

APPENDIX “B”



*Anishinabek First Nations Relations with Police and
Enforcement Agencies*

Author: Dwayne Nashkawa

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This paper is based on the author's experience while engaged in consultations, policy analysis, and tripartite negotiations on behalf of the forty three (43) member First Nations while employed with the Union of Ontario Indians from 1994 until 2003. I would like to gratefully acknowledge the assistance of Melissa Restoule, Allan Dokis and Fred Bellefeuille for their assistance in the preparation of this paper.

Anishinabek First Nations Relations with Police and Enforcement Agencies

Thesis Statement

The objective of this paper is to explore how the events at Ipperwash have affected ordinary Anishinabek people and how these events have negatively influenced the level of trust among some Anishinabe people have toward police services in general. In order to restore a measure of trust, people need to see results. Resolution of issues such as policing negotiations, contentious rights issues as well as the development of effective and accountable jurisdictional and governing structures are critical in developing healthy relations between Anishinabek First Nations, government and police services.

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Table of Contents

1.0 Executive Summary.....	1
2.0 A Short History of the Anishinabek Nation And UOI	4
3.0 The Anishinabek Response in Times of Crisis.....	7
3.1 The Union of Ontario Indians’ Experience at the Time of the Crisis at Ipperwash....	7
3.2 We Support Our Brothers and Sisters	9
4.0 Anishinabek Experiences with Law Enforcement in Ontario.....	11
4.1 The Far Reaching Effects of Operation Rainbow	11
4.2 First Nation Perspectives on the MNR Enforcement Branch.....	13
4.3 First Nations Perceptions of Racism Within OPP and MNR.....	14
4.4 A Complicated Relationship	16
5.0 First Nations and Law Enforcement Must Work Together	19
5.1 The MNR Enforcement Branch	20
5.2 The Need for Improved Policy Direction on First Nation Policing	21
5.2.1 The Federal Government’s First Nation Policing Policy.....	22
5.2.2 The Need for an Aboriginal Policing Policy in Ontario	23
5.3 Police Oversight and the Need to Support First Nation Institutions	24
5.3.1 The Stand Alone Police Services in Anishinabek Territory	25
6.0 Frustration for First Nations Under the OFNPA.....	27
6.1 Closure of the Ontario First Nations Police Commission	31
6.1.1 The Role of the Ontario Native Affairs Secretariat	32
7.0 Conclusion.....	35

8.0 Recommendations.....	36
8.1 Cross Cultural Training and Community Outreach	36
8.2 Accountability	36
8.3 Policy Development and Negotiations.....	37
9.0 Bibliography.....	38
The Author	40
Appendix “A” – Anishinabek Nation Map.....	41
Appendix “B” - Anishinabek First Nations’ Requests for Enhancements to Police Services.....	42

1.0 Executive Summary

The relationship between Anishinabek First Nations and law enforcement agencies¹ in Ontario has a long and tumultuous history. The struggle for the recognition of Aboriginal and treaty rights has been waged in the courts, the media, at negotiation tables and in the form of protest. Typically, the interaction between Anishinabek people and Ontario enforcement agencies has occurred during circumstances that led to a negative outcome. While Anishinabek people support the role, functions and mandates of provincial law enforcement agencies, there is a prevailing sentiment within many First Nation communities that the interaction between Anishinabek people and law enforcement officers can and should be carried out in a better way.

The Union of Ontario Indians (UOI) roots trace back hundreds of years to the Three Fires Confederacy of the Ojibway, Odawa and Pottawatomi Nations. It's modern origin as a political advocate and political organization on behalf of Anishinabek First Nations was 1949. Since 1949, the UOI has been active and involved during the development of the Indian Commission of Ontario, the creation of First Nation police services, the repatriation of the Constitution, the Oka Crisis and numerous other initiatives in which First Nations had a stake in the outcome. It has been active in lobbying for policy and legislative change at all levels of government while supporting First Nations in their efforts to become self-governing and self-sustaining.

Following the events at Ipperwash, that role entered a new phase as many First Nation leaders questioned how the political and policy mechanisms that were supposed to resolve long standing issues could break down so disastrously. In September 1995, the UOI and its staff responded in much the same manner that it had during similar crises at

¹ The terms "law enforcement" and "enforcement" are used extensively throughout this paper. The law enforcement agencies being referred to the Ontario Provincial Police and the MNR Enforcement Branch unless otherwise specified. It is important to note that the MNR Enforcement Branch has a specific mandate related to the enforcement of laws related to protection of Ontario's natural resources. The OPP and MNR Enforcement Branch operate as independent agencies with their own respective mandates. These two agencies, in addition to First Nation police services, are the agencies that Anishinabek people come into contact with on a routine basis. This paper highlights the OPP and MNR Enforcement Branch due to the high level of interaction between First Nation people, their leaders and First Nation organizations.

Restigouche, Oka and later, Burnt Church. The difference was that this event took place in one of the UOI's own member communities and the events hit much closer to home.

The UOI has spent the last ten years analyzing and reviewing provincial law enforcement policies and procedures in an effort to improve relationships between the Ontario government and First Nations. It has reviewed and studied the interaction of law enforcement agencies, particularly the Ontario Provincial Police and the Ministry of Natural Resources Enforcement Branch. The First Nation response to Operation Rainbow², an MNR sting that targeted many First Nations harvesters³ on Manitoulin Island, is a particularly convincing example of how First Nations strived to find alternative approaches to routine enforcement methods.

Perceptions of racism, bias and ignorance within government law enforcement agencies are a reality with most First Nation communities. These perceptions have been reinforced by events like those at Ipperwash and other specific incidents across Ontario. While one must be very careful about generalizing from specific incidents, many First Nations people believe that there is pervasive bias and ignorance within government law enforcement institutions. However, there are a number of initiatives underway designed to break down barriers between First Nations and law enforcement bodies that, given the proper support and time, may begin changing perceptions.

The relationship and perceptions are complicated by differing interpretations about Aboriginal and treaty rights, ambiguities within government policies and other factors. Certainly, the multi-layered discussion that occurs between First Nations Councils, harvesters, community members and law enforcement agencies makes achieving certainty within decision making very difficult.

Improved policy development and direction setting within federal and provincial levels of government would assist First Nations leadership in their efforts to resolve rights based

² Operation Rainbow was a multi-year sting operation led by the MNR Enforcement Branch that took place on Manitoulin Island during the late 1980's and early 1990's. It targeted First Nation harvesters who were alleged to have been hunting illegally and selling wild game illegally. It resulted in a number of charges and convictions. It remains an extremely contentious issues for many First Nation leaders and community members on Manitoulin Island to this day.³ The term "harvester" is used extensively throughout the paper to describe Anishinabek people who hunt, fish, trap or gather for personal, ceremonial or spiritual purposes.

issues. A review of federal and provincial Aboriginal policing policies or lack thereof, demonstrates gaps in providing necessary mandates for governments and First Nations to resolve outstanding issues.

This further demonstrates the need to support First Nation law enforcement services and institutions that will deliver services in a more culturally appropriate manner. This may begin to alleviate the current levels of frustration and aggravation being experienced by First Nations that want to take on additional responsibilities as it relates to policing and law enforcement within their territories.

2.0 A Short History of the Anishinabek Nation And UOI

The Union of Ontario Indians (UOI) is a political advocacy organization representing 42 Anishinabek First Nations surrounding the northern shores of the Great Lakes. There are seven tribes that make up the Anishinabek Nation. These are the Ojibway, Chippewa, Odawa, Pottawatomi, Mississauga, Algonquins and Delawares. These nations share common languages, customs, beliefs and histories⁴.

The UOI is governed by a Grand Council that meets two to three times per year to decide on matters of “national” importance to the Anishinabek. These decisions are made by resolution. A Board of Directors oversees the corporate business of the Anishinabek Nation through the Union of Ontario Indians, a non-profit corporate secretariat.

The UOI is the oldest First Nation political organization in Ontario. Its roots date back to the Grand General Indian Council of Ontario in the early 1800’s and prior to that, the Three Fires Confederacy of the Ojibway, Odawa and Pottawatomi Nations. The Three Fires Confederacy is generally believed to have been confederated since the 15th century.

Through the years, Anishinabek warriors have fought alongside the British and fellow Canadians in every major conflict since the American Revolution. The UOI was incorporated in 1949 by veterans who returned to Canada having been promised a better life following their service to Canada and the British Crown. However, many of those Veterans found that the conditions they had left upon volunteering for service were no better than before, in fact, in many cases, the situation was worse.

Initially, the UOI represented all the First Nations in Ontario and was responsible for the establishment and promotion of many ground breaking initiatives. Following the collapse of the National Indian Brotherhood/Joint Cabinet Committee in 1977, the UOI lobbied for the creation of a tripartite process specifically for the province of Ontario.

