

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

REPLY ON BEHALF OF THE ONTARIO PROVINCIAL POLICE

AND ITS SENIOR OFFICERS

PART II

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INTRODUCTION

1. The OPP Part II Reply follows. As indicated in the Overview to Part I, this Reply is organized into Sections, each of which addresses the submissions made by a particular party to the Inquiry. The Reply is organized to address, first, the submissions by Part II parties (in the order in which they will present oral submissions), and second, the submissions by the other parties.

2. Some of the Part II recommendations made by parties to the Inquiry are similar to those made by other parties. The OPP has reproduced its response in each of the Sections devoted to those parties. Naturally, this means that the OPP Part II Reply contains some duplication. However, it was felt, on balance, that this approach would assist the Inquiry and the parties in identifying the OPP's response to each of the parties' recommendations, without having to constantly refer back to other Sections of the Reply.

MENNONITE CENTRAL COMMITTEE ONTARIO

3. The Committee's submissions refer to recommendations that came directly from the public meeting held at the Thedford Arena. It notes that six of the eight recommendations made to the Inquiry that evening had to do with the actions of the police, many of them already or in the process of being implemented by the OPP, including mandatory preservation of officers' notes, stronger use of Aboriginal officers to police Aboriginal communities, and the need to communicate effectively with the whole community during a critical incident. The seventh recommendation was "the oft-repeated and still true need for timely settlement of outstanding claims."

4. Drawing further from the public meeting, the Committee suggests the need for two fundamental changes: First, "the relearning of the history of our being welcomed to this land;" second, "a thorough ongoing effort to rebuild or simply build strong, honest, informed relationships with First People who are our neighbours."

5. We agree. The first accords with the OPP's recommendation to promote public education on Aboriginal issues. The second accords with the OPP's position that everyone, including communities, must become engaged in building respectful relationships, not just the police. As the Committee notes, "when

communities know, understand and trust each other, they will not need to so quickly depend on the professionals from police departments and federal ministries to step in to resolve local issues.”

AMNESTY INTERNATIONAL

6. Several of Amnesty International's recommendations address the need to ensure fair and timely resolution of outstanding disputes over Indigenous land and resources, as emphasized by the Royal Commission on Aboriginal Peoples. One recommendation urges Commissioner Linden to press the federal and provincial governments to acknowledge that the constitutional division of powers must not be a barrier to the protection of human rights and to therefore develop a more coordinated approach to ensuring the protection of the rights of Indigenous peoples in Canada.

7. As reflected in the OPP Part II submissions, the OPP strongly supports priority being given to the speedy and just determination of Aboriginal claims, and that adequate resources (financial or otherwise) be directed to the resolution of Aboriginal issues. (recommendations 4-5) The OPP's recommendations 17-19 also accord with Amnesty's position summarized above by suggesting that the provincial and federal governments develop policies that complement and support the Framework's approach to Aboriginal occupations and protests, and that both governments consider the creation of a process to enable them to resolve, in a timely way, disagreements between them about their share for past actions of the Crown.

8. At page 11 of its submissions, Amnesty International comments on the lack of efficacy of traditional court injunctions, including those issued *ex parte*, to adequately consider Aboriginal and inherent rights, and reduce the likelihood of conflict with the police or other law enforcement officials. The OPP has addressed this issue in paragraphs 56-61 of the Part II Submissions, reflecting a more nuanced position on court injunctions, including the recognition that in some circumstances, applications for injunctive relief, the timing of such applications, or the terms of any injunctive relief, may not ultimately advance public safety and order, but may exacerbate tensions and actually inhibit the expeditious and peaceful resolution of the issues. This is why the OPP has recommended that governments should develop policies that articulate the factors that inform the approach to applying for, or supporting, injunctive relief, and the timing of such applications. The preservation of public order and safety should figure prominently in these policies. (recommendations 17-18)

9. Commencing at page 13, Amnesty International addresses policing issues. It cites the guiding principles for law enforcement officials as outlined, in part, in the United Nations Code of Conduct for Law Enforcements Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The OPP accepts that these documents correctly and usefully set out principles that inform OPP training and conduct.

10. Amnesty International's submissions speak to the "criminalization of

Indigenous protest”. The point is validly made that police must recognize their obligation to protect the rights of individuals to protest and that enforcement actions should have due regard to the social and cultural context of the protestors. The Framework specifies addresses this point, as does OPP training on its use. The OPP does not agree with Amnesty International that the use of large numbers of deployed officers, sometimes heavily armed, tactics based on encircling and containment, and high levels of surveillance demonstrate that police have “criminalized” the protest or necessarily increase the likelihood that excessive force will be used. Sadly, in the OPP’s experience, peaceful protest has attracted, both in the Aboriginal and non-Aboriginal context, violent elements on all sides. Indeed, the evidence at this Inquiry reflected repeated concerns expressed by members of Aboriginal and non-Aboriginal communities (including protestors) that their perspectives not be undermined by violent elements or vigilantism.

11. Having said that, the OPP recognizes the importance of ensuring that generalizations about all protestors or their opposition are not made. The OPP also recognizes that the public response to Aboriginal occupations or protests often involves the labeling of all protestors as criminals without distinction, which does not contribute to the peaceful resolution of such incidents.

12. Amnesty International welcomes new training requirements introduced within the OPP since Ipperwash, the recognition in the Framework that the OPP

must make every effort to understand the issues and protect the rights of all involved parties, and the introduction of significant structural reforms such as the Aboriginal Relations Team and the deployment of a Critical Incident Mediator. Amnesty International submits that it is unclear how well the new direction has been institutionalized and acculturated within the OPP, and that there is an urgent need for an independent evaluation of the Framework and its implementation, particularly within the context of Caledonia. The related point is made that training requirements must also be independently evaluated to determine the extent to which officers have successfully been sensitized to these issues.

