash Team, she immediately referred the matters to PSB for investigation. The institutional response to some of these matters was summarized and marked as Exhibit P-1727. A number of officers received non-disciplinary discussions or informal discipline. Civilian members received a letter of reprimand. No disciplinary action could be taken against retired members.

- Evidence of G. Boniface, June 14, 2006, pp. 172-79
- Summary of Audio Clips that are Part of the Evidence, Ex. P-1727

229. Commissioner Boniface explained why these responses were appropriate:

A: Well, it would be based on, first, the comments. Or the dilemma with this – the audio clips, it's the same dilemma we had with the others, is the audio clips are such a long time frame between the time of the occurrence 'til the audio clips came to our attention, and we, in fact, had these in our possession all that time.

So the discussion is based on – or the discipline response is based in part on the – sorry. The response is based on the comments as well as weighing all of the factors around this issue.

Q: And when you – I understand the – the delay and the length of time between when the comments were made and when they were discovered in 2003 or –

A: 4.

Q: -- 2004, but what other factors did you consider?

A: Well, what –

Q: When you say other factors?

A: Well, it's – it would be on what the content of it was, what the content of the interview was, what the response was of the interview in terms of mitigating factors. So all of those would be individually.

- Evidence of G. Boniface, June 14, 2006, pp. 177-78

E. FINDING OF PERJURY AGAINST CHRIS COSSITT

230. On April 9, 1997, the Honourable Mr. Justice H. Fraser delivered his reasons for judgment in *R. v. Deane*. His Honour made a finding of credibility against Constable Chris Cossitt, a witness called on behalf of the defence. Indeed, His Honour concluded that P/C Cossitt had fabricated his evidence:

There were no Crown witnesses or defence witnesses that saw any weapons in the hands of the First Nation people except for Sergeant Deane and except for Constable Cossett. And at this point perhaps I will comment on the testimony of Constable Cossett. The Crown called his testimony amusing which is one word. I might choose others. Rather than scrutinize Constable Cossett's testimony for any grains of truth that might fall out, I have dismissed it entirely as being clearly fabricated and implausible.

- Reasons for Judgment, Ex. P-1580, p. 168

231. On its own initiative, the OPP investigated the matter. In making an assessment whether disciplinary proceedings ought to be commenced against the officer, the Director of PSB had the benefit of a legal opinion on the complexity of prosecuting an allegation of perjury. At the end of the day, the OPP took no action against P/C Cossitt. Upon reflection, Commissioner O'Grady was of the view that the investigation ought to have been referred to an outside police service, at the very least for the sake of the appearance of the investigation's objectivity:

...When I reflect on this case and I have seen some of these documents now, it seems to me that I would – that I was – that I should have ordered an outside investigation, another Police Force from outside simply because this was a highly charged emotional issue.

And members of our Force felt very strongly about it and I think there could have been a public view that – that perhaps the OPP could not be unbiased in their approach to it and I would have been much better served had I asked an outside Police Force to investigate and provide me with a – a recommendation.

It may not have been any different than the recommendation I got but I certainly would be on firmer ground today had I done that. And in the normal course of events, when those types of investigations are done before the police windup their investigation, they usually consult legal advice.

Especially focused on the issue, so in this issue it would be perjury, so that they would have the best legal advice to support their investigative conclusions before making a recommendation.

That what I should have done, I did not.

Commissioner Boniface agreed with Commissioner O'Grady's assessment.

- Evidence of G. Boniface, June 14, 2006, p. 158
- Evidence of T. O'Grady, June 15, 2006, pp. 342-44; June 16, 2006, p. 77
- Complaint Form, Ex. P-1053

F. SIU INVESTIGATION INTO CECIL BERNARD GEORGE

232. The Special Investigations Unit commenced an investigation into how Cecil Bernard George sustained his injuries. As an aspect of that investigation, and an inquiry into a threat that had allegedly been made against Dudley

George, the SIU requested photographs of all of the officers present at the occurrence. Commissioner O'Grady took the view that the officers' photographs from their personnel files should be produced to the SIU, a position he knew would be unpopular among the affected officers. However, in his view, it was the right thing to do.

- Evidence of T. O'Grady, August 23, 2005, p. 109-14; August 25, 2005, pp. 192-99
- Notice of Application for Judicial Review, dated April 24, 1996, Ex. P-623

233. In July 1996, then Acting Director of the SIU, James Stewart, issued a *Director's Report* outlining, amongst other things, the results of that investigation. Mr. Stewart wrote:

I am of the view that the injuries suffered by Cecil Bernard George were the result of a violent confrontation between Mr. George and the OPP where some officers apparently applied excessive force. Unfortunately, the investigation into this event is frustrated by the fact that neither Mr. George, nor any other protestor, can identify the officers involved.

No further action was pursued at that time by the SIU in relation to Mr. George's injuries.

- Director's Report, dated February 8, 1999, Ex. P-626

234. By letter dated May 29, 1997, Commissioner O'Grady wrote to then SIU Director, André Marin, and, relying on a number of factors, observed that the circumstances surrounding the injuries sustained by Mr. George during the confrontation warranted further investigation. Put simply, Commissioner O'Grady was not content with the quality of the original SIU investigation or the fact that the matter would be left unresolved on the basis articulated by SIU. In June 1997, the SIU advised Commissioner O'Grady of its intention to re-investigate this matter.