⁴ This paper shall refer to these 42 member First Nations as “Anishinabek First Nations” for the purposes of this paper. See Appendix I for a map of Anishinabek First Nations.

This resulted in the establishment of the Ontario Tripartite Process and the Indian Commission of Ontario, with Justice Patrick Hartt as the first Indian Commissioner⁵.

During the constitutional discussions in the later 1970s and early 1980s, the UOI was very active. It was during this time that many of the principles that guide the Anishinabek Nation today were formally adopted and communicated to the governments of Canada and Ontario. In November 1980, the Chiefs of the Anishinabek Nation put forth the Declaration of the Anishinabek. This declaration defines who the Anishinabek are as a nation of people. It also defines the Anishinabek world view on relations with other nations, on lands and resources, on Aboriginal and treaty rights and on governance. It is the most important statement on the nationhood of the Anishinabek people that has ever been produced. It informed that governments of Canada and Ontario that the Anishinabek are a people and that as a nation, it had the right to be self-governing and had the right to self-determination.⁶

The UOI has been actively engaged in discussions and negotiations with the governments of Canada and Ontario steadily since the constitutional discussions in 1980. It was party to the first Indian Policing Agreement in Ontario (among the first tripartite policing agreements in Canada).

During the late 1980's and early 1990's, the UOI, led by Grand Council Chief R.K. (Joe) Miskokomon, was the principal organization in the negotiations for the development of a First Nation casino, which was eventually established at the Mnjikaning (Rama) First Nation. The UOI, now led by Grand Council Chief John Beaucage, continues to play an active role in facilitation of discussions between First Nations and the Chippewas of Mnjikaning today.

The UOI has also been very active in leading lands and resources discussions with the province. This has led to the development of the Anishinabek/Ontario Fisheries Resource Centre (A/OFRC) in 1995, "an independent source of information on fisheries assessment, conservation and management, promoting the value of both western science

⁵ Tonina Simeone, *The Road to Resolution: A History of the Ontario Tripartite Process and the Indian Commission of Ontario*, Toronto: Unpublished Report, 8. ⁶ Union of Ontario Indians, *Declaration of the Anishinabek*, Toronto, November 1980. p.3.

and traditional ecological knowledge. The A/OFRC is a not for profit corporation controlled by a Board with equal representation from Native and non-Native Directors”⁷.

More recently, the UOI and Ontario Ministry of Natural Resources (MNR) have jointly established the Anishinabek/Ontario Resource Management Council (A/ORMC). The mandate of this Council is to bring together Anishinabek Chiefs and senior management within the MNR to resolve issues. It also provides an opportunity for technical working groups to review policy, and offer advice to the Minister and Grand Council Chief.

⁷ Anishinabek/Ontario Fisheries Resource Centre, “Our History”, <http://www.aofrc.org/corpoII.html>, (28 Mar 2005)

3.0 The Anishinabek Response in Times of Crisis

3.1 The Union of Ontario Indians' Experience at the Time of the Crisis at Ipperwash

The staff of the UOI, at the time of the events at Ipperwash and today, represents a microcosm of Aboriginal society. The people who work there reside on and off reserve, some are traditional, some are not. The people are members of reserves from all over Ontario, north and south. There are also non-Aboriginal people who work at the organization. All share a common goal, supporting “mno-bimaadziwin”, “living in a good way” for the Anishinabek people.

The UOI is located on Nipissing First Nation, 8 kilometres west of North Bay, Ontario. This necessitates extensive travel for many of the staff to various First Nations, in addition to traveling for meetings with various levels of government. Due to the nature of the work undertaken by the political leadership and staff of the UOI, the office is in a constant state of flux. Staff are coming and going, having short conversations and a few laughs as they pass each other on the way in or out. It can be likened to a large extended family.

The day after Dudley George was shot by a member of the Ontario Provincial Police (OPP) tactical unit at Ipperwash, the UOI office at Nipissing First Nation was in a state of stunned fury. There was a palpable sense of disbelief and shock as the staff gathered to talk about the shooting of one of the Stony Point protesters. Being an advocacy organization, the UOI was well aware of the protest at Ipperwash and the sequence of events, historical and otherwise, that led to the occupation of the park when it closed for the season in 1995.

The Kettle and Stony Point First Nation was, and remains, an active member community of the UOI, with its Chief, Tom Bressette a member of the UOI's board. However, the UOI had not had any direct involvement in the occupation of the barracks at Camp Ipperwash, nor had the organization been involved in any elements of the occupation of the park. It had provided moral and political support for the First Nation, but little beyond that.

After the shooting, staff started to ask what they could do to assist with the situation. There was little direct involvement politically as Ovide Mercredi had immediately intervened in his role as National Chief for the Assembly of First Nations. Many First Nations were also calling the organization asking if they could assist in any way. Nobody really knew if the

situation was going to further deteriorate, if the tactical unit would return or if the protesters were going to leave. The Anishinabek Police Service (APS), established by the UOI under the Ontario First Nation Policing Agreement in 1991, had arrived to try to act as a buffer between the community and the OPP. At the time, the UOI organized a collection of food and supplies from various First Nations from the North Shore of Lake Huron and Manitoulin Island, through the Highway 69 corridor south to the Chippewas of Kettle and Stony Point. In the years that followed, the Anishinabek Chiefs would lend support at their Grand Council Assemblies and through the leadership of the UOI's political office in lobbying for an inquiry into Dudley George's death.

There was an immediate sense within the larger Aboriginal community that the OPP's actions were politically motivated. Since the election of the Harris government earlier in the year, the relationship between First Nations and the government of Ontario had deteriorated measurably. One only needs to review the decisions that were being made by the Premier's Office, the Cabinet and various Ministers at the time. The Statement of Political Relationship, signed between the Rae Government and Ontario First Nations atop Mount McKay on the Fort William First Nation in 1991, had been shelved. The Ontario government was in the process of narrowing the mandate of the Ontario Native Affairs Secretariat to focus only on economic self-sufficiency for First Nations.

After the shooting of Dudley George, the relationship between the Ontario Government and First Nations was virtually non-existent. Existing provincial programs and services continued to be provided to First Nations, but there was no dialogue between First Nations or the First Nation Political Territorial Organizations (PTOs) and the Ontario government. The perception at the UOI was that the government would hunker down to weather the storm that would follow.

The weeks and months following the events at Ipperwash left many First Nations people with strong emotions. There was sadness and anger that many Anishinabe people felt about the events at Ipperwash. There was a sense that the events could not be ignored, that there was a level of government direction in the police action that politicized events in a unique way.

There were times when people felt a small sense that justice might be done. There was the

immediate attention that the entire incident generated, the arrival of the Ron Irwin, Minister of Indian Affairs a few days after the shooting, with evidence that there was indeed a burial site located within the park and the response of First Nations people from across the province. Dudley George's funeral was attended by First Nation political leaders from across Ontario in addition to grass roots community members from various First Nations. This was a strong indication of the support and empathy that First Nations people felt toward the people who had occupied the park. There was a sense that the events that occurred at Ipperwash could have happened anywhere and indeed they had.

3.2 We Support Our Brothers and Sisters

Memories of events in recent years at Oka, Kanasatake, Kanawake, Restigouche and other events that had occurred across Canada were still relatively fresh in the minds of Anishinabe people across Ontario. During the Oka stand-off, many Anishinabek First Nations organized their own protests, including peaceful road blockades to demonstrate their support for the people of Kanasatake. Chapter 12, "Shock Waves" of Geoffrey York and Loreen Pindera's book "People of the Pines", provides an excellent view of how a number of First Nations immediately identified with events affecting the Mohawks at Oka. One Anishinabek First Nation is cited in particular.

In northern Ontario, the warriors inspired the political awakening of an obscure band of Ojibways on a tiny reserve near the town of Longlac. The reserve, known as Long Lake No. 58, had always been politically apathetic. The Chief and Councilors did little except distribute welfare cheques. But in the summer of 1990, the Ojibways were galvanized by the events at Oka....

In early August, the Ojibways of Long Lake took their first step toward militancy. Following the example of the Mohawk warriors, they blocked the Trans-Canada Highway and issued a four-page list of grievances. They demanded a treaty and a much larger reserve. "Never did our ancestors agree that this tiny plot of land was fair payment to allow outsiders free access to the immense resources in our traditional lands," the band said. "This bit of muskeg could not conceivably be considered as fair payment for the tremendous wealth taken out of our lands in recent decades."⁸

The experience of the people of Long Lake No. 58 was not isolated. Similar protests were

held in the Pic Mobert, Pays Plat, Saugeen and numerous other Anishinabek First Nations. Oka was a serious event in a long history of serious events across the country, events that are continuing to this day. Perhaps not surprisingly, Long Lake's list of grievances remains almost entirely unresolved to this day.

There had also been a number of events within Anishinabek First Nation territories in Ontario that reinforced many Anishinabe people's ability to instantly identify with what the protesters at Ipperwash had experienced.