13. As reflected in paragraph 92 of the OPP Part II Submissions, and drawing upon a recommendation from the Chiefs of Ontario, Commissioner Boniface agreed that input and guidance from First Nations leadership on developing assessment tools would be welcome, over and above that currently offered through the Commissioners' Select Liaison Council on Aboriginal Affairs. This is in addition to the internal mandatory assessments that now take place for Aboriginal critical incidents and Level 2 incidents. (OPP Part II Submissions, paras. 87-90)

14. As for training, the longitudinal study currently underway is designed, amongst other things, to evaluate the extent to which officers have been sensitized to these issues. The involvement of Dr. Karen Mock and the Canadian

Race Relations Foundation in the OPP Native Awareness Training also provided important input on that training. (OPP Part II Submissions, para. 123)

15. As for Caledonia, the matter is ongoing. However, it must be emphasized that the OPP's position and its approach to that dispute is well known. There is a high degree of transparency associated with that approach already, even in the absence of independent review. And the OPP strongly believes that its approach accords with the principles identified in the Framework. We are grateful to First Nations leadership that has recognized this approach. For example, Grand Council Chief John Beaucage recently said this:

The Ontario Provincial Police are acting as true 'peace officers' in their role at Caledonia. There is great honour in showing restraint and making good decisions. Being a peacekeeper shouldn't be considered by anyone to be shameful, a sign of weakness or supporting lawlessness.

16. Amnesty International notes that the Framework calls for strategies that minimize the use of force to the fullest extent possible, but relies principally on mediation. It is contended that the Framework, the Ontario *Police Services Act*, or Regulation 926 to that Act fail to adequately address when force, particularly lethal force, may be used. Regulation 926 currently states that "A member of a police force shall not draw a handgun or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm."

17. In response to questions from Mr. Rosenthal, Commissioner Boniface took no objection to a potential amendment to Regulation 926 that would impose a similar limitation on pointing any firearm.

18. However, there are significant limitations upon the extent to which the provincial government can or should legislate the amount of force that can lawfully be used. The degree of lawful force that can be used is specifically addressed by a number of sections of the *Criminal Code of Canada*, and the jurisprudence that interprets those sections. Further, the *Criminal Code* and the jurisprudence support case-specific determinations of whether force used was excessive in the circumstances, rather than further legislation. Amnesty International's proposal would create distinctions between permissible uses of force in Ontario and elsewhere in Canada.

19. Finally, the Framework must be read together with policies that specifically address Gradual Application of Force, consistent with the use of only so much force as is necessary in the circumstances.

20. Amnesty International then discusses "unbiased policing." It notes that the present Inquiry has heard testimony concerning racist remarks and behaviour by individual officers involved in the Ipperwash incident. It also suggests that the nature and scale of the police response is suggestive of suspicion, mistrust and possibly even hostility toward Indigenous protest. With respect, the nature and

scale of the police response at Ipperwash can be (and has been) the subject of fulsome debate at the Inquiry. However, the evidence overwhelmingly demonstrates that racism played no part in the decision-making process at Ipperwash; nor can it be said that the OPP showed suspicion, mistrust or hostility towards peaceful protest. On the contrary, the OPP and its senior officers, including the Incident Commander, demonstrated respect for peaceful protest, whether it was seen as having merit or not. Nor are sweeping generalizations about racist remarks by those *involved* in the Ipperwash incident helpful. This conduct has been fully addressed in the OPP Part I Submissions and need not be further addressed here.

21. Amnesty International notes that cultural sensitivity training is welcome, but that surveys from some forces have shown that biased attitudes worsen after officers take sensitivity training. The OPP has addressed this concern in a variety of ways: First, cross-cultural training utilizing academics or advocates may often be ineffective; the OPP uses Aboriginal police officers in an experiential environment, a best practice identified in the Hylton paper cited by Amnesty International. Second, the OPP training is not a one-time event (another identified deficiency in such training), but extends across the OPP and through the life of each OPP officer, coupled with a selection and recruitment process designed to eliminate racist or intolerant candidates. (OPP Part II Submissions, paras. 117 “Native Awareness Training” and 131-143, most particularly footnote 21)

22. On the issue of accountability and oversight, Amnesty International expresses the concern that “as revealed by the handling of complaints of abuse and ill-treatment during the Ipperwash confrontation, the civilian SIU of the OPP is constrained in its mandate and operations in such a way that has limited its effectiveness in dealing with non-lethal abuses.” It acknowledges that the SIU is nonetheless an indication of the feasibility of a robust and impartial civilian oversight of police operations.

23. The SIU fully investigated the use of non-lethal force by officers who discharged their firearms, and found the force to have been justified in self-defence. The original SIU investigation into the Cecil George incident was deficient, for reasons unrelated to its mandate or operations. At the insistence of the OPP, the matter was fully re-investigated. The displeasure voiced by some over the conclusions of the SIU do not translate into some inability to address non-lethal abuses. There is no evidentiary foundation at this Inquiry to support changes to the SIU, its mandate or operations. As for Amnesty International’s belief in a strengthened civilian police oversight mechanism, Bill 103 contemplates such a mechanism.

24. Amnesty International ends with eight recommendations with respect to policing, largely summarizing its earlier submissions.

1) When legal uncertainty exists over the exercise of Aboriginal rights, government officials have an obligation to seek a peaceful and just resolution of the dispute through an appropriate legal or negotiation process in which the rights of Indigenous peoples can be given full consideration. Where disputes over rights have not yet been settled, police should be deployed only as absolutely necessary and for the sole purpose of protecting public order and safety.

25. We agree. This represents current OPP Policy contained in the Framework and incorporated into its Police Orders.

2) Police training should include scenario-based training on the appropriate tactics to uphold human rights in the policing of Indigenous land and resource protests.