- Evidence of T. O'Grady, dated August 23, 2005, pp. 64-69
- Letter of T. O'Grady, dated May 29, 1997, Ex. P-624
- Letter of A. Marin, dated June 11, 1997, Ex. P-625

235. That second investigation culminated in a *Director's Report*, dated February 8, 1999. In accordance with statute, a copy of this report was not sent to Commissioner Boniface. Instead, she received only a letter from the Director of the SIU dated February 10, 1999. It summarized the conclusion reached in the *Director's Report*:

My decision, which is explained at length in my report to the Attorney General, is to the effect that there are not reasonable grounds, based on the available evidence, upon which to lay criminal charges against any officers. That is not to say that Mr. George was not injured in the course of the confrontation, although the extent of his injuries actually occasioned at that time are now revealed to be less serious than initially understood. Rather, my decision is based on a lack of credible and reliable evidence going to the identity 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. [emphasis in original]

Despite the Director's conclusion that the evidence did not support a finding of excessive force, he expressed concern that "the officers' accounts fell far short of assisting in accurately reconstructing the events surrounding the altercation with Mr. George and I, therefore, gave them little weight in resolving the question as to whether the force used against Mr. George was excessive."

- Evidence of G. Boniface, June 14, 2006, pp. 180-81
- Director's Report, dated February 8, 1999, Ex. P-626
- Letter of P. Tinsley, dated February 10, 1999, Ex. P-1535

236. In Commissioner Boniface's view, having regard to the findings made by the SIU concerning excessive force, there was no action to be taken against the officers whom the SIU had investigated:

Well the – as you know, the investigation had actually gone twice. This was the second investigation that had taken place; it started with my predecessor and then the second one.

And the only route that I would have to go after two investigations would be a third investigation on the *Police Services Act*. And it was my view that there would be nothing more to be gained out of this, given the issues, the identity issue and the conclusion that Mr. Tinsley made around excessive force.

- Evidence of G. Boniface, June 14, 2006, pp. 184-85

237. It is noteworthy that the *Director's Report* of February 1999 praised the contribution of a number of OPP officers, including Commissioner Boniface, towards the re-investigation:

Despite these obstacles, and on a more positive note, the S.I.U.'s re-investigation of this matter was greatly assisted by the efforts and cooperation of then Chief Superintendent Gwen Boniface, Detective Inspector R.J. Goodall and Detective Constable Mark Dew of the O.P.P....

- Director's Report, dated February 8, 1999, p. 47, Ex. P-626

CONCLUSION

238. The matters investigated by S/Sgt. Adkin resulted in informal discipline or non-disciplinary discussions. These dispositions were more significant than those recommended by him. That is not intended as a reflection upon him, but as a recognition that the organization forged ahead with the investigation despite the absence of an external complaint, and carefully considered what the appropriate response should be. Part of that response involved recognition by then Commissioner O'Grady of the OPP's institutional failings and the introduction of a number of initiatives, several of which have contributed to building respectful relationships with the Aboriginal community. (The OPP's institutional response to the Ken Deane pins was equally appropriate.)

239. For some, no discipline short of dismissal would be regarded as adequate. Indeed, during the OPP Forum, one questioner raised the notion of automatic dismissal. It is difficult to find legal support for such an approach. More importantly, Wally McKay's response from the audience spoke volumes. He spoke eloquently about how that proposal did not conform to an Aboriginal approach. Deputy Carson also noted, as a former adjudicator, that discipline cannot only be about punishment. This is particularly so within an employment context where it often likely that the law will not support dismissal.

240. The informal discipline imposed on Sgt. Whitehead made him a better and culturally competent officer. That can only be regarded as a good thing.

241. The automatic or "rigid" exclusion of informal discipline for these kinds of cases is also not the answer. As former Commissioner O'Grady explained, it is important to educate an officer without building a sense of resentment. The response to misconduct must take all of the circumstances into consideration. These include the seriousness of the misconduct, when it occurred, its impact on others, the officer's mental state, the existence or absence of remorse. P/C Dyke's contract had to be terminated. There was no alternative, given the degree of his involvement. Other officers' circumstances compelled a different result.

242. Commissioner Boniface's commitment to diversity and bias-free policing is well known and beyond question. When the audio clips and second t-shirt came

to her attention, she initiated immediate investigations. She recognized that the discipline imposed in relation to the audio clips was appropriate given all the circumstances, including the extensive passage of time.

243. The trial judge's findings at Ken Deane's trial concerning P/C Cossitt raise different issues. P/C Cossitt was not a party to that proceeding. The trial judge's findings were inadmissible at any proceeding against him. He had no opportunity to challenge those findings. Indeed, an examination of the different judgments rendered in trial cases relating to Ipperwash reinforces the fact that different judges see things differently. Their findings are not binding as against non-parties.

244. There were arguably compelling reasons not to prosecute P/C Cossitt for perjury either criminally or at a discipline hearing. Such an allegation, as reflected in legal advice given to the Professional Standards Bureau, is very difficult to prove, and doubly so in the context of the matrix of contested facts at Ipperwash.

245. The OPP was correct in referring the trial judge's findings for investigation, but in hindsight, it would have been preferable had the investigation been done externally. This is a reflection of the depth of emotion generated by the Ken Deane trial and its effect upon objectivity and the perception of objectivity of those within the OPP.

246. Finally, the OPP's institutional response to the Cecil Bernard George investigation was appropriate. The SIU's initial report left the matter unresolved on the merits. Commissioner O'Grady was not prepared to allow the investigation to end that way. He brought about a re-investigation respecting his own officers, and took the unpopular position with the affected officers that their personnel photographs could be provided to the SIU. Ultimately, it became clear that the photographs would not contribute to the investigation which was able to determine that no findings of excessive force could be made. The OPP, and Chief Superintendent Boniface, as she then was, were commended for the cooperation extended to the investigation. The comments by the Director of the SIU about the veracity of some officers but did not provide a basis for further action by the Commissioner respecting those officers.