⁸ Geoffrey York and Loreen Pindera, *People of the Pines: The Warriors and the Legacy of Oka*, Toronto: Little, Brown and Company, 1991, p. 283.

4.0 Anishinabek Experiences with Law Enforcement in Ontario

Generally speaking, there is not often an opportunity for community members to interact with law enforcement officers from outside the First Nation except during the course of their role as law enforcement officers. These experiences usually end in a negative result, like a speeding ticket or more serious involvement with the justice system. Generally, Anishinabe people understand and respect this function of police work as necessary and practical.

That being said, there are some circumstances wherein an entire community feels targeted or painted with the same brush. There is hardly an Anishinabek First Nation that has not had an experience like this during the last generation. Most, if not all Anishinabek First Nations have had negative experiences, as a community, with provincial law enforcement agencies within the last generation, often during the exercise of what First Nations wholly believe to be the exercise of their constitutionally protected Aboriginal and treaty rights. Many First Nations have experienced sting operations in their communities by the MNR Enforcement Branch, the unauthorized placement of cameras within their communities by the MNR, and raids by the OPP tactical unit. In some circumstances, First Nations have even had their own community based police services assist in the enforcement actions against their members.

4.1 The Far Reaching Effects of Operation Rainbow

On Manitoulin Island during the late 1980's and early 1990's, the MNR spent hundreds of hours and thousands of dollars to carry out a sting, known commonly as "Operation Rainbow", of First Nation harvesters purported to be selling wild game, and employing unsafe hunting practices. While the First Nations acknowledged that there were some legitimate safety and conservation issues, the First Nation leaders had numerous concerns about the heavy handed approach taken by the MNR throughout this operation. The United Chiefs and Councils of Manitoulin (UCCM) coordinated the defense of the accused in the matter⁹.

The UCCM leaders repeatedly requested that a negotiated process be initiated to deal with unresolved land issues, harvesting rights and to improve the relationship between Ontario as represented by the MNR, and the First Nations. However, these requests were repeatedly

rebuffed by the province. The Operation Rainbow court case dragged on for years, nearly bankrupting UCCM.

The UCCM Chiefs found support for their call for negotiations from the Assembly of First Nations (AFN) on two separate occasions. On June 25, 1992 the AFN passed a resolution at its assembly in Fredericton, New Brunswick. It stated that the operation and the legal proceedings had made “a mockery of Ontario’s recognition of the inherent rights of the Anishinabek, and call into question that government’s commitment to the realization of our rights and liberties”.¹⁰ It further called for negotiations between the MNR and local First Nations with respect to management of wildlife resources on Manitoulin Island.

The second AFN resolution condemned the MNR, calling the action “a breach of fiduciary duty and a violation of the honour of the Crown”. It further called for the Ontario government to negotiate on a government to government basis rather than take a confrontational approach. It called for intervention by the federal Crown in the court case. It requested financial support for First Nations to properly prepare constitutional defense and recognize the Aboriginal and treaty rights of the UCCM First Nations¹¹.

In the end, 35 individuals were charged with 326 offenses in the operation that involved 67 undercover officers of the MNR¹². However, the lasting damage was the complete breakdown in the relationship between local First Nations and the MNR.

⁹ The United Chiefs and Councils of Manitoulin is a Tribal Council representing 6 First Nations on Manitoulin Island – M’Chigeeng First Nation, Aundeck Omni Kaning (Sucker Creek) First Nation, Sheshegwaning First Nation, Sheguiandah First Nation and Zhibaahaasing First Nation. The Chiefs of these First Nations serve as Directors on the Tribal Council. ¹⁰ Assembly of First Nations, “Resolution No. 37/92: Ministry of Natural Resources and Operation Rainbow on Manitoulin Island”, June 25, 1992.

<http://www.afn.ca/resolutions/1992/aga/res37.htm>, (12 Feb 2005). ¹¹ Assembly of First Nations, “Resolution No. 16/95: A National legal and political defense strategy on fisheries and wildlife”, July 19, 1995. <http://www.afn.ca/resolutions/1995/aga/res16.htm>, (12 Feb 2005).

4.2 First Nation Perspectives on the MNR Enforcement Branch

Many other First Nations have experienced similar types of operations. The First Nations surrounding Lake Nipigon have always felt persecuted by the MNR, particularly with the harvest of moose and fishing on Lake Nipigon. The Nipissing First Nation found cameras planted on its reserve by the MNR while Mike Harris was the Minister of Natural Resources in the 1980's. More recently, Nipissing First Nation has been blamed for the collapse of the fishery on Lake Nipissing despite its efforts to develop conservation measures for its own harvesters.

There are few, if any, First Nations in the Anishinabek Nation that have not had similar experiences. Given the close kinship and cultural ties that many Anishinabek First Nations share, there is a tendency for people to feel that there is a systemic or pervasive effort to stifle, if not extinguish, the exercise of Aboriginal and treaty rights. Many feel that it is a campaign directed specifically at Aboriginal people. There is a sense of "here we go again" whenever the media reports Native harvesters have been charged or whenever a wildlife resource comes under pressure or during other natural resources enforcement activities.

The MNR should be compelled to make readily available upon request (without having to go through a freedom of information request), on an MNR district by district basis, the amount of resources expended on enforcement activities related to natural resources management. Further, these reports should outline how much the MNR spends on investigations, enforcement activities and prosecutions of First Nation harvesters. This transparency provides a level of information for First Nations and the MNR to begin dialogue on specific issues and natural resource management activities. It also holds MNR accountable for the expenditure of public funds.

¹² Christina Varga, "Natives Netted for Illegal Hunt", NOW Magazine, June 19-25, 1997.
<http://www.nowtoronto.com/issues/16/42/News/front.html>, (February 12, 2005)

4.3 First Nations Perceptions of Racism Within OPP and MNR

However, these experiences are not just related to natural resource management issues. There have been times when the OPP has been involved in law enforcement actions that have raised questions about their approach in handling the situation. On October 30, 1998, the Nipissing First Nation bingo operations were raided by a tactical unit of the OPP. Numerous employees of the First Nation were charged with operating a common gaming house. These charges were subsequently dropped. However, many members of the community felt that the use of a tactical unit was heavy handed and unnecessary. The issue was further compounded by the fact that the local First Nation police service, the APS, had escorted the tactical unit into the community and assisted in the execution of the warrant. Many people felt that their trust in their local police service had been compromised by APS assisting in a raid against what Nipissing maintained was a lawful bingo operation.

The OPP has long boasted about its efforts to improve relationships with First Nations, particularly in the areas of cross cultural training and recruitment. Recently, the OPP has publicized its efforts to reach out to First Nations through its OPP Bound Aboriginal recruitment program¹³.

To her credit, Commissioner Gwen Boniface has been the most accessible commissioner to First Nations. She has attended Chiefs Assemblies and other meetings with First Nations in an effort to reach out to First Nations, listen to their concerns and offer considered but frank responses.

However, there have still been a string of incidents in recent years that many First Nation people believe represent the prevailing attitudes of front line police and MNR enforcement officers and amongst decision makers within the OPP and the MNR Enforcement Branch. Many First Nations and their respective advocacy organizations called for increased accountability by the governments and law enforcement agencies of Canada, Ontario and

¹³ Gwen Boniface, "Police Leaders' Perspectives on Accountability, Building Ethical Frameworks and Civilian Oversight", Canadian Association for Civilian Oversight of Law Enforcement Conference 2004. Toronto: June 25, 2004. 9-10

other provinces throughout the 1990's¹⁴. These appeals were the result of a series of racist incidents by law enforcement officers, incidents between police and individual members of First Nations or incidents that gained wider attention, including Ipperwash, the standoff at Gustafson Lake and the events at Burnt Church.

There were the "Team Ipperwash" trophies that emerged within the OPP in the weeks following the events at Ipperwash. These trophies included t-shirts and coffee mugs emblazoned with a "Team Ipperwash 95" and an OPP crest with an arrow through it, which were sold in Forest, Ontario. These trophies had been ordered by on-duty officers in uniform following the events at Ipperwash.¹⁵

There was the shooting death of Orval Wesley in Cat Lake in northern Ontario, after which First Nations leaders called into questions the methods of the OPP at the time of the shooting and the subsequent investigation by the Special Investigations Unit (SIU).¹⁶

In November 1997, the AFN would once again call for investigation into the methods of government(s) and their respective law enforcement agencies across Canada. This time, the Chiefs would go so far as to state that "governments are attempting to prevent the public from hearing the truth" about incidents like Ipperwash and the events at Gustafson Lake.¹⁷

These types of allegations and incidents are not isolated to Ontario or limited to the OPP or MNR. The relationship between First Nations and the Department of Indian and Northern Affairs Canada (INAC) has always been tainted by a sense that INAC does not take concerns of First Nations seriously and is dismissive in its treatment of Aboriginal people.