26. We agree. For example, applicants for Level 2 Incident Command positions must successfully complete seven mandatory fields, including managing Aboriginal issues. Their assessment includes one scenario involving the application of the Framework. As reflected in the OPP Part II Submissions, instruction for ERT (POU) members and POU Commanders on the special considerations and unique responses involving an

Aboriginal blockade, occupation or land dispute is now being incorporated into their training. (OPP Part II Submissions, para. 140)

- 3) The government of Ontario should collaborate with Indigenous peoples to carry out an independent evaluation to determine the effectiveness of the OPP Framework for Police Preparedness for Aboriginal Critical Incidents as a means to minimize the risk of escalation and ensure respect for and protection of the rights of Indigenous protestors.**

27. As earlier indicated, Commissioner Boniface agreed that input and guidance from First Nations leadership on developing assessment tools would be welcome, over and above that currently offered through the Commissioners' Select Liaison Council on Aboriginal Affairs. This is in addition to the internal mandatory assessments that now take place for Aboriginal critical incidents. (OPP Part II Submissions, paras. 87-90)

- 4) Independent evaluations of current cultural sensitivity training should be carried out to determine their effectiveness in achieving substantive changes to the perceived and actual attitudes of officers. Affected communities should be directly involved in such an evaluation.**

28. As earlier indicated, the longitudinal study currently underway is designed, amongst other things, to evaluate the extent to which officers have been sensitized to these issues. The involvement of Dr. Karen Mock and the Canadian Race Relations Foundation in the OPP Native Awareness Training also provided important input on that training. The OPP welcomes the input of First Nations leadership in developing assessment tools for this training. (OPP Part II Submissions, para. 123)

5) Policies must be put in place to weed out officers whose biased attitudes interfere with the fulfillment of their duties and to screen for racial bias among new recruits before they enter the force.

29. The OPP has an ambitious selection and recruitment process designed to do precisely this. (OPP Part II Submissions, para. 117 “Native Awareness Training”)

6) The principle that force is to be used only as a last resort measure should be directly incorporated into the regulations of the *Police Services Act*.

30. The OPP respectfully disagrees with the placement of such principles in the Ontario *Police Services Act*.

7) Amnesty International urges the Commissioner to highlight that government interaction with police must never directly or indirectly order, facilitate or encourage conduct that contravenes human rights standards. Government must actively require police to operate in full compliance with international human rights obligations.

31. We take no issue with the principles that government must never order, facilitate or encourage police conduct that violates human rights standards, and that government has a role to play in police accountability for its human rights obligations.

8) Measures should be taken to expand the civilian oversight of police in Ontario, including independent investigation of all allegations of police wrongdoing. Particular attention should be paid to ensuring that such oversight is well-known and accessible to Indigenous communities.

32. Bill 103, founded on recommendations made by Justice LeSage establishes an Independent Police Review Director and a new public complaints process. In our view, it is somewhat beyond the scope of this Inquiry to analyze Justice LeSage's recommendations or Bill 103. However, the OPP is supportive

of a process that enhances transparency and accountability. (OPP Part II Submissions, para.108)

AFRICAN CANADIAN LEGAL CLINIC

33. The ACLC submits that recommendations arising from Part II of the Inquiry with respect to police use of force are of vital importance for the African Canadian Community. “African Canadians are critical stakeholders in oversight processes involving police use of force. Indeed a link was made at the Inquiry between the racism against Aboriginal and African Canadians. Racist remarks caught on tape by the police officers at Ipperwash the day before Dudley George was killed, extended beyond Aboriginal people to persons of African descent. The tape obtained by the CBC News revealed that OPP officers posing as a media crew made racially derogatory comments about using beer as “bait” to trap the Aboriginal protesters and how it works with watermelon in the South, referring to a stereotype about African Americans.”

34. The OPP’s denunciation of the racist comments against persons of African descent by Officer Dyke, coupled with the immediate termination of his contract with the OPP has been well documented in the evidence at this Inquiry. As well, the OPP has created and supported strong diversity policies (including those on discrimination and illegal profiling), introduced specific diversity training for all officers, recruitment screening to eliminate candidates with racist or intolerant views, and a award-winning outreach recruitment program designed to attract people interested in a policing career from identified groups such as women,

Aboriginal people and visible minorities. (OPP Part II Submissions, paras. 107,115 and 117; See also Appendix A herein)

35. The ACLC has proposed that the following recommendations be considered by the Commission:

i. That the collection of disaggregated race-based data for the purpose of monitoring use of force by the police be conducted on a permanent basis by the SIU, and by the police through the Public Complaints Process for incidents not falling within the mandate of the SIU. Data collection will include information on a large number of variables such as: the age, gender and race of the civilian; cause of injury or death, criminal history of the civilian, mental health of the civilian, police service involved, age, gender and race of subject officers, rank and years of experience of subject officers, description of the incident and final outcome of case (i.e., officers cleared or charges laid).

36. This recommendation seeks the permanent collection of data on police use of force similar to the approach being taken by the ACLC in its current research project. In its submissions, the ACLC outlines this research project. It involves a detailed analysis of records from the SIU. In early 2006, ACLC received permission from the SIU to examine the Director's Report for each case dating back to 2000, permitting it to collect detailed information on over 1,000 SIU

investigations respecting a large number of variables including: the age, gender and race of the civilian; cause of injury or death, criminal history of the civilian, mental health of the civilian, police service involved, age, gender and race of subject officers, rank and years of experience of subject officers, description of the incident and final outcome of case (i.e., officers cleared or charges laid).

37. It is said that the analysis of the final data will focus on a number of questions including: 1) Are African Canadians, Aboriginal and other racial minorities over-represented in SIU cases? and 2) Are SIU cases involving racial minorities similar or different than cases involving white civilians (i.e., are they more or less likely to involve weapons, are they more or less likely to result in the death of the civilian, are they more or less likely to involve charges against the subject officers). The ACLC indicates that this is the first study in Canada to examine statistics on police use of force.