FINAL CONCLUSION

247. Systemic recommendations are grounded in the facts. Those facts have been developed in the OPP Part I Submissions. The Part II Submissions address recommendations that should follow.

All of which is respectfully submitted.

Mark J. Sandler

Andrea E. E. Tuck-Jackson

XII. LIST OF CENTRE APPENDICES

- A. Scribe Note References Regarding John Carson's Concern About Involving Vince George

- B. Scribe Note (typed) and Audio Tape References Regarding Deputy Carson's Belief that the Injunction Application was Proceeding

- C. Transcript of Chatham 0146, Track 12 from 10:27 p.m. to 11:10 p.m.

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APPENDIX "A"

Scribe Note References Regarding John Carson's Concern
About Involving Vince George

Scribe Note References Regarding John Carson's Concern About Involving Vince George

DATE & TIME OF ENTRY	SCRIBE NOTE ENTRY
September 5, 1995	
11:17 a.m.	A discussion regarding negotiations took place. S/Sgt. Seltzer once again stated that the same person should negotiate all the way through. Inspector CARSON agreed. S/Sgt. Seltzer suggested talking to Vince GEORGE. Inspector CARSON that he is hesitant to do this because Vince GEORGE has to live here with these people. S/Sgt. Seltzer also talked to Lorne SMITH, He is not sure whether he wants to negotiate because he also lives in the area. He does not want to cause concern for his family. D/Sgt. WRIGHT suggested bringing in Sgt. Marg EVE.
	Brad SELTZER suggested to John CARSON that we use a native negotiator in the negotiations. Inspector CARSON advised S/Sgt. Seltzer to contact Vince GEORGE. Inspector CARSON brought up concerns about Vince GEORGE, he doesn't want him to have to suffer after we leave. John CARSON stated we need Mike HUDSON, but he is on vacation. John CARSON would like initial contact with Vince GEORGE and then switch to a negotiator. It was decided to bring Sgt. EVE in on 06 Sept 95. Have Marg EVE and Vince GEORGE then change Vince GEORGE to Mike HUDSON. Brad SELTZER to check with Vince GEORGE. John CARSON stresses to Brad SELTZER if Vince GEORGE is uncomfortable helping us, we respect that.
	Discussion on whether Vince GEORGE should be used as a negotiator or as someone to help us behind the scenes in identifying people. Sgt SELTZER to make arrangements for the communications center to find someone else to work for her tonight.

DATE & TIME OF ENTRY	SCRIBE NOTE ENTRY
September 6, 1995	
8:47 a.m.	<p>Sergeant SELTZER arrives. John CARSON wants them to know what constable GEORGE has decided to do. He has just arrived here now. Discuss with Constable GEORGE if he feels comfortable or not to negotiate. Brad SELTZER feels negotiations will just be dialogue. Have to have someone that they will talk to. John CARSON from Constable GEORGE'S point of view have him as an introduction person, have him take them in and have Marg EVE do the talking. Constable George provides a bit of safety to us, suggest to Constable GEORGE that he go in and facilitate the dialogue, not to be seen as a dialogue person, just to help us get in there. Sgt SELTZER agrees with the idea. Sgt SELTZER feels that First Nation have some acceptance of the female. John CARSON do we have anybody else in our negotiation team that is more appropriate. John CARSON advises Brad SELTZER that we should have Lorne SMITH talk to Bob GEORGE.</p>
9:03 a.m.	<p>John CARSON wants them to know that we are there, keep pressing them, keep some dialogue going. Sgt SELTZER, asks if it is time to introduce Marg EVE. John CARSON advises yes, take her in and keep her in there. Sgt SELTZER any support to thinking that Marg EVE is the one that we want them to talk to, let them know that she is a negotiator. John CARSON we should cross the fence. If we go in they will come up and talk to us, we have lots of video there, and lots of officers. If you go in and someone has to go in and tell you to go out. Sgt SELTZER agrees if there is enough support there. John CARSON stresses to Brad SELTZER that he wants Vince GEORGE to be the introduction guy, have a lot of respect for his read of the people. Sgt SELTZER some cultural things he will be able to help us with. Sgt SELTZER keep Lorne SMITH at arms length, no problem with him going to the reserve. John CARSON wants to get a sense of how the other people are feeling. Sgt SELTZER HAVE Lorne SMITH set something up and Sgt SELTZER to attend with him.</p>

DATE & TIME OF ENTRY	SCRIBE NOTE ENTRY
4:25 p.m.	Bill DENNIS has a request for extra security at court. They want 5 officers. They want someone familiar, John CARSON advised don't want to put Constable GEORGE in that position. Inspector CARSON told Bill DENNIS to arrange for five officers. He states that Chris AVERY will contact guys.

APPENDIX "B"

Scribe Note (typed) and Audio Tape References Regarding Deputy Carson's
Belief that the Injunction Application was Proceeding

REFERENCES REGARDING ANTICIPATED INJUNCTION APPLICATION

DATE	TIME	EVENT	SOURCE
06 SEP 95	2:07 p.m.	Conversation between John Carson, Ron Fox and Chris Coles. Fox explains to Carson that Tim McCabe from the Attorney General's office is putting together the material for the injunction and intends to proceed ex-parte. Fox advises they are lining up a Judge in Lambton County and the hope is to take the matter before the court either tonight or tomorrow.	Ex. P-444A Tab 37
06 SEP 95	2:27 p.m.	<p>Ed VERVOORT, Les KOBAYASHI is waiting for a copy of the new wording of the affidavit, he will be signing it, Trevor RICHARDSON has given them photographs to substantiate the affidavit, may have it today</p> <p>Mark WRIGHT there will be a leg [sic] time, second party has to have an opportunity to attend. Ed VERVOORT feels probably will be Friday. Concerns raised that the longer it goes, more may be around. Dan ELLIOTT, MNR, is to head any complaints from people who are calling, need this information for affidavit. One complaint is parents are calling in, kids are coming home from school, feeling sick</p>	Ex. P-426 pp. 62, 63