¹⁴ Resolutions were passed at a number of Chiefs' assemblies throughout the 1990's calling for accountability and improved oversight by law enforcement agencies. These assemblies included All Ontario Chiefs Assemblies, Assembly of First Nation meetings, Anishinabek Grand Council assemblies and other regional meetings.

¹⁵ Peter Edwards, *One Dead Indian: The Premier, the Police and the Ipperwash Crisis*, Toronto: Stoddard Publishing Co. Ltd, 137.

¹⁶ Assembly of First Nations, "Resolution No. 11/96: Death of Orval Wesley", July 10, 1996. <http://www.afn.ca/resolutions/1996/aga/res11.htm>, (12 Feb 2005).

¹⁷ Assembly of First Nations, "Resolution No. 19/97: Call for Inquiry into Canadian Government and Police Actions", November 4, 1997. <http://www.afn.ca/resolutions/1997/aga/res19.htm>, (19 Feb 2005).

Among the most recent examples of INAC's attitude was reported by CBC News in Winnipeg on February 11, 2005. The CBC story reports that INAC hasn't taken concerns of Raven Thundersky, a member of Poplar River First Nation, who has been working for eight years to have her concerns about asbestos contamination of insulation in First Nations homes taken seriously. According to a local Member of Parliament, Pat Martin (NDP), Ms. Thundersky has received scripted responses by federal officials indicating how to sympathize with and act in conversations with Ms. Thundersky and her family.¹⁸

While these incidents are not directly related and are relatively isolated, whenever they occur, they resonate throughout "Indian Country" as more proof that governments and some members of law enforcement agencies either do not understand First Nations people or have their minds made up about them already. At worst, there is a growing segment of the First Nations population that believe things are getting worse, not better.

4.4 A Complicated Relationship

It is important to point out that there are several levels of dialogue occurring between First Nations and Ontario law enforcement agencies. There is one relationship that exists between the First Nation (its Council and staff) and MNR/OPP. This relationship is a government to government relationship that often focuses on policy development, development of agreements, and a higher level of dialogue. Discussions might include access to resources, Aboriginal and treaty rights issues, etc. Typically, this level of discussion is led by the Chief of the First Nation and Managers within the OPP or MNR.

There is a completely separate level of interaction between First Nation members and these organizations. It is important to make this distinction to illustrate how complicated the relationship is between First Nations and government agencies. This is typically a front line or field level relationship and usually, but not always involves some measure of enforcement being imposed on a First Nation member.

¹⁸ CBC Manitoba, "INAC's Treatment of Thundersky 'shameful': MP", February 11, 2005. http://winnipeg.cbc.ca/regional/servlet/View?filename=mb_thundersky-20050211, (14 Feb 2005).

To further complicate matters, there is also another level of relationship that exists between political advocacy organizations like the Anishinabek Nation/UOI and these agencies. This often involves political leadership and staff interacting with senior levels of government. All discussions can involve complicated jurisdictional issues, Aboriginal and treaty rights and other elements that complicate the relationship.

Many of the incidents that have resulted in confrontation between First Nations and government or racial stereotyping have involved tactical units of law enforcement agencies. A recent example was reported by the Canada Newswire regarding an incident in the Chippewas of the Thames, an Anishinabek community located southwest of London, Ontario. In January of 2004, the Barrie Tactical Response Unit of the OPP assisted the local police from the First Nation during a situation which involved a member of the First Nation refusing to leave his home. Following a negotiation, the person surrendered to police.

Approximately one week later the community member complained to the Chief that some of his personal possessions, a flag and a photograph, had been defaced by the tactical unit. A subsequent investigation resulted in discipline and charges under the *Police Services Act* but also raised further concerns for the community. There were no criminal charges laid, which appeared to the community to create a double standard. Chief Kelly Riley was quoted as saying “There appears to be two standards with the Crown. If you or I were to deface a Canadian flag, we most certainly would face criminal code charges – we wouldn’t be charged under the *Police Services Act*”.

However, the Chief was most concerned with the fact that no one from the unit came forward to report the incident nor tried to stop the incident when it occurred. The Chief went so far as to compare the actions of the team to that of the officers at Ipperwash. It is important to note that because of the events at Ipperwash, the OPP were not allowed on the First Nation without permission of the band.

While the Chief did acknowledge that there were areas where there was a positive working relationship, he expressed specific concerns about special units within the OPP. The article quotes the Chief, “While specialized units are needed in policing – it is disgraceful that there seems to be an ingrained lack of respect for an important symbol of First Nations culture”. The Chief went on to add that the community had offered to assist with cross cultural training

that would be appropriate for his community. What was really required was the capacity for the First Nation to deliver policing fully to its members.¹⁹

This is but one example of the problems First Nations have experienced with tactical units of the OPP, and to a similar extent, with the Enforcement Branch of the MNR.

However, to characterize the overall relationship between the OPP and First Nations as negative would be misleading and inaccurate. In northeastern Ontario, a recent anti-racism initiative found that the police were seen as more positive than negative by Aboriginal respondents to the study. When provided with the statement “Police in my neighborhood are usually helpful and treat me fairly”, 55% of Aboriginal respondents agreed and only 10% disagreed or strongly disagreed with the statement.²⁰ This initiative focused on urban centers (North Bay, Timmins and Sault Ste. Marie). While this was not a broad study, it does indicate that there is an understanding of the role of the police in the day to day safety and security of any community.

¹⁹ Canada NewsWire, “Barrie Tactical Response Unit Deface First Nation Symbols”, March 11, 2004. <http://www.newswire.ca/en/releases/archive/March2004/11/c9330.html>, (28 July 2004).

²⁰ Curry, Don. Debwewin: Three City Anti-Racism Initiative. (North Bay: Communitas Canada) 39.

5.0 First Nations and Law Enforcement Must Work Together

Incidents like the events described above have occurred in many First Nations across the province. While the Anishinabek Nation recognizes that efforts are being made to improve relationships between the OPP and First Nations, through initiatives like the OPP Bound program and the development of cross cultural training programs, more needs to be done.

Training is the beginning. However, there is a need to bridge the training that recruits receive, along with ongoing cross cultural training, with the day to day delivery of service. It needs to be tied to outcomes, measurable targets that can be evaluated, both within the OPP and within the First Nations that the OPP serves.

While the 2004 OPP business plan does incorporate supporting direction to First Nations involved in tripartite policing arrangements and “cultural competence”²¹, some areas are entirely overlooked. It is also difficult to determine how First Nations could measure any progress the OPP might make in reaching the goals it has established for itself within its work plan. First Nations have steadily maintained that accountability to the people, as recipients of the service, is lacking.

This is particularly evident in circumstances when front line and tactical units operate within First Nations territories. While public safety has to be paramount in any situation involving the police and the public, many First Nations people believe that when there is situation that requires a high level of police intervention, that situation is treated differently than if the situation were to occur in a non-native community.

Whether or not OPP and MNR enforcement activities within First Nations are carried out differently than in non-native communities is obviously debatable but it is clear that the prevailing feeling within First Nations communities is not up for debate. Many First Nations people believe that situations are often unnecessarily escalated because of the lack of understanding by tactical units or responding officers toward the people they are dealing with.

²¹ Ontario Provincial Police, “2004 Provincial Business Plan”, <http://www.gov.on.ca/opp/bplan/english/oppplanen2004.htm>, (March 12, 2005).

This attitude has been amplified by incidents that denigrate the very people the OPP have sworn to serve. Isolated events including the creation of trophies by members of the tactical unit at Ipperwash, the revelation of racist e-mails being distributed in northern Ontario and the event previously described at the Chippewas of the Thames only reinforce prevailing attitudes for some First Nations people.

The pattern of incidents across Ontario in the past ten years is deeply disturbing. While it must be acknowledged that efforts are being made and that many leaders, most notably Commissioner Boniface of the OPP, are providing leadership on bridging the gulf that exists between law enforcement agencies and First Nations people, there is much more that has to be done.

However, there are circumstances that point toward a changing attitude when it comes to investigation of serious occurrences in First Nations. On April 6, 2005 the Nipissing First Nation held a healing circle. The purpose of the circle was to help a local family heal from the effects following a murder in the community some months earlier. It was also held to discuss the social challenges that the small community was facing. At the circle, the investigating officers of the OPP were praised for their efforts to keep the community informed during the course of the investigation and the respect they showed to community members and were presented with gifts for the care and concern that they demonstrated during the course of their investigation. It also provided them with an opportunity to explain firsthand how the investigation was undertaken and how some laws, policies and procedures prevented them from sharing information with the community during the course of the investigation. On the whole, this left those who attended with a much clearer understanding of the role of the OPP during the homicide investigation.