38. The OPP states in the Part II Submissions at paras. 145-147 that the availability of relevant and sound data has the potential to promote bias-free policing. The soundness of data collection must be assessed on a project-by-project basis. The OPP will review with interest the ACLC's research report when completed, but for obvious reasons, cannot comment upon the soundness of its approach or findings at this stage. It has the potential of representing a valuable addition to existing information on policing. As earlier indicated, the OPP would welcome further discussions on best practices for bias-free policing.

ii. That police oversight mechanisms be strengthened to ensure accountability, transparency and independence with respect to police use of force against racialized people. Specifically:

(a) The implementation of the recommendation in the *Adams Report* for cross-cultural education opportunities for SIU investigators and the recruitment of investigators from cultural and racially diverse backgrounds.

39. The OPP cannot speak to whether this recommendation has been implemented since the *Adams Report*. Of course, the OPP supports access to cross-cultural education for SIU investigators and the recruitment of investigators from culturally and racially diverse backgrounds.

(b) The definition of “serious injury” should be broadly interpreted to protect victims of police violence to include psychological harm, such as to engage the investigative jurisdiction of the SIU.

40. With respect, there is no evidentiary foundation at this Inquiry to support changes to the SIU, its mandate or operations. The SIU fully investigated the use of non-lethal force by officers who discharged their firearms, and found the force to have been justified in self-defence. The original SIU investigation into the Cecil

George incident was deficient, for reasons unrelated to its mandate or operations. At the insistence of the OPP, the matter was fully re-investigated. The displeasure voiced by some over the conclusions of the SIU does not translate into some inability to address non-lethal abuses. Nor has this Inquiry been provided with a sufficient foundation to determine how the current mandate of the SIU concerning “serious injury” is or should be interpreted.

(c) With respect to incidents of use of force where injury is caused but does not fall within the SIU’s “serious injury” mandate, particularly in situations where racism or racial bias is alleged to have been a factor, complainants must be entitled to and ensured of an independent investigation. In the proposed *Bill 103 Independent Police Review Act, 2006*, such an investigation would be conducted by the civilian oversight body the Office of the Independent Police Review Director.

41. As noted, Bill 103 does address this issue. Although it is somewhat beyond the scope of this Inquiry to analyze Justice LeSage’s recommendations or Bill 103, the OPP is supportive of a process that enhances transparency and accountability. (OPP Part II Submissions, para.108)

iii. That police forces ensure that complaints and concerns against police officers relating to use of force, particularly when the complainant is racialized, are reflected and factored into the assessment of each officer's performance review and or promotions.

42. Where misconduct has been shown (either resulting from informal or formal discipline), it figures prominently in the assessment of officer performance and likelihood of promotion. An unsubstantiated complaint cannot (and should not) factor into assessment or promotion. That being said, there has been a longstanding public debate over transparency and accountability respecting police disciplinary decisions. Bill 103 is designed to address those issues. As well, the OPP recognizes the importance of diversity amongst its Professional Standards Bureau investigators, and diversity training for those officers. This has been addressed, in the context of Aboriginal awareness, in the OPP Part II Submissions at paragraph 102, but has equal application to visible minorities.

iv. That police forces develop an anti-racism curriculum and training program to be incorporated into any existing training programs on use of force and which will be mandatory for recruits, new officers, and serving officers. The training should be designed and delivered by independent experts in anti-racism to ensure a full understanding of racially biased policing, racial discrimination and the racialized communities police serve, particularly with respect to use of force. This

training should be provided as a refresher on a regular basis. The training program should be independently and regularly evaluated to assess its efficacy.

43. The OPP has the most ambitious anti-racism curriculum and training program in existence. We expect to further enhance it based upon the lessons learned at this Inquiry. Indeed, several new features to this training have been introduced as a direct result of this Inquiry. Given the scope of the issues here, the focus has understandably been on Aboriginal issues. However, the newly introduced “diversity tables or dialogues” for all officers address many issues of importance to visible minority communities, and have been designed by external consultants, drawing upon lessons learned about the earlier delivery of training surrounding the OPP Promise. (For the Inquiry’s information, a very brief outline explaining the diversity tables or dialogues is attached as Appendix A.)

v. That police forces develop rules and regulations regarding when it is legitimate to use force and when it should not be used.

44. Regulation 926 currently states, “A member of a police force shall not draw a handgun or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.”

45. In response to questions from Mr. Rosenthal, Commissioner Boniface took no objection to a potential amendment to Regulation 926 that would impose a similar limitation on pointing any firearm.

46. However, there are significant limitations upon the extent to which the provincial government can or should legislate the amount of force that can lawfully be used. The degree of lawful force that can be used is specifically addressed by a number of sections of the *Criminal Code of Canada*, and the jurisprudence that interprets those sections. Further, the *Criminal Code* and the jurisprudence favour case-specific determinations of whether force used was excessive in the circumstances, rather than further legislation. ACLC's proposal would create distinctions between permissible uses of force in Ontario and elsewhere in Canada.

vi. That police forces be encouraged to retain independent employment equity experts to develop concrete, measurable and attainable goals to increase the number of racialized people, particularly African Canadians and Aboriginals, in positions of responsibility.

47. The OPP has done this, and will continue to do so.

vii. That police forces develop and adopt policies and procedures to address the existence of the police subculture.

48. Rather than develop policies and procedures that speak in pejorative terms of “police subculture”, the OPP has developed policies and procedures, many entrenched in Police Orders, that institutionalize and promote a culture of respect for diversity and for Aboriginal peoples, and for the exercise of constitutional, inherent and treaty rights. It is recognized that this is of particular importance for specialty teams where the use of force is regularly contemplated. That is why, for example, human rights competencies now figure prominently in the selection of new TRU team members.

viii. That police forces develop policies and procedures to review, deal with and report on incidents involving the use of force within a specified time frame.

49. Commissioner Boniface reflected in her testimony concerning Regulation 926 that she took no objection to an amendment that would extend the requirement to file a use of force report to situations involving the pointing of any firearm. That and any other amendments to current use of force reports should be addressed province-wide, and in the context of a fulsome discussion on the purpose and use of such reports.