DATE	TIME	EVENT	SOURCE
06 SEP 95	2:43 p.m.	Conversation between Tim McCabe and John Carson. McCabe advises Carson that he expects to get direction this afternoon to seek an ex-parte interlocutory injunction and that the court is available at 9:00 a.m. tomorrow in Sarnia. There was discussion about having Carson (or designate) attend court to provide evidence rather than file affidavit evidence. Carson agrees to provide McCabe with a list via facsimile of the defendants. Carson and McCabe had discussions about the state of urgency as a requirement for ex-parte applications.	Ex, P-444B Tab 39
	2:47 p.m.	Inspector CARSON advised that Tim MCCABE. Crown Law Office, called him inquiring about his availability to give evidence tomorrow in Sarnia Court, subject to approval of bosses or whether someone else can go.	Ex. P-426 p. 63
06 SEP 95	3:09 p.m.	Conversation between Dave McLean and Andrea Weir. Weir was calling Wright to arrange for extra security at the court the following day for the injunction hearing.	Ex. P-444B Tab 40
06 SEP 95	3:48 p.m.	Conversation between John Carson and Jim Hutchinson. Discussion about the use of the APC. Carson advises that MNR's application for the injunction will be heard in Sarnia 9:00 tomorrow morning.	Ex. P-444B Tab 42
06 SEP 95	4:07 p.m.	John CARSON calls and leaves a message with Tim MCCABE regarding hearing tomorrow.	Ex. P-426 p. 64

DATE	TIME	EVENT	SOURCE
06 SEP 95	4:13 p.m.	Conversation between Tim McCabe and John Carson. Carson advises that Mark Wright will be the representative from the OPP in court tomorrow.	Ex. P-444B Tab 45
	4:12 p.m.	Tim MCCABE returned John CARSON'S call. Confirmed with him that D/Sgt Mark WRIGHT will be our representative in court tomorrow. Explained Mark WRIGHT'S involvement with First Nations People.	Ex. P-426 p. 64
06 SEP 95	4:29 p.m.	Les KOYABASHI entered command post. Discussion with Inspector CARSON regarding affidavit. John CARSON advises that Mark WRIGHT will be our spokesperson. John CARSON to sit down and discuss things with Mark WRIGHT. John CARSON advises Les KOYABASHI of the status on the concrete blocks.	Ex. P-426 p. 65
06 SEP 95	4:44 p.m.	John CARSON advised Mark WRIGHT that he will be our representative in court tomorrow. John CARSON to discuss details with Mark WRIGHT.	Ex. P-426 p. 66
06 SEP 95	4:55 p.m.	John CARSON we go in with a court order and they run, we will tack it on one of the sheds, they will eventually come and read it.	Ex. P-426 p. 67
06 SEP 95	5:00 p.m.	Janet VANDENBERG brought in John CARSON an updated copy of an affidavit.	Ex. P-426 p. 67

DATE	TIME	EVENT	SOURCE
06 SEP 95	5:47 p.m.	<p>Les KOBAYASHI heading off to Sarnia tomorrow at 8:15 court at 9:00 a.m. for emergency injunction. Want this kept quiet, arranging for extra court security. Hopefully an injunction tomorrow.</p> <p>Mark WRIGHT will be briefed tonight by John CARSON. He will be in court regarding the injunction. Mark WRIGHT is aware of the history of the dealings with Ipperwash.</p>	Ex. P-426 p. 68
06 SEP 95	6:42 p.m.	Inspector CARSON advised that there is a court hearing for an injunction at 9:00 a.m., 07 Sept 95. Marcel BEUBIEN aware of situation.	Ex. P-426 p. 69, 70
06 SEP 95	7:10 p.m.	John CARSON to Dale LINTON tomorrow at 9:00 hours court injunction.	Ex. P-426 p. 72
06 SEP 95	7:41 p.m.	Conversation between Tim McCabe and Dale Linton. McCabe calls looking to speak with Mark Wright. Discussion about service of notice upon the defendants.	Ex. P-750
	7:45 p.m.	Tim MCCABE called wants Mark WRIGHT to call him regarding reviewing evidence for tomorrow, he will be faxing a copy of his injunction for us to try to serve the natives to let them know what's happening.	Ex. P-426 p. 72
06 SEP 95	8:05 p.m.	Conversation between Mark Wright and John Carson. Discussion about getting together to talk and about Wright's meeting	Ex. P-444B Tab 48

DATE	TIME	EVENT	SOURCE
		tomorrow.	
06 SEP 95	8:25 p.m.	Conversation between Tim McCabe and Mark Wright. Discussion about Mark Wright's anticipated evidence at the ex-parte injunction hearing in Sarnia tomorrow. Discussion about the current situation and issue of service of notice.	Ex. P-464
	8:57 p.m.	Mark WRIGHT I spoke to Attorney General Lawyers and went over my evidence. John CARSON, Okay, but I want to speak to you about this. John CARSON and Mark WRIGHT left to speak about same.	Ex. P-426 pp. 76, 77
06 SEP 95	9:19 p.m.	Conversation between Tim McCabe and Dale Linton. Discussion about concern over the service of the notice documents given the current situation.	Ex. P-347
06 SEP 95	9:49 p.m.	Conversation between Tony Parkin and Dale Linton. Discussion about request to service notice papers. Parkin raised concerns that OPP was requested to serve these documents.	Ex. P-469

APPENDIX "C"

Transcript of Chatham 0146, Track 12 from 10:27 p.m. to 11:10 p.m.