5.1 The MNR Enforcement Branch

It is not only the OPP that needs to do more. Indeed, the MNR is viewed with much greater suspicion within First Nations than the OPP. The MNR enforcement branch in particular is considered by many First Nations people to have a mandate of harassing First Nations harvesters. The Ministry of Natural Resources has done little to address this perception and many First Nations continue to have a confrontational relationship with the

Ministry of Natural Resources today.

The UOI is deeply concerned that successive Ministers of Natural Resources and Solicitors-General for Ontario have not embraced this issue as a real problem. Other than continued talk about cross cultural training, there has been little meaningful work done to engage First Nations at senior management levels within the MNR, the Ontario Ministry of Community Safety and Correctional Services or the Ontario Native Affairs Secretariat.

5.2 The Need for Improved Policy Direction on First Nation Policing

Many Anishinabek leaders believe that it is a lack of political will on the part of the governments of Canada and Ontario that keeps law enforcement agencies from meeting the needs of the First Nation communities. This political will may take many forms from adequate funding of services and negotiations to policy development to working with First Nations leaders.

First Nation policing in Ontario is complicated and has a long history²². There are a number of different types of arrangements for the delivery of police services to First Nations people depending on geography, circumstance and what type of arrangements First Nations have chosen for public safety in their communities. However, many First Nations have suffered from a lack of adequate resources to police their communities, from a lack of policy direction and a lack of political will on the part of both levels of government.

The issues have certainly been identified and continue to be discussed at all levels, most recently at a meeting of federal, provincial and territorial Ministers responsible for Justice and Justice System Issues on January 25, 2005. At this meeting, the Ministers agreed that there was a need to work with Aboriginal partners to address Aboriginal justice issues including Aboriginal over-representation in the criminal justice system and as victims of crime and under-representation of Aboriginal people as police officers, judges and

²² For an excellent treatment of the history of First Nations policing in Ontario, refer to Philip C. Stenning, *Police Governance in First Nations in Ontario*, (Toronto: Centre for Criminology, University of Toronto, 1996)

lawyers²³. This is a commitment that has been made over and over again by successive provincial and federal governments. What has been lacking previously, and at this meeting, was a plan to get serious discussions going with Aboriginal leaders and community members. It is this approach of continually talking about the problems and not following up that has bred deep cynicism within Aboriginal communities.

5.2.1 The Federal Government's First Nation Policing Policy

The Aboriginal Policing Directorate of the Department of Public Safety and Emergency Preparedness Canada has had a First Nations Policing Policy (FNPP) since 1991. It states that the federal government is committed “to supporting First Nation to become self-sufficient and self-governing, and to maintaining partnerships with First Nations based on trust, mutual respect and participation in decision making”²⁴. This policy applies to all Indian reserves in Canada. The policy further states that First Nations peoples’ rights to personal security and public safety will be achieved through access to responsive police services that meet standards with respect to quality and level of service.

The policy principles reflect what many First Nations in Ontario want for their communities including quality and appropriate levels of service, responsibilities and levels of authority for First Nation Constables that are on par with other police officers, openness to First Nation culture, allowance for the First Nation to determine its most appropriate service model and police accountability²⁵. The other important element of the policy relates to funding for First Nation police services or contract policing for First Nations.

While the FNPP sets out a clear policy statement on the part of the federal government, there have been many deficiencies in its implementation. These deficiencies include a lack of resources for existing police services to deliver on the mandate of the policing policy and unwillingness to expand existing First Nation police services so more First Nations can become involved in First Nation policing.

²³ Canada Newswire Group, “Federal, Provincial and Territorial Ministers Responsible for Justice and Justice System Issues”, January 25, 2005. <http://www.newswire.ca/en/releases/archive/January2005/25/c6857.html>, (March 30, 2005).²⁴ Solicitor-General Canada, “First Nations Policing Policy”, Minister of Supply and Services 1996. 1. ²⁵ Ibid, p.4-5

5.2.2 The Need for an Aboriginal Policing Policy in Ontario

While the Government of Canada has had a First Nation Policing policy for almost fifteen years, the Ontario government does not have any policy with regard to First Nation policing in Ontario. As a result, First Nations have been left in the dark as to the province's long term plans for supporting the delivery of policing to First Nation communities. The Ontario government has been virtually bereft of any direction whatsoever in dealing with First Nations about the needs of their communities as it relates to policing in their communities.

Following the events at Ipperwash, it became extremely difficult for First Nations to communicate with the Ontario Ministry of the Solicitor-General. It would be more than a year before meaningful negotiations would resume at the Indian Commission of Ontario (ICO) on First Nation policing. While there was no official refusal to meet or communicate with First Nations, there was virtually no communication on negotiations or other issues between First Nation organizations and government. This, coupled with a policy vacuum, made making progress on improvements to First Nation policing impossible. Unfortunately, there has not been a measurable improvement to this date.

The lack of policy direction and resources has also affected the ability of First Nations to manage issues related to restorative justice and other community safety programs. First Nations have been left with a patchwork of proposal driven, under funded restorative justice programs that are generally temporary in nature²⁶. While the work of the community members and volunteers who participate in these programs should be lauded, the UOI is quite concerned that this approach is not beginning to meet the needs of community members and all too often, a program has to shut down just as it is beginning to gain acceptance in the community and undertake its real work.

This paper will explore the difficulties the UOI and other First Nations had in working with both levels of government on reaching a new First Nation Policing Agreement for the Province of Ontario.

²⁶ Aboriginal Healing and Wellness Strategy, "*Inventory of Aboriginal Community/Restorative Justice Programs*", Joint Management Committee, February 20, 2003, p.1.

5.3 Police Oversight and the Need to Support First Nation Institutions

Another source of consternation for Anishinabek people involves the administration of complaints processes and the perceived lack of disciplinary action following these sorts of events. First Nations people have not been afforded significant opportunities to participate in civilian oversight processes, particularly in circumstances where First Nations individuals or communities feel that they have a legitimate complaint. This has reinforced many prevailing attitudes toward the police that exist in First Nations.

Again, this is nothing new as illustrated by a summary prepared by the Assembly of First Nations in May 1991. The AFN had completed a review of the “*Indian Policing Policy Review*”, a report entitled “*Policing in Relation to the Blood Tribe – Report of a Public Inquiry*”, “*Justice on Trial – Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta*”, and the “*Royal Commission on the Donald Marshall Jr. Prosecution*”.

The themes the AFN identified in each of the reports could have been written today.

- increasing funding for on-reserve policing
- clarifying jurisdiction
- importance of sensitizing non-Aboriginal on-reserve police officers to the culture, language needs, and circumstances of First Nations
- increasing accountability of non-Aboriginal police forces to First Nations
- development of more Aboriginal police forces (the reports differ on the degree of autonomy envisioned)

- resolving problems experienced by existing Aboriginal police forces
- the need for at least an examination of alternative models of criminal justice including involvement of Elders and community members in sentencing, traditional modes of peace-keeping, and Aboriginal justice systems²⁷

²⁷ Assembly of First Nations, “*Summarization of Recent Reports and Public Inquiries on the Impact of Policing and the Criminal Justice System on First Nations*”, May 1991, p.9.

While this summary does not reflect on any Ontario specific reports, it is useful because it demonstrates that while these issues are widespread and involve multiple jurisdictions, there are common issues and concerns throughout.

The UOI has represented its member First Nations at tripartite discussions with Canada and Ontario for over 30 years. The Anishinabek have been directly involved with civilian oversight and police complaints processes through the negotiation of successive policing agreements beginning in 1981, through the Ontario First Nation Policing Agreement (OFNPA) in 1991 and creation of the Anishinabek Police Service (APS) in 1994 and its role as a party to the Ontario First Nation Police Commission.

5.3.1 The Stand Alone Police Services in Anishinabek Territory

The APS was the first regional stand alone police service for First Nations in the province of Ontario. It was negotiated following the successful negotiation of the OFNPA in 1992. The OFNPA was a framework agreement, under which, PTOs including UOI could negotiate stand alone policing arrangements to replace the OPP's First Nation and Contract Policing Branch.

In 1994, APS was initiated as a pilot project involving four First Nations²⁸ that were members of the UOI. In 1996, APS expanded to 13 additional communities and in 1997, it expanded once more to its present membership of 19 First Nations. These communities range from Fort William at the head of Lake Superior to the Chippewas of Kettle and Stony Point.

Although each First Nation joined APS for reasons of its own, many shared common concerns about lack of culturally appropriate service from the OPP, inadequate police presence locally and a desire for community policing.

Following the establishment of APS, the six First Nations on Manitoulin Island affiliated with the UCCM Tribal Council soon negotiated their own First Nation police service called the UCCM Police Service. The Wikwemikong Unceded Indian Reserve chose to

²⁸ Saugeen, Sagamok Anishnawbek, Garden River and Curve Lake are the four First Nations that initially stepped away from the OPP to form the APS.

negotiate a stand alone service due to its high population (over 3000 people reside on the reserve) and large geographic area (over 400 square kilometers).