NISHNAWBE-ASKI POLICE SERVICES

50. The submissions presented by NAPS are exceedingly important in explaining the unique policing challenges for the Nishnawbe-Aski Police Services, as well as the challenges for First Nations police services generally.

51. The role of policing in First Nations culture is developed in NAPS' submissions. These are several of the points made:

- Policing was a totally foreign concept to First Nations, introduced and then implemented by the then settler governments. First Nations had their own forms of maintaining community social order through peacekeeping measures. Policing and peacekeeping concepts were diametrically opposed.
- The Oji-Cree word or description of police is literally translated as “the one who holds the weapon, the one who holds the weapon over you.” In the language of the Moose Cree, the literal translation for the term used for police is “the one who locks you up or the one who binds you.” In the Ojibway language, the word used is translated as “the one who apprehends you or the one who takes you away.”

- It is insufficient to simply transfer existing policing systems to First Nations police services, but we must consider introduction of Aboriginal forms of peacekeeping. Further, the language describing the police is fundamental at odds with community policing. There is a plea for new and innovative First Nation approaches to narrow the gap of irreconcilability of relations between Aboriginal peoples and the police.
- Peacekeeping responsibilities varied from each nation and community. These responsibilities were determined by the community as a whole as were the measures required to resolve the issues that give rise to the need for direct intervention. The recent road blockade at Caledonia demonstrates how peacekeeping can work. Peacekeeping is about finding solutions to contributing problems. The OPP maintain order and ensured safety for the public at large and for the occupiers. The police do not have the answers to problems but, in Caledonia, became instrumental in facilitating opportunities for dialogue and eventual negotiations.
- Peacekeeping approaches will ultimately change the character and nature of policing.

52. NAPS's submissions in this regard are quoted at length for two reasons. First, in the OPP Part II Submissions, we recommended that the Inquiry specifically recognize the important role of the OPP and other police services as

“peacekeepers;” (para. 26, recommendation 6). As noted by NAPS, the role of the OPP at Caledonia has included the facilitation of opportunities for dialogue and eventual negotiations. This constitutes a component of the “peacekeeper” role and accords with traditional Aboriginal practices.

53. Second, in the OPP Part II Submissions, the point was made (in the context of a discussion about First Nations police services as “replacements” or “enhancements”) that self-directed First Nations police services are not simply intended to “replace” the services provided by the OPP, but to meet the needs of their communities in ways that may or may not have been realized by the OPP in the past. Accordingly, even “replacement” terminology is deficient. That point is well illustrated by NAPS’s submissions. NAN’s vision for First Nations policing involves a “more customary, traditional peacekeeping police service enforcing NAN laws within specified jurisdictional regions”, rather than a policing model offered by non-First Nations police services.

54. In its submissions, NAPS identifies issues that impact on its policing:

1. The federal policy on Aboriginal policing is limited to provision of front-line policing. This policy hinders and impedes further promotion and sophistication of police services that the policy was designed to improve. The policy does not provide the resources to address the service’s real capital needs.

2. Originally, officers hired by NAPS included a number of officers who had not successfully completed the OPC training. Training costs to bring officers up to standards that equal OPP or municipal policing became a major expenditure. NAPS and most of its officers do not have additional training such as crowd control or other specialty operations.

3. Although NAPS and the OPP have entered into operational protocols to meet operational objectives and satisfy legal requirements of policing between the services, jurisdictional issues still exist. One is the policing responsibility of First Nations constables. Canada continues to insist that their duties are restricted to within the reserve. This is impractical and does not promote the policing aspired to by First Nations. For example, dry communities can be undermined by the delivery of alcohol to off-reserve locations, where the OPP cannot enforce local bylaws and where the OPP, in any event, does not have the resources to police. The Commissioner of the OPP appoints and issues the warrant cards for NAPS constables, conferring the duty and responsibility of enforcing laws both on and off reserves. Operational protocols concerning enforcement on winter roads between NAPS and the OPP have addressed issues arising out of enforcement of the *Highway Traffic Act*. Another key issue is territorial designation. The OPP Commissioner and the Chief of Police of NAPS have addressed this issue through transitory steps. First Nations

constables are exempt from accountability provisions of the *Police Services Act* (including the SIU regime). The Chiefs of NAN want clear accountability mechanisms, ultimately through First Nation legislation.

4. NAPS exists by negotiated agreement. First Nations policing institutions have no legislative base. As a result, NAPS can only perform services according to the confines of the tripartite agreement. Therefore, it cannot contract police services with municipalities. No legal capacity exists to permit its Board of Directors to do so. As previously indicated, the OPP Commissioner appoints First Nations constables. Although the Commissioner has used discretion and flexibility in doing so, this is unsatisfactory.

 5. The most immediate legislative needs relate to the appointment of officers, territorial designations and other jurisdictional issues, NAPS Board responsibilities, mandate and authority for NAN Citizen's Review Board, and police contracting powers. (There is very helpful discussion on how legislative change should take place in the context of provincial-federal legislative undertakings.)
55. NAPS also identifies the logistical challenges associated with its policing. A hostage taking in a remote community requiring additional officers may deplete its present budget allocations. Mobilizing a ten-man unit to respond to crisis will

be extremely costly. NAPS would have to call in either OPP ERT or TRU to respond to critical situations. NAPS would eventually have to underwrite the costs of such units. (At present, the OPP assumes those costs.)

56. First Nation policing was seen as an opportunity for individuals to provide policing for their own communities, and to reduce costs since external people need not have been brought in. However, stress levels from policing one's own community rose to the point that officers left. They encounter family isolation and withdrawal when enforcing the law requires them to lock up and apprehend relatives. Most officers hired and performing exceptionally well are from other communities and regions. NAPS does not have the resources to provide counselling support to their officers or hire coach officers for new recruits. Plus, officers in small communities are expected to provide round-the-clock coverage.