Transcript Of Chatham Logger Tape 0146 – Track 12

“TAC” Channel For September 6th, 1995

10:27 p.m. – 11:10 p.m.

(Current Time: - 10:27)

LACROIX: CMU advance slow pace should be tenth (10th) of a k.

LACROIX: TOC to CMU we're advancing to within ah three-hundred (300)

HEBBLETHWAITE: Wade do you want to hold on for a minute

LACROIX: okay halt

HEBBLETHWAITE: I just got an idea

LACROIX: okay ah (I/A)... good news they've got rocks and sticks piled up and we all know we can beat that (I/A)... rocks and sticks that's in our Bailiwick. All we have to worry about is little brown stocks and black barrels. Okay we're going to advancing in a moment. Advance

OFFICER: (I/A) ... boys

LACROIX: stay in our pairs whatever you do do not leave your buddy

ALPHA: Lima Two this is Alpha Checkpoint the Uniform members have arrived what do what what do you want to do with the two ERT

LIMA 2: ten-three (10-3) Alpha

LACROIX: everybody stay off the air unless somebody's hurt up or down or you hear anything any kind of noise(I/A) strange noise ...

LACROIX: TOC CMU how do you read

LIMA 2: CMU Lima 2 I'm reading you

LACROIX: ten-four (10-4)

MALE: (I/A) radio static

MALE: (I/A) radio static

OFFICER: (I/A) ... I see some lights

MALE: (I/A) radio static

MALE: (I/A) radio static... formation... (I/A)

SKINNER: CMU ah TAC 1 be advised ah you've been spotted by their forward observers and their forward observers are retreating

LACROIX: (I/A) ... to the Centre Pole.

LACROIX: everybody alert stay spread out

LACROIX: watch vehicle

OFFICER: that's TRU in the vehicle

LACROIX: halt

LACROIX: (I/A) dressing shields down

LACROIX: TOC to CMU

LACROIX: TOC to CMU

SKINNER: CMU TAC 1 go ahead

LACROIX: TAC 1 CMU two to three hundred (200-300) meters out awaiting instructions

SKINNER: standby

LACROIX: (I/A)... from Sierra 1

SKINNER: (I/A)... Sierra 1 what's going on with the spotlights

HEBBLETHWAITE: TOC to CMU anything from Sierra 1 please

HEBBLETHWAITE: TOC from CMU anything to report from Sierra 1
in regards to what spotlights are etcetera

SKINNER: CMU from TAC 1 the spotlights are from the occupants
and they are roaming wildly

HEBBLETHWAITE: is Sierra 1 in position

SKINNER: standby

SKINNER: CMU to TAC 1 advising Sierra 1 and Sierra 2 are not
repeat not in position

HEBBLETHWAITE: copy copy

(Current Time: - 10:41 P.M.)

LACROIX: advance one (1) hydro pole

LACROIX: hold spread out especially Contact Squad from the other squad give yourself a little bit of space

SKINNER: CMU be advised ah party on the road may have a weapon in his hand

SKINNER: Tex to CMU person down the road does have a weapon does have a weapon

LACROIX: okay everybody move split right left split right left split right left split right left everybody split right left take a knee take a knee

HEBBLETHWAITE: CMU to TOC we've read that and we've taken cover

HEBBLETHWAITE: TAC CMU confirm one man with weapon long gun

SKINNER: CMU from TAC 1 are you holding your position

HEBBLETHWAITE: TOC yeah ten-four (10-4) CMU is holding position holding position

SKINNER: ten-four (10-4)

SKINNER: subject is believed to be armed

HEBBLETHWAITE: copy that one (1) subject armed long gun

SKINNER: ten-four (10-4)

SKINNER: CMU ah TAC 1

CMU TAC 1

CMU TAC 1

HEBBLETHWAITE: TAC 1 you're cutting yourself out at the start go
ahead CMU

(Current Time: - 10:46 P.M.)

SKINNER: CMU confirmed the subject has a stick that has been
confirmed by Romeo Stick

HEBBLETHWAITE: copy that CMU copy

HEBBLETHWAITE: TAC 1 do we have Sierra in position CMU

SKINNER: standby

HEBBLETHWAITE: TAC 1 do we have Sierra in position ah key your
mike for a second before talking please in this
TAC

MALE: (I/A)

SKINNER: CMU standby (simultaneous talking)

SKINNER: CMU TAC 1
CMU TAC 1

HEBBLETHWAITE: go ahead

HEBBLETHWAITE: TAC 1 go ahead

SKINNER: Alpha and Sierra 2 can cover your position

SKINNER: CMU TAC 1 do you copy

(Current Time: - 10:48 P.M.)

HEBBLETHWAITE: copy that copy that we're engaging

LACROIX: (I/A) keep your distance spread out

SKINNER: CMU if you read Sierra 1 is on your left flank

HEBBLETHWAITE: CMU copy

HEBBLETHWAITE: contact squad back up contact squad back up

LACROIX: right cover back up a bit

HEBBLETHWAITE: right cover back up right cover

LACROIX: (I/A) back back CMU

LACROIX: (I/A) TAC to CMU

SKINNER: go ahead CMU

LACROIX: they're on the ah provincial provincial ah property

SKINNER: ten-four (10-4) take up a defensive position

LACROIX: contact squad ah back up slowly

(Current Time: - 10:54 P.M.)

LACROIX: shield chatter

(Current Time: - 10:55 P.M.)