The creation of these First Nations police services promised to change the way that First Nations people perceived law enforcement officials. However, each service had its share of growing pains as it wrestled with issues including adequate complement, jurisdictional disputes and lack of resources.

The vision for this police service was one of community policing, an approach to policing that more closely resembles the traditional role of peacekeepers within Anishinabek communities. This vision remains but has been frustrated by both levels of government imposing terms on new police services. The narrow mandates that the federal and provincial governments bring to negotiations have stifled the growth and potential of First Nation police services. In many instances, First Nation police services and communities have been left with “take it or leave it” as their only options when negotiating with the governments. Many believe that this approach has limited the opportunities that First Nations might have to design truly culturally appropriate policing services for themselves²⁹.

These services were negotiated prior to the election of the Harris government in 1995. This is significant because since 1995, there has only been one new First Nation police service negotiated. Until very recently, efforts to expand existing First Nations police services have been met with frustration and lack of any meaningful progress. Officer complement levels for First Nations under OPP administration are at the same levels they were in 1995, with the exception of an additional 7 positions negotiated by the UOI, the Association of Iroquois and Allied Indians (AIAI) and the Chippewas of Nawash in 2000.

²⁹ The Epilogue in Stenning’s “*Police Governance in First Nations in Ontario*” covers this issue much more thoroughly than could be accomplished here.

6.0 Frustration for First Nations Under the OFNPA

While a number of stand alone police services have been established under the OFNPA, there remain at least 15 First Nation members of the UOI that are pursuing alternative policing arrangements in order to improve the level of service in their communities. These communities are served either by First Nations Constables administered through the OPP or are serviced directly by the OPP.

The OFNPA was signed in 1992 (a year after it was supposed to be implemented) and expired on March 31, 1996. It was and is a multi-party tripartite agreement that serves as a mechanism for First Nations to determine the type of policing arrangements they feel best suits the needs of their communities³⁰. It is also the only mechanism to implement the cost sharing arrangement between Canada and Ontario for First Nations police services administered under the OPP program. Under the cost sharing arrangement, Canada pays 52% of the costs of policing and Ontario pays the remaining 48%. This formula is consistent for all First Nation policing in Ontario, however, stand alone police services receive these funds directly from the governments. There is no administration by OPP for these stand alone services.

Discussions to renew the OFNPA following its expiry in 1996 have been underway since 1995. Until 2003, it had only been renewed annually through addendums to the agreement, with only one enhancement to complement during that period of time. This has been a cause of consternation and serious concern for First Nations leaders that want better police service for their communities. First Nation negotiators have continually questioned the political will of the governments. The 2003 agreement offers some critical enhancements but has still been criticized as offering too little for many First Nations. It offers only six new policing positions in the next three years. Of those six positions, two will be shared amongst Anishinabek First Nations. It also stipulated that the Ontario First Nation Police Commission would close effective March 31, 2004. However, there is a

³⁰ The Parties to the original OFNPA were the Solicitor-General of Canada, the Solicitor-General of Ontario, Six Nations of the Grand River, Nishnawbe-Aski Nation (NAN), the Grand Council of Treaty #3 (GCT #3), the Association of Iroquois and Allied Indians and the UOI. Six Nations, NAN and GCT#3 subsequently withdrew from the OFNPA once negotiations for stand alone policing arrangements for their respective communities were complete.

one million dollar enhancement in the third year of the agreement but no mechanism to carry the agreement forward after that period. It is anticipated that any First Nation not involved in First Nation policing will have to join an existing police service after that time³¹.

For the past nine years, First Nations that are not a part of a stand alone regional police service have largely been ignored. Since 1995, their efforts, and the efforts of the UOI as lead negotiating body, have consistently been met with indifference and a lack of dedicated resources by both levels of government. This has left many Chiefs and Councils frustrated with the lack of progress and dissatisfied with the status quo³².

The Solicitors-General for the Provincial and Federal Governments have alternatively attended negotiations without mandates to properly resource the needs of First Nations who rely on the OPP First Nation Policing Program. Since 1995, there have been no less than nine different negotiators at the policing discussions on behalf of the Government of Ontario³³ and no less than nine for the Aboriginal Policing Directorate of the Solicitor-General Canada³⁴. Clearly, the OFNPA was not a priority for either level of government. Whenever one of the government negotiators was replaced, it would not be unusual for a three to six month delay in discussions to result as the new negotiator took time to review the files and prepare for meetings. It must also be mentioned that these negotiators were often responsible for carrying out negotiations with more than one First Nation police service at a time. Another result of frequent changes of negotiators was a lack of corporate memory within governments, particularly Ontario.

This very often left First Nation negotiators with the cynical feeling that the governments were deliberately shuffling the negotiators to stifle progress and prevent meaningful dialogue. Another factor that frustrated progress was a lack of a clear mandate to negotiate on the part of Ontario in 1995-96 and later by the federal government. These

³¹ Union of Ontario Indians, "*Ontario First Nations Policing Agreement Briefing Note*", Apr. 7, 2004. 1. ³² See Appendix B for a chart outlining the number of requests made the Governments of Canada and Ontario and UOI regarding enhancements to First Nation policing in Anishinabek First Nations. ³³ The negotiators for the province were Ron Fox, Scott Patrick, Mark Callahan, Paul Laing, Robin McElary-Downer, Pierre Chamberlain, Hugh Stevenson, Rick Stuivenburgh and Ron Bain (present). ³⁴ The negotiators for Canada were Elizabeth Tromp, Lewis Staats, Lynda Clairmont, Pierre Goulet, Kathy Wilde, Pam Menchions, Diana Jardine, Bonnie Glancy, and Ray Levesque. The Director of the Aboriginal Policing Directorate, Peter Fisher, was also involved in OFNPA negotiations on occasion.

issues were communicated to both governments and the ICO, which was responsible for providing neutral facilitation of the discussions.

The frustration the First Nation negotiators were expressing was acknowledged by Scott Patrick, Special Advisor for the Ontario Ministry of the Solicitor General on May 30, 1996 in a letter to the Indian Commissioner of Ontario, Philip Goulais. He states “I appreciate that there has been increasing frustration expressed by the policing negotiators regarding Ontario’s delay in proceeding with the negotiations. I share that frustration and want to ensure you that every effort is being made to ensure that Ontario has the ability to participate in a fuller sense in the near future³⁵”. Mr. Patrick went on to add that this correspondence could be shared with the parties to the policing agreements.

On July 13, 1999 Grand Council Chief Vernon Roote wrote to Philip Goulais at the Indian Commission of Ontario (ICO) to complain about the length of time it was taking to complete negotiations of the OFNPA.

“As you well know, this process has dragged on for more than four years without measurable progress. There are a number of reasons for this lack of progress but two primary factors are the government representatives keep changing and since June 1995, Ontario’s mandate has severely limited our ability to discuss issues that might see a successful conclusion to negotiations...

However, those communities covered by the OFNPA that the Deputy Grand Chief and I work with have an expectation that their communities will be provided with appropriate level of service and that the agreement will reflect their needs.³⁶”

Prior to sending this letter to Commissioner Goulais, Grand Council Chief Roote had written to Minister David Tsubouchi complaining about the same issue. He stated “Ontario’s negotiators have been unable to contribute very much to the negotiation process as their mandate is narrow and has never been clearly articulated at the negotiation table. This has led to frustration and mistrust at the negotiations; a situation

³⁵ Patrick, Scott. Letter to Philip Goulais, Commissioner, Indian Commission of Ontario. 30 May 1996. ³⁶ Roote, Vernon. Letter to Philip Goulais, Commissioner, Indian Commission of Ontario. 13 July 1999.

that, I am sure you will agree, does not lend itself to productive and fruitful discussions³⁷”.

On September 21, 1999 First Nation leaders would communicate these concerns directly to Minister Tsubouchi in a face to face meeting at the Minister’s Office in Toronto. The three main issues discussed at the meeting were the shortfall of funds for First Nations Constables and the OFNPA, the shortfall in policing services being experienced by First Nations within the Anishinabek Nation and the lack of progress in negotiations. The leaders present at the meeting urged the Minister to expand the negotiation mandate and to attend a special meeting called by the ICO to have the Grand Chiefs and Solicitors-General discuss the state of First Nation policing in Ontario³⁸.

Commissioner Goulais did exercise his authority under the Orders in Council for the ICO and called the emergency meeting. His correspondence to the Solicitors-General and the Grand Chiefs captured the essence of the problems being experienced at the OFNPA negotiations.