Proposed NAPS Recommendations

1. It is recommended that Ontario and Canada provide financial resources for NAPS to further develop into a fully functioning police service. The present financial base that is negotiated on continual interim basis restricts and stifles growth and development. NAPS must have adequate resources to respond to policing needs of the communities including not only front-line services, but other policing

services such as drug enforcement, and special investigation capability.

2. It is recommended that Canada renew its Aboriginal policing policy to support progressive development of Aboriginal police services to fully functioning police service units. The present policing policy as outlined has or is lagging behind Aboriginal policing growth and development.

3. It is recommended that Ontario take measures to provide the resources for NAPS to further its capacity policing development as a fully functioning police service. These measures may include exceptional resources arrangements independently or with OPP. These arrangements must be viewed and recognized as investments wherein such development will advance unique capabilities that NAPS may provide in the event of direct action undertakings.

4. It is recommended that Canada and Ontario provide the required capital resources for NAPS to have the required up-to-date capital infrastructure at all sites. NAPS should have the capital infrastructure parallel to what is available to RCMP and OPP. Ontario and Canada must approach financing for NAPS under a new fiscal transfer mechanism that will be consistent and dependable.

57. In relation to the above four items, the OPP has recommended that the federal and provincial governments significantly increase funding for First Nation police services, and that there be consideration of a legislative framework for First Nations police services (OPP Part II Submissions, paras. 111, 113, and recommendations 23 and 24). A number of speakers at the OPP Forum also identified the limitation upon current funding to front-line services as particularly problematic.

5. It is recommended that NAPS develop internal operational policing capacity to not only to adequately respond to confrontations, road blockades, and protests but implement unique systems of managing and resolving future direct action undertakings without collateral damage. The recommendation recognizes that additional financial resources will need to be secured and designated strictly for this capability. In light of increased direct action undertakings by First Nation not only in northern Ontario, but throughout Ontario and elsewhere, NAPS would be in a position to deploy such expertise responding to such incidents.

58. The OPP strongly supports the principle that First Nations should police themselves where desired. This means the First Nations should be able to decide whether they want, for example, their own emergency response teams. That being said, it must be recognized that there are large financial costs associated with emergency response teams, particularly those (like TRU) that require full-time officers who must constantly train to maintain perishable skills. Some First Nations police services may not have the demonstrated need or the financial resources for such full-time specialty teams. As well, despite strong support for the principle that First Nations should police themselves, the difficulties for local First Nations police officers in policing Aboriginal occupations or protests (and potentially serving as TRU or POU members in their own communities) has been well recognized, and acknowledged by First Nations police services.¹ Indeed, NAPS correctly identifies this issue as one that generates high levels of stress for officers working in their own communities.

59. As a result, there may always be a need for the OPP to provide some emergency response policing for Aboriginal critical incidents, even within a policing structure that financially and philosophically supports self-directed First Nations policing. That being said, the OPP supports access by officers of First Nations police services, where resources are available, to specialty training such

¹ See also Wawryk, at 29. In small communities, local police should interact with the community, leaving crisis management duties to qualified personnel brought in.

as ERT and Crisis Negotiation so that First Nations officers can work seamlessly with OPP emergency response teams when issues arise.

6. It is recommended that NAPS be provided with financial and human resources to engage full time additional positions for communications and public liaison specialty functions. These individuals would be fully trained, and have the expertise to design negotiation formats and processes. These individuals would be engaged as front-line functionaries assisting the protestors with negotiation processes and in turn will restore confidence and calm at occupations. This will be key pro-active policing measure.

7. It is recommended that NAPS have the resources to employ coach officers on full-time basis. The newly recruits who find themselves as the only police officer because of time-off, medical leave and other policing demands expose new officers to potential personal safety risks and crisis.

8. It is recommended that NAPS be provided with resources to implement a full Auxiliary Policing Program that will not only provide non-direct policing for NAPS officers but that the program can be designed to promote constable development at ground level.

9. It is recommended that NAPS be provided with resources to design, develop and implement a program to support officers that have encountered traumatic situations. NAPS should have access to expertise to provide professional counselling and supports at its disposal.

60. In relation to items 6-9, the OPP reiterates the principle that First Nations should police themselves where desired. This means the First Nations should be able to decide what they want within the context of appropriate financial resources. That being said, the OPP strongly supports proactive policing initiatives, the use of coach officers, constable development through an Auxiliary Policing Program, and professional counselling for member officers and their families. NAPS has made an impressive case for why counselling for its officers is of particular importance. At present, NAPS officers have some access to OPP counselling services, though the situation is far from ideal.

10. It is recommended that NAPS be recognized as a legitimate police service under appropriate legislative base as with other police services. NAPS' present status as a police program is a disservice and at best viewed as secondary policing institution. Under this recommendation, the following must include;

- territorial designation,

- **police appointment powers,**
- **powers and responsibilities of board,**
- **powers and responsibilities of Citizens Review Board (policing accountability),**
- **contracting police services.**

61. Again, the OPP supports consideration of a legislative framework for First Nations police services that would be expected to address all of these issues. The OPP has also recommended that within such a legislative framework, the appointment of First Nations officers by the OPP Commissioner be discontinued, and be transitioned into appointment by the relevant Service or Board (OPP Part II Submissions, para. 113, recommendation 24)

11. It is recommended that Ontario commission an undertaking to fully explore, design and recognize the traditional peacekeeping practices of First Nations. Once designed, peacekeeping should not be considered as an option at First Nations but a cornerstone for providing public security and protection for all.

62. It will be for others to determine how this issue should best be explored. However, the OPP supports consideration by First Nations of how policing and traditional peacekeeping practices should intersect, and welcomes an ongoing

dialogue with First Nations on how the OPP can best serve its own peacekeeping role.