HEBBLETHWAITE: TOC from CMU be advised that we're at the perimeter the ah badgers are within the bounds of the park the badgers are in the park over

SKINNER: CMU to TAC 1 that's ten-four (10-4) ah request you hold your position

HEBBLETHWAITE: CMU copy that hold position

SKINNER: CMU TAC 1 are you in a position of cover

HEBBLETHWAITE: negative ... (I/A)

SKINNER: TAC 1 ten-nine (10-9)

HEBBLETHWAITE: negative right now we're out in the open but we can take cover go ahead

TAC 1: CMU TAC 1 take cover and maintain your position

LACROIX: back up back up back up to the pavement back to the pavement

LACROIX: hold up Contact Squad let that left cover catch up

HEBBLETHWAITE: okay back up to the pavement back up to the pavement

LACROIX: right cover ah spread out there in the dark spread out to the right

(Current Time: - 10:58 P.M.)

LACROIX: get ready for it get ready

LACROIX: ready ready go (loud) go (loud)

LACROIX: back back back ... (I/A)

(Current Time: - 11:02 P.M.)

LACROIX: Right Contact close it in you're going to get caught with this fence behind your back. Right Contact Right Cover I mean Right Cover close to the left

HEBBLETHWAITE: back-em up

LACROIX: Contact Squad back up...(I/A) clear to the road

PRISONER VAN: Lima 2 this is the prisoner van... (I/A)

LIMA 2: confirm do you want an ambulance

PRISONER VAN: confirmed

LIMA 2: Lima 1 Lima 2

LIMA 2: Lima 1 Lima 2

LIMA 1: Lima 1 you calling or Lima 2 you calling

LIMA 2: Lima 1 Lima 2 they want an ambulance

(Current Time: - 11:03 P.M.)

MALE: ten-four (10-4) (I/A)...

LACROIX: shots fired shots fired...(I/A)

MALE: (I/A)... yelling (sound of gunfire and revving engine)

MALE: hold your fire

LIMA 2: Lima 1 Lima 2

LIMA 2: Lima 1 Lima 2

LIMA 1 (I/A)... calling

LIMA 2: Lima 1 Lima 2

LIMA 1: Lima 1 go ah Lima 2 go ahead

LIMA 2: Lima 1 have you got an ambulance enroute

LIMA 1: ten-four (10-4) ah do you want it sent down to the TOC

MALE: (A/I)

LIMA 2: yeah okay I I think we've got an ambulance here already
I just got to find out where to send it

HEBBLETHWAITE: Lima 2 prisoner van to bring it down here to the
CMU

LIMA 2: the ambulance down to CMU

HEBBLETHWAITE: ten-four (10-4) bring it here up behind the prisoner
van tell it to stay about two-hundred (200) yards
back

LIMA 2: ten-four (10-4)

LACROIX: (yelling) back behind the van I want a count back behind the van I want a count

LACROIX: (I/A) form up form them up two lines

ALPHA: Lima 2 this is Alpha we'll escort the van the ambulance down there from our position

LACROIX: do a count from here behind this ah prisoner van report to me

MALE: prisoner van report to ah CMU leader

LACROIX: Contact Squad take the front Contact Squad take the front left cover right cover

ALPHA: Lima 2 this is Alpha the ambulance is on the way

SKINNER: stop the ambulance don't send the ambulance forward

MALE: ten-four (10-4) got it it's right at Alpha point

LACROIX: TOC from CMU

SKINNER: go ahead CMU

LACROIX: we ah took gunfire from a car a bus tried to run us over
we returned fire we have no casualties that I can count
for everybody seems to be accounted for

SKINNER: thanks

CARSON: CMU ah TOC back off if you can back off and ah come
back to ah the TOC site

LACROIX: okay back up

CARSON: back out back out
CMU ah TAC 1 are you ten-four (10-4) on the back out

LACROIX: ten-four (10-4) we're backing out now covered by TRU

CARSON: ten-four (10-4) ten-four (10-4)

LACROIX: okay back up back up

LACROIX: back up

(End Time: - 11:10 P.M.)

APPENDIX "D"

Chronology of Events Regarding Mark Wright's
Communication of the Gerald George Incident

Chronology of Events Regarding Mark Wright's Communication of the Gerald George Incident

DATE	TIME	EVENT	SOURCE
06 SEP 95	7:51 p.m.	<p>Radio transmission between Mark Wright and checkpoint delta [sic]. Wright states:</p> <p>“okay, ten four, somebody take him aside, I think, I think you got ah, Sammy Poole down there, take a quick statement from him, and ah, I’m roaring back, just let me get my ah sierra together here at the command post, and ah, you know what I’m after okay. Just stand-by alright.”</p>	Ex. P-1114
06 SEP 95	7:54 p.m.	<p>Radio transmission between Mark Wright and Bob Cousineau. Wright states:</p> <p>“yeah we got about ah, up to eight individuals, ah, at the picnic table area, I assume you know what that is, and they’re just about on the edge of the road. They got some bats and stuff in their hands and apparently they’ve damaged some ah, an individual’s vehicle so we got some mischief right now or wilful damage. And I talked to them for a while they weren’t sure who I was, and it appears to me, it appears to me that they’re ah up to something so can you talk to ah, your E.R.T. guy in there with the Inspector, I’m on my way back and I’ll give you a full rep when I get back but I think we should be moving ah, some people down that way, I think we should be moving some people down that way, I’m about ten away, ten minutes away from the command post.”</p> <p>Cousineau replies,</p> <p>“That’s ten four Lima 1 is standing right here heard it all and so did the Inspector.”</p>	Ex. P-1115
	7:55 p.m.	Mark Wright reports via police radio, 10 natives with	Ex. P-426

Chronology of Events Regarding Mark Wright's Communication of the Gerald George Incident