The Commission believes that it is critical to allow negotiations with the ICO to take their course, permitting the parties themselves to negotiate an outcome that meets all sides’ interests. However, since June 1996, the negotiators at the OFNPA table have proved unable to resolve the key issue of complement size. This has left the process without even a first draft of an agreement to renew the policing agreement that expired on March 31, 1996. Indeed at the moment, there is not even a written understanding that provides for the continuation of the status quo. As Commissioner, over the past nine months I have attempted to assist the parties to move beyond the current impasse by meeting separately with senior management and political leaders from all parties. Unfortunately, this has not led to a resolution of the issues and it is clear to me that the parties’ existing mandates do not permit such a resolution. Accordingly, it is necessary to have recourse to the Commission’s Orders in Council, a power I exercise rarely. As you know, the last time Ministers and Grand

³⁷ Roote, Vernon. Letter to David H. Tsubouchi, Solicitor-General of Ontario. 28 June 1999.

³⁸ Union of Ontario Indians, “*Draft Briefing Notes: Minister of Solicitor General and Anishinabek Policing Meeting*”, September 15, 1999. 1.

Chiefs were brought together under this power, the meeting was a successful one, overcoming a six month impasse and leading to the signing of the 1991-1996 Ontario Wide Policing Agreement³⁹. This request was reiterated on October 15, 1999, however, a full meeting of the Ministers and Grand Chiefs never occurred. In March 2000, the federal and provincial governments failed to come to an agreement on renewing the ICO Orders in Council and the Commission was shut down. To date, there is no process in place for tripartite discussions.

This pattern continues today, leaving First Nations with few options. According to Rick Stuivenburgh, the Special Advisor for First Nations Policing in the Ministry of Community Safety and Correctional Services, there is no process for First Nations currently policed by the OPP to be considered for participation in an existing stand alone police service⁴⁰. They can join an existing stand alone police service, most likely APS, or they can continue with the status quo.

While a three year agreement for a new OFNPA was reached in 2003, the needs of First Nations are still not being adequately met and the pace of discussions continues to be slow. The last meeting between the UOI and representatives of Canada and Ontario took place on May 28, 2003. Many of the commitments made at that meeting are still not implemented and despite the repeated requests of the UOI, there are no meetings anticipated in the near future.

6.1 Closure of the Ontario First Nations Police Commission

In March 2004, First Nations in Ontario were dealt another blow when the Ontario First Nations Police Commission (OFNPC) was closed following a decision by the Governments of Canada and Ontario. The OFNPC was established as a part of the OFNPA and was to have been considered to have its Terms of Reference and composition made the subject of joint Orders in Council. Despite repeated requests from

³⁹ Goulais, Philip. Memorandum to Chief Ralph Akiwenzie, Honourable James Flaherty, Grand Chief Charles Fox, Grand chief Leon Jourdain, Honourable Lawrence MacAulay, Honourable Robert Nault, Grand Council Chief Vernon Roote, Grand Chief Larry Sault, Chief Wellington Staats, Honourable David H. Tsubouchi. 1 November 1999. p.2.

⁴⁰ Stuivenburgh, Rick. Letter to Deputy Grand Chief Nelson Toulouse. 2 March 2004.

First Nations negotiators as a part of the OFNPA renegotiations, the governments never seriously considered developing these Orders in Council.

The OFNPC was initially highly regarded by the Chiefs and both the provincial and federal governments as an agency that could assist with involving First Nations in civilian oversight of police and public complaints about First Nations policing as well as complaints about OPP. Many Chiefs brought their concerns to the OFNPC regarding specific incidents between police and First Nations or their members. The commission also heard concerns from First Nations about levels of police service in First Nations, policing policy (or lack thereof) and other issues involving OPP or First Nation police services. However, the OFNPC never officially had a mandate for civilian oversight of the OPP or First Nations police services, nor did it officially serve as a public complaints body. Later in its mandate, there were also discussions about having the OFNPC act as an information resource centre for First Nations and First Nation police services.

However, it was the lack of movement with regard to OFNPA discussions, coupled with a lack of support from both levels of government that ultimately resulted in the closure of the OFNPC.

6.1.1 The Role of the Ontario Native Affairs Secretariat

Discussion of the Anishinabek Nation's views toward how Ontario has managed to engage First Nations in meaningful dialogue on law enforcement issues would be incomplete without a brief discussion of how the mandate of the Ontario Native Affairs Unit changed dramatically under the Harris government from its previous role under the NDP government.

On August 6, 1991, Premier Bob Rae and Minister Responsible for Native Affairs, the Honourable Bud Wildman, along with First Nation Chiefs and Grand Chiefs, signed the Statement of Political Relationship (SPR). The SPR was a defining moment for First Nation/provincial relations in Ontario. For the first time, the government of Ontario had formally recognized the rights of First Nations in the province and to “facilitate the further articulation, the exercise and implementation of the inherent rights of selfgovernment⁴¹”.

Unfortunately, there was no framework to follow up on the commitments made in the SPR. As a result, when the Tories came to power in 1995, they simply ignored the SPR and narrowed the mandate of the Ontario Native Affairs Secretariat (ONAS). ONAS had previously played an important part in facilitating dialogue between line ministries and First Nations. However, under the Harris government, the mandate of ONAS was very straightforward – focus on economic development and making First Nations self-sufficient. Ontario’s mandate for the negotiation of outstanding land claims was also affected by this change in policy. The result was a cut in staffing levels, reduced communication with First Nations and a reduction in support for First Nations organizations and the ICO.

There are signs that under the new Liberal government, things are changing, albeit awfully slowly. ONAS has been directed to take the lead on developing a “new policy approach to Aboriginal issues⁴²”. This process has proven to be very slow in its development with little to show with more than a year passing since it was announced.

Involving First Nations in policy development has to become an essential element of the mandate of ONAS. First Nations must be consulted and involved in policy and legislative development that has the potential to affect their communities and their people.

ONAS also has an essential role to play in working with First Nations, PTOs like the UOI and off reserve Aboriginal organizations to improve communication between government and First Nations people. This is particularly important during negotiations for the resolution of land claims.

It is critical that Ontario’s Aboriginal Policy seriously consider the needs and concerns of First Nations people while the new policy approach is being developed. This is an opportunity too important not to be taken seriously. ONAS has to engage First Nations

⁴¹ Statement of Political Relationship. August 6, 1991.

⁴² Ontario Native Affairs Secretariat, “Aboriginal Policy”.

<http://www.nativeaffairs.jus.gov.on.ca/english/policy/policy.htm>. (March 31, 2005).

and their representative organizations in serious dialogue to develop a framework for resolution of outstanding issues. This is particularly important in light of the closure of the ICO and the OFNPC in recent years. The avenues for First Nations to have their issues heard and addressed have disappeared in this province.

That being said, it is equally important for First Nations and their representative organizations to be ready and willing to respond when the government seeks input. PTOs in particular must work together and with the government to ensure that the people who they purport to represent have their voices heard.

7.0 Conclusion

While there is a long and often turbulent history between First Nations and law enforcement agencies in the province of Ontario, there is ample evidence that things are changing for the better. One can cite the recent events at Nipissing First Nation, the efforts that OPP has made to reach out to First Nations under Commissioner Boniface's leadership and the willingness of First Nations to participate with the law enforcement agencies in training as positive examples of a new way of communicating and understanding between First Nations and law enforcement agencies. In many circumstances, the environment is changing so quickly that it is difficult to communicate all the change that is occurring. And while some challenges are being overcome, new tests and problems arise continually. The key to moving forward will be adaptability of services, flexibility in planning and policy development and strong communications.

8.0 Recommendations

8.1 Cross Cultural Training and Community Outreach

Ontario government line ministries and the OPP should be mandated to ensure First Nation participation in cross cultural training at the local and regional levels. This will ensure that local concerns and issues are addressed through training processes. PTOs and many First Nations possess the capacity to develop this curriculum to ensure it reflects the local reality and in many circumstances, are equipped to deliver the training.

Police and the MNR Enforcement Branch should develop mechanisms that evaluate the effectiveness of current cross cultural training programs and tie that training to indicators and targets. Management should be evaluated based on the effectiveness in meeting these indicators and targets. Tools should be developed that communicate the effectiveness of cross cultural training to local Chiefs and Councils as well as First Nation PTO's. First Nation PTO's possess the information and have the expertise to develop these training models and programs.

OPP tactical units in particular should be sensitized to the unique cultural needs and circumstances of First Nations and their citizens. Following an enforcement action by a tactical unit, First Nation leadership should be provided with a briefing on the actions and their outcomes whenever possible.

Programs that support increased interaction and involvement between First Nations youth and law enforcement agencies in positive circumstances, such as the OPP Bound program, should be developed and strengthened. First Nations and PTOs should be brought in to design and implement these programs jointly with the OPP.

8.2 Accountability

Through a joint process, a review of the effectiveness of past MNR enforcement operations should be undertaken. A study of the success or failure of "Operation Rainbow", more than ten years after the sting, could prove very beneficial for all parties involved. This review should include the cost of these sorts of operations, the number of investigators involved, the rationale for the investigations and if the investigations met their goals. The lasting impact on First Nation/MNR relations following these operations should also be reviewed.