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION

63. A number of the First Nation's recommendations are drawn from its earlier paper presented to the Inquiry entitled "Under Siege: How the People of the Chippewas of Awash Unceded First Nation Asserted Their Rights and Claims and Dealt with the Backlash (December 16, 2005)." The paper is cited in the OPP Part II Submissions (paragraphs 30 and 55). As well, a number of the OPP recommendations accord with principles identified by this First Nation.

No. 5: The Crown (both Canada and Ontario) and First Nations should develop and codify best practices for negotiations and for dealing with confrontations.

64. The OPP has recommended that the provincial and federal governments consider the creation of a policy on their approach to Aboriginal occupations and protests. Such policies should complement and support the Framework's approach, and articulate factors that will inform the government's approach on the timing and desirability of court processes for injunctive and other relief. Such policies might also address best practices for negotiations and their timing. (OPP Part II Submissions, paras. 60,63,95-96 and recommendations 17-18)

65. The First Nation lists in Appendix H of “Under Siege” a number of best practices for the Crown, the police and for First Nations. In relation to the police, the First Nation says this:

In our view, the police have a major role in keeping the peace, which they can do best by leading by example and maintaining a cool, calm, patient presence. The OPP, in discussion with leaders and peacekeepers on both sides of a dispute, can help set the boundaries of a confrontation (areas that can be occupied, areas that should not, *etc*). It would be wise for the OPP to develop officers who show talent for such a role, by further training and then deploying those officers who demonstrate, in the words of Best Practices for Police in our Appendix H,

an appreciation for the complexity of Native rights and claims, experience in dealing with confrontations involving Native people, the authority to use discretion, and a talent for striking up relationships with leaders on both sides of the dispute

They also have a role in facilitating a resolution by helping the parties bring the right people to the table as soon as possible. Finally, since they are talking to all parties involved, they have a major role to play in ensuring lines of communications are kept open.

66. The OPP agrees. Indeed, we have reviewed the best practices identified in Appendix H “For the Police – Dealing with Confrontations” and find them a helpful articulation of the role of the police. They also accord with the approach adopted in the Framework.

67. The First Nation also submits that “the crucial role of communications during confrontations is an aspect of Aboriginal-Police relations that the [Inquiry’s] Discussion Paper does not discuss. The police have the communications tools (*e.g.*, mobile radios, cell phones, internet access) to keep negotiators in the field in touch with one another and with their political leaders.

In the fog that envelopes some confrontations, fast, accurate communications are vital. “

68. The OPP agrees that existing communication tools can be utilized to facilitate ongoing dialogue. Indeed, one best practice currently adopted by the OPP is to provide a cell phone, where appropriate, to protestors to enable direct communication with the OPP to continue.

38) The Crown (Ontario and Canada) should implement a policy of zero tolerance for hateful remarks, actions, and correspondence at all levels of its organization. Proven cases of racist attitudes should result in immediate and irrevocable dismissal of the staff who promote or communicate them.

69. Ontario Provincial Police Orders mandate zero tolerance for racism. Strong policies on racism and diversity are the starting point. Recruitment strategies to promote diversity and eliminate candidates with racist or intolerant views complement those policies. Ongoing training across the OPP and through the life of OPP officers represents another means of promoting a culture of tolerance.

70. Racist behaviour or expression is a disciplinary offence. Allegations of racism are sensitive investigative matters that are brought to the attention of the

OPP Commissioner. A Professional Standards Bureau investigator assigned to a complaint raising First Nations issues (including racism) will have attended the Native Awareness Training course. The most senior officers, including the Commander, will act as case managers for the most sensitive or complex matters, and where appropriate, may seek (and indeed have sought) input from community leaders.

71. All that being said, immediate and irrevocable dismissal of staff is not always the answer. The answer is not to create inflexible rules on what discipline will or will not be imposed in cases that are fact specific, but to ensure that anti-racism policies are followed, and that discipline, when required, takes all relevant facts into consideration, including racism. That presently occurs. Officer Dyke's statements compelled the immediate termination of his contract. Officer Whitehead's involvement suggested a different approach that recognized his role, level of remorse and potential rehabilitation. Wally McKay spoke eloquently at the OPP Forum in response to Mr. Rosenthal's proposal favouring automatic dismissal. In his view, 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. (OPP Part I Submissions, paras. 238-241)

72. As noted elsewhere, the Chippewas of Nawash Unceded First Nation has recommended that racism includes “any communication, action or course of conduct, *whether intentional or unintentional*, which denies recognition, benefits, rights of access or otherwise abrogates or derogates from the constitutionally recognized rights and freedoms of any person or community on the basis of their membership or perceived membership in a racial group” (recommendation 35). Other parties have made the valid point that the absence of a racist intent does not minimize the consequences to the affected group. Commissioner Boniface made the very same point in reviewing the investigative report into the memorabilia and other offensive items. However, as Commissioner Boniface noted, lack of intent is not a defence to offensive conduct, but it is relevant in determining the appropriate disciplinary action. Mandated dismissals (leaving aside constitutional or due process impediments) are, with respect, not appropriate.

73. The OPP is prepared to consider amending existing policies to more clearly articulate two operative principles:

- (1) Evidence that conduct, including statements, was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor shall be treated as an aggravating circumstance

in determining what disciplinary action should be taken. This tracks the language contained in section 718.2 of the *Criminal Code*.

(2) Where conduct was so motivated, this should figure prominently in assessing whether measures short of formal discipline are appropriate.

74. It will be for the Province of Ontario to determine whether these principles should be incorporated into the *Police Services Act*, together with a related principle that conduct so motivated shall be deemed by the adjudicator to be an aggravating circumstance in determining an appropriate sanction.

75. Several of the First Nation's recommendations address education, not only for police officers, but also for other members of the justice system, especially Justices of the Peace.

31) A full year course in the traditional practices of aboriginal peoples and in aboriginal and treaty rights as they are expressed in the constitution and being defined by the courts should be mandatory for all students seeking employment in law enforcement, especially for those who would be Conservation Officers.