DATE	TIME	EVENT	SOURCE
		baseball bats near the road who apparently have damaged a private vehicle.	p. 73
06 SEP 95	8:02 p.m.	Mark Wright reports natives off park area with baseball bats. Const. Zacher a personal vehicle being damaged.	Ex. P-426 p. 73
06 SEP 95	8:15 p.m.	Wright states: "Sammy it's Mark, all I need to know is ah your victim identify ah that stuff coming from those guys at the curve there".	Ex. P-1117
06 SEP 95	8:17 p.m.	<p>Charlie: To answer your question, that's ah, ten four on the ID'ing positively from the location of the incident.</p> <p>Lima 1: That's ten four ah Charlie from Lima one ah Sergeant Wright has been advised.</p> <p>Charlie: You can pass it onto Sergeant Wright as well, victim possibly might have a suspect possibly wanted with ah, other warrants.</p> <p>Lima 1: Yeah confirm Charlie ah from Lima one that your ah victim can possibly identify one of the other parties that may have warrants.</p> <p>Charlie: That's ten four it's related to the incident with the damage, he observed it himself.</p> <p>Lima 1: That's ten four we copied Detective Sergeant Wright advised</p>	Ex. P-1118

Chronology of Events Regarding Mark Wright's Communication of the Gerald George Incident

DATE	TIME	EVENT	SOURCE
	8:19 p.m.	Const. Poole called on radio reports that the victim has identified suspects in the same area.	Ex. P-426 p. 74
07 SEP 95	9:26 a.m.	<p>Mark Wright testified before Justice Daudlin and provided the following evidence in relation to the Gerald George incident:</p> <p>"I was notified by radio from the first checkpoint that a civilian had stopped, his vehicle had been – he had been threatened and his vehicle had been damaged. Something had been thrown at it, and I don't know what".</p>	Ex. P-467 p. 27

APPENDIX "E"

Chronology of Events Regarding the
Call-Out for Emergency Medical Services

Chronology of Events Regarding The Call-Out For Emergency Medical Services

DATE	TIME	EVENT	SOURCE
06 SEP 95	8:55 p.m.	OPP Sgt. Reid calls Wallaceburg CACC and advises there is an ongoing situation. REID requests one ambulance on stand-by at the Forest Base.	Ex. P-346 Ex. P-1333
06 SEP 95	9:28 p.m.	2 ambulances to talk [sic].	Scribe Notes Ex. P-426 p. 78
06 SEP 95	9:32 p.m.	OPP Sgt. Reid calls Wallaceburg CACC and requests two ambulances for stand-by to attend the checkpoint on Ipperwash Road.	Ex. P-1333
06 SEP 95	9:58 p.m.	Mark Wright sending another St. John ambulance to talk [sic]. Karen Bakker-Stephens and Glen Morgan drive from Forest OPP detachment to the MNR parking lot.	Ex. P-426 p. 78 Testimony of Morgan 19APR05 pp. 155 – 157
06 SEP 95	10:37 p.m.	Gilpin calls Connors and advises that OPP medic Slomer is with them and he has suggested that Connors call Strathroy Hospital for Doctor availability. Gilpin confirms they are in the MNR parking lot and that the St. John Ambulance Brigade is with them. Slomer testified that it is part of his duties to brief on scene EMS personnel on the situation and reassure them they would not be called forward into a dangerous area.	Ex. P-1333 Testimony of Slomer 26MAY06 pp. 220 – 222

Chronology of Events Regarding The Call-Out For Emergency Medical Services

DATE	TIME	EVENT	SOURCE
06 SEP 95	11:05 a.m.	<p>Following the sound of gunshots heard over the TAC, Lima 2 asks if an ambulance is en route. Lima 1 confirms and asks if they want it sent to the TOC. Lima 2 then corrects and advises they already have an ambulance there and just need to determine where to send it. The operator of the OPP prisoner van requests the ambulance be brought down to within 200 yards of the prisoner van.</p> <p>Ambulance requested, shots overheard, being fired on radio transmission</p>	<p>Ex. P-438</p> <p>Ex. P-426 p. 80</p>
06 SEP 95	11:06 p.m.	<p>OPP Sgt. Reid calls Wallaceburg CACC asking if the two ambulances made it down in relation to the request at 9:32 p.m. Jack Knight advises Reid that two ambulances are at the OPP checkpoint on Ipperwash Road.</p> <p>Alpha checkpoint advises they will escort the ambulance down East Parkway from the TOC site.</p>	<p>Ex. P-351</p> <p>Ex. P-438</p>
	11:07 p.m.	<p>Sgt. Cousineau arranging for 2 ambulances.</p>	<p>Ex. P-426 p. 80</p>
06 SEP 95	11:07 p.m.	<p>Alpha checkpoint advises the ambulance is on the way down East Parkway. Skinner from the TOC orders the ambulance stopped – “don’t send the ambulance forward”.</p>	<p>Ex. P-438</p>
06 SEP 95	11:07 p.m.	<p>Sgt. Cousineau calls Wallaceburg CACC requesting two ambulances attend the checkpoint on Ipperwash Road. Connors advises Cousineau that they are already there. There is some confusion as to the exact location of the ambulances and some clarifications are made. Cousineau is told that Sgt. Reid is speaking with CACC on the other line. Reid is told to hang-up.</p>	<p>Ex. P-1333</p> <p>Ex. P-1119</p>