- A First Nation law enforcement oversight process must be developed in Ontario that can review the activities of any police service working in First Nation communities. Existing law enforcement oversight processes do not adequately address the needs of First Nations. This process can build on past successes and examine shortfalls that led to the closure of the Ontario First Nation Police Commission.**

The MNR should be compelled to make readily available upon request (without having to go through a freedom of information request) , on an MNR district by district basis, the amount of resources expended on enforcement activities related to natural resources management. Further, these reports should outline how much the MNR spends on investigations, enforcement activities and prosecutions of First Nation

harvesters. This transparency provides a level of information for First Nations and the MNR to begin dialogue on specific issues and natural resource management activities. It also holds MNR accountable for the expenditure of public funds.

8.3 Policy Development and Negotiations

The tripartite process to discuss jurisdictional and Aboriginal and treaty rights issues in Ontario must be restored and renewed.

The Ontario government must develop an Aboriginal policing policy. A exceptional opportunity exists to develop this policy in partnership with First Nations and PTOs.

Increased complement and resources are required for First Nation police services in Ontario. Both the federal and provincial governments must commit additional resources to First Nation policing and provide clear negotiation mandates to their negotiators.

Both the federal and provincial governments should support First Nations that want to increase their capacity to manage natural resources in their traditional territories. This may include measures such as the development of a First Nation Conservation Officer program in Ontario. This program should be developed jointly with First Nations and PTOs. This may be viewed as an interim step until First Nations develop the capacity to fully manage the exercise of Aboriginal and treaty rights.

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The Author

Dwayne Nashkawa is a member of the Chippewas of Saugeen First Nation. He is currently employed as the Executive Director of Nipissing First Nation, located between North Bay and Sturgeon Falls on the shores of Lake Nipissing. Dwayne has been active in First Nation advocacy and governance since his graduation with a B.A. in Native Studies and Political Science from Laurentian University in 1995.

Dwayne was a Policy Analyst and later Director of Intergovernmental Affairs for the Union of Ontario Indians from 1995 until 2003 where he coordinated treaty research and participated in numerous tripartite resource management negotiations and tripartite policing negotiations. Dwayne worked with more than forty First Nations during his time with the Union of Ontario Indians and sat on numerous committees and working groups within the Robinson-Huron and Robinson-Superior treaty areas, the Chiefs of Ontario Office, the Indian Commission of Ontario and the Assembly of First Nations.

Appendix “A” – Anishinabek Nation Map



Appendix “B” - Anishinabek First Nations’ Requests for Enhancements to Police Services

First Nation	Date	Author	Intended Recipient	Request	Correspondence Type (Letter, BCR)
Alderville	November 19, 1996	Chief Leonard Gray	Deputy Grand Chief Vernon Roote	Enhanced Policing for First Nation	Letter
Alderville	April 11, 1997			Policies for membership of APS	BCR
Alderville	June 2, 1997			Join Anishinabek Police Service	BCR
Golden Lake (Pikwakanagan)	January 31, 1995			Support for introduction of FN police constables on FN’s	BCR
Golden Lake (Pikwakanagan)	February 10, 1995	Irvin Sarazin		Support the establishment of APS in Golden Lake	Letter
Golden Lake (Pikwakanagan)	February 2, 1995	Sgt. J.W. Graham	NNADAP Coordinator Irvin Sarazin	Letter of Support	Letter
Chippewas of Georgina Island	July 6, 2001	Grand Council Chief Vernon Roote	Chief Bill McCue	Provided one constable position for Georgina Island	Letter
Chippewas of Georgina Island	October 8, 1999	Eugene Manitowabi	Robin McElary-Downer, Manager FN Policing Section	Secondment of Paul Trivett	Letter
Chippewas of Georgina Island	September 28, 1999	Robin McElary-Downer	Ontario First Nations Police Commissioner	Secondment of Sergeant Paul Trivett	Letter
Chippewas of Georgina Island	January 8, 1998	Deputy Grand Chief Eugene Manitowabi	Inspector Paul Laing	Concerns raised by Georgina Island Policing Committee regarding FN constables	Letter
Chippewas of Georgina Island	December 17, 1997	Patricia Big Canoe	Deputy Grand Chief Eugene Manitowabi	Information requested	Letter
Chippewas of Georgina Island	October 22, 1997			Consent to adopt guidelines for Georgina Island Police Constables	BCR
Chippewas of Georgina Island	January 19, 1998	W.J. Crate	Deputy Grand Chief Eugene Manitowabi	Concerns of the Georgina Island Police Committee	Letter

First Nation	Date	Author	Intended Recipient	Request	Correspondence Type (Letter, BCR)
Chippewas of Georgina Island	November 21, 1997	Hugh Big Canoe	Vernon Roote	Request for funding for third constable for Georgina Island.	Letter & BCR
Dokis	April 23, 2001	Chief Tim Restoule	Honourable Lawrence McAulay, M.P.	Tripartite Negotiations between Ontario, Canada and Dokis	Letter
Dokis	April 4, 2001	Chief Tim Restoule	Dwayne Nashkawa	Obtaining police services from OFNPC.	Letter
Dokis	September 14, 1999	Michael A. James	Mr. Mark Callaghan, Special Advisor, First Nations	Calling for the removal of Callaghan as Provincial negotiator	Letter
Dokis	September 17, 1999	Michael A. James	Mr. Mark Callaghan	Anishinabek Police Service Agreement	Letter
Dokis	March 28, 1998	Chief Jack Restoule	Mr. Ken Dokis, Policing Coordinator	Request for extra compliment Dokis First Nation police	Letter
Fort William	August 30, 1994	Chief Christi Pervais	Joe Hare/Peter Akiwenzie	U.O.I to lobby on behalf of FWFN.	Letter
Kettle & Stony Point	December 11, 1992	Chief Thomas Bressette	Philip Goulais, Commissioner	Appointment of Miles C. Bressette, Chief of police	Letter & BCR's
Long Lake	November 6, 2000	Deputy Grand Chief Nelson Toulouse	Chief of Police, Glen Bannon	Long Lake #58 First Nation Policing Issues	Letter
Long Lac	October 26, 2000	Chief Veronica Waboose	Grand Council Chief Vernon Roote	APS Police concern for Long Lac	Letter
Long Lac	September 18, 2000			Authorization to circulate letter/bulletin of community concerns	BCR
Long Lac	October 10, 1995			Transfer to Anishinabek Police Service	BCR
Mississauga	November 11, 1999	Deputy Grand Chief Eugene Manitowabi	Chief Larry Boyer	First Nations Policing	Memorandum
Mississauga	November 5, 1997			First Nation Constable Program	BCR
Mississauga	August 22, 1994	Chief Doug Daybutch	Joe Hare	Proposal for policing services with Minister of the Solicitor General	Letter

First Nation	Date	Author	Intended Recipient	Request	Correspondence Type (Letter, BCR)
Scugog	July 15, 1996	Chief Gary Edgar	Bill McCue, Southeast Chief	Funding for full time police officer	Letter
Munsee-Delaware	March 11, 1996			Apply to APS for 2 constables	BCR
Ojibways of Pic River	June 12, 1995			Transfer to APS to negotiate and operate a police service	BCR
Pays Plat	January 10, 1996			Special Constable for Pays Plat	BCR
Red Rock	June 28, 1995			Participation in the Anishinabek Police Service	BCR
Red Rock	January 25, 1995			Establishment of Mr. Dan Legarde Sr. as Special Reserve Constable	BCR
Serpent River	July 21, 1993	Chief Earl Commanda	Mr. Wally McKay, Chariman	Establishing First Nation Constable	Letter
Serpent River	July 20, 1992			Support for Serpent River to acquire their own compliment of constables	BCR
Walpole Island	November 27, 1991	Deputy Chief Glen Hare	Ontario First Nations Police Commission	Adequate police service and representation	Presentation
Whitefish Lake	October 3, 2000	Dwayne Nashkawa	Chief Gail Shawbonquit	Whitefish Lake FN Policing Request	Letter
Whitefish Lake	September 12, 2000	Chief Gail Shawbonquit	Grand Council Chief Vernon Roote	Requesting update on two additional FN Constables	Letter
Whitefish Lake	December 14, 1995	Chief Dean Nebenionquit	Deputy Grand Chief Vernon Roote	Proposal for Ontario First Nations Police Commission	Letter
Whitefish Lake	December 13, 1995			Additional two First Nation Constables	BCR
Wikwemikong	Novembe 25, 1991	Clayton Shawana, General Manager	Mr. Wally McKay, Chariperson	Additional compliment for four new FN police Constables	Letter
Wikwemikong	January 29, 1991			Request for Four additional FN police officers	BCR
Wikwemikong	April 5, 1991			Acquire services to undertake re-organization of WFN Police	BCR