Chronology of Events Regarding The Call-Out For Emergency Medical Services

DATE	TIME	EVENT	SOURCE
06 SEP 95	11:10 p.m.	Ministry Ambulance 1146 advises Wallaceburg CACC that they just got into position and that they may be transporting.	Background radio transmission Ex. P-347
06 SEP 95	11:12 p.m.	911 operator calls Wallaceburg CACC speaking with Connors and advises of a call from 9780 Army Camp Road reporting two people have been shot. This information is passed on to Cousineau who is still on the phone with CACC.	Ex. P-1333 Ex. P-1119
06 SEP 95	11:15 p.m.	Connors tries a callback to 9780 Army Camp Road and there is no answer. This information is passed along to Cousineau.	Ex. P-1333 Ex. P-1119
06 SEP 95	11:18 p.m.	Delta checkpoint advises that an ambulance is needed at Highway 21 – reporting “an occupant from the camp came out requiring an ambulance for her son.” Alpha checkpoint reports that the ambulance is en route (from the TOC site) and is taking Ipperwash Road.	Ex. P-1622
	11:19 p.m.	Reports 10-52 needed at entrance Army Camp to pick up native that has been shot.	Ex. P-426 p. 80
	11:20 p.m.	Conversation between Sgt. Cousineau and Knight from Wallaceburg CACC. Cousineau advises someone at the main gate of the Army Camp is reporting someone has been shot. Ambulance units 1145 and 1146 advise they are en route from the TOC to the main gate. Cousineau asks if both ambulances are going. When Knight confirms this, Cousineau advises they are going to have to scramble two more ambulances to the TOC site.	Ex. P-351 Ex. P-1333

Chronology of Events Regarding The Call-Out For Emergency Medical Services

DATE	TIME	EVENT	SOURCE
06 SEP 95	11:18 p.m.	Delta checkpoint advises that an ambulance is needed at Highway 21 – reporting “an occupant from the camp came out requiring an ambulance for her son.” Alpha checkpoint reports that the ambulance is en route (from the TOC site) and is taking Ipperwash Road.	Ex. P-1622
	11:19 p.m.	Reports 10-52 needed at entrance Army Camp to pick up native that has been shot.	Ex. P-426 p. 80
	11:20 p.m.	Conversation between Sgt. Cousineau and Knight from Wallaceburg CACC. Cousineau advises someone at the main gate of the Army Camp is reporting someone has been shot. Ambulance units 1145 and 1146 advise they are en route from the TOC to the main gate. Cousineau asks if both ambulances are going. When Knight confirms this, Cousineau advises they are going to have to scramble two more ambulances to the TOC site.	Ex. P-351 Ex. P-1333
06 SEP 95	11:45 p.m.	St. John Ambulance Brigade Unit 100 departs the MNR parking lot with Cecil Bernard George – en route to Strathroy Hospital.	Ex. P-342 Ex. P-341

APPENDIX "F"

Sequence of Information over the TAC Supporting
Reasonable and Probable Grounds for Arrest

Sequence of Information Over the TAC Supporting Reasonable And Probable Grounds For Arrest

DATE	TIME	EVENT	SOURCE
06 SEP 95	10:27 p.m.	CMU begins march down road.	Ex. P-438
06 SEP 95	11:03 p.m.	LACROIX is yelling, "shots fired, shots fired". The sound of gunshots, people yelling and the revving of a vehicle engine are also heard. The CMU is then instructed to "hold your fire".	Ex. P-438
06 SEP 95	11:09 p.m.	LACROIX states, "We ah took gunfire from a car. A bus tried to run us over we returned fire we have no casualties that I can account for everybody seems to be accounted for".	Ex. P-438
06 SEP 95	11:11 p.m.	LINTON: Shots were fired from a bus? KOROSEC: From a, from a, school bus tried to run them down, we returned fire.	Background Conversation recorded within the command post Ex. P-347
06 SEP 95	11:14 p.m.	Cousineau: someone at 9780 is on 911 saying two people have been shot.	Conversation recorded within the command post Ex. P-347
06 SEP 95	11:17 p.m.	There is a significant amount of conversation in relation to the location of 9780 Army Camp Road. Korosec advises that Ipperwash Provincial Park is on Army Camp Road and suggests they contact the Park to ascertain the 911 number. Wright: "It'll be right down the bottom, no doubt. That's where the gunshots were fired.../A..."	Background Conversation recorded within the command post Ex. P-347

Sequence of Information Over the TAC Supporting Reasonable And Probable Grounds For Arrest

DATE	TIME	EVENT	SOURCE
06 SEP 95	11:19 p.m.	Delta Checkpoint advises that an ambulance is needed at highway 21 reporting "an occupant from the camp came out requiring an ambulance for her son." Alpha checkpoint reports that the ambulance is en route (from the TOC site) and is taking Ipperwash Road. Korosec yells out "Mark", and then states, "We should have someone go with that ambulance. This guy we will want in custody".	Background Conversation recorded within the command post Ex. P-347
06 SEP 95	11:25 p.m.	Trevor Richardson victim is being transported to Strathroy. Const. Speck and Mark Dew en route.	Scribe Notes Ex. P-426 p. 81
06 SEP 95	11:35 p.m.	KOROSEC is speaking with Wallaceburg CACC and receives information about a gunshot wound at 6840 Nauvoo Road. Information received that someone showed up at that residence with a gunshot wound to the chest. KOROSEC advises Wright of the information. At the end of the conversation with CACC Korosec states, "that must be where the other guy disappeared to".	Conversation recorded within the command post Ex. P-351
06 SEP 95	11:41 p.m.	Trevor Richardson and Don Bell depart the command post to locate the white car that was reported to have left 6840 Nauvoo Road.	Testimony of Trevor Richardson, June 8 th , 2006 p. 199
	11:42 p.m.	Trevor RICHARDSON still present in the command post – voice can be heard in the background.	Command Post Logger Track 3 Call at 23.35.55