This is followed by a new recommendation:

As part of their deployment to a new area, an OPP officer or an MNR Conservation Officer will be seconded to the First Nation in their area for a period of six months.

76. Training of police officers respecting Aboriginal peoples and their rights should constantly be reviewed and enhanced. That being said, in our view, the OPP's training is as ambitious a program as exists anywhere. It extends for the life of an OPP officer from recruitment to senior management. It includes early identification of Aboriginal issues and dynamics, particularly those in the officer's first assigned detachment, secondment to a First Nations police service, ongoing in-service training, and an intensive week long Native Awareness Training program mandated for a wide range of positions and specialty teams, including TRU, ERT, Level 2 Incident Command, Crisis Negotiation, recruiters etc. Promotion is tied to an understanding of Aboriginal issues. Senior managers are evaluated on meeting measurable goals (contained in business plans) that support the organization's initiatives in this area.

77. The OPP reluctantly cannot support a requirement for a full year's training on Aboriginal issues, or a requirement for a six-month secondment to a First Nation, however admirable those requirements might be. Financial and human resources simply do not support those requirements.

78. The First Nation submits, in summarizing its position, that “police officers, if properly screened, educated, trained and deployed, can help stage-manage demonstrations and confrontations in a way that will lead to a reasonably quick and peaceful resolution of the immediate conflict. It will be up to the diplomats and politicians on both sides to ensure a lasting reconciliation is found.”

79. The related point is made that “in day-to-day policing matters, law enforcement officers who understand and respect Native claims, rights and ways of life will do much to reduce the tensions and resentments that build up in a Native community and that frequently fuel the anger that leads to confrontation.”

80. The OPP agrees wholeheartedly. It also agrees with the principle articulated in the First Nation’s recommendation 13 that the recruitment of Aboriginal police and conservation officers should be a high priority. For the OPP, it is.

THE UNION OF ONTARIO INDIANS

81. The UOI Part II submissions and recommendations represent a valuable contribution to the Inquiry. Some of the UOI recommendations correspond to those earlier presented through the three papers completed by the UOI and through community consultations, and were adopted by the OPP in its earlier Part II submissions. Accordingly, the following is intended only to address policing recommendations not earlier commented upon.

Submissions - Short Term

2) The Ontario Government must increase police officer and conservation officer understanding of Aboriginal history, culture, rights and contemporary issues.

a) Participants in regional consultations indicated that greater understanding of aboriginal and treaty rights must begin by increasing Aboriginal specific history, culture, rights and contemporary issues curriculum in Ontario's education system.

b) Participants in regional consultations indicated that the various enforcement agencies including Ontario Provincial Police, Ministry of Natural Resources and Anishinabek Police Services have

inconsistent interpretations and understanding of Aboriginal and Treaty rights. This has led to both First Nation and non-First Nation First Nation misunderstandings on the scope of aboriginal and treaty rights.

c) Participants indicated that there is a need to increase police officer training and awareness of history, traditions and cultures of First Nation communities so that the healing process can occur after an incident. Participants indicated that as a result of police practices they were not allowed to practice their own cultural activities upon the occurring of a death. While participants acknowledged that there are valid reasons for police practices, there must be a means to satisfy the interests of both the police and First Nation member practices.

82. We agree with the importance of training and awareness. In relation to item c, it should also be noted that life cycle First Nations practices form a part of Native Awareness Training. Even back in 1995, individual officers were sensitive to the importance of allowing death-related cultural activities where practicable (such as the ceremony that followed the motor vehicle deaths in the summer of 1995 near Army Camp Road), and the OPP is far more attuned now than ever before to this issue when a death occurs.

d) Ontario government line ministries and the Ontario Provincial Police should be mandated to ensure First Nation participation in cross-cultural training at the local and regional levels. First Nation communities across Ontario are unique in their cultures. This will ensure that local concerns and issues are addressed through training processes.

83. We agree. This important point was made in Nashkawa, Anishinabek First Nations Relations with Police and Enforcement Agencies (August 30, 2005) at 36 (recommendation 8.1) and adopted by the OPP.

84. The OPP training on First Nations issues was developed in consultation with Elders, Aboriginal leaders (including the Commissioners' Select Liaison Council on Aboriginal Affairs), and Aboriginal officers. We recognize that the Native Awareness Training course should not be confined to any single culture. One day of the current course is devoted to familiarizing participants with varied cultures. As well, the course has been adapted, with local input from Elders and community leaders, to emphasize locally relevant cultures. For example, in the last two years, courses have been offered at Six Nations and Akwesasne devoted to the Haudenosaunee culture. As well, officers are provided information about local cultural practices and history at various stages in their training. In November 2006, there will be a Native Awareness "Train the Trainers" program designed to increase the number of available trainers, and enhance their own cultural and practical knowledge.

85. The OPP has also indicated that, as part of its initiative to ensure that Native Awareness Training extends to varied cultures, we will invite even greater participation by local Elders and organizations to enhance the program. These and other ways to involve Aboriginal peoples in the design, implementation and evaluation of initiatives to improve relations can also form part of communication/dialogue protocols with PTOs and First Nations. (OPP Part II Submissions, paras. 118 “Localized Native Awareness Training”, and 128)

e) Police and the Ministry of Natural Resources 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.

86. We agree. The longitudinal study currently underway is designed, amongst other things, to evaluate the extent to which officers have been sensitized to Aboriginal issues through current training. Dr. Karen Mock and the Canadian Race Relations Foundation also provided important input on the OPP Native Awareness Training course. As well, the OPP, through its business planning cycle has the means to assess whether the organization, and its Bureaus, Regions and Detachments have met certain projected and measurable goals (e.g. ensuring “x” number of officers have attended Native Awareness

Training courses within “x” period of time.) Commissioner Boniface agreed that input and guidance from First Nations leadership on developing additional assessment tools would be welcome. (OPP Part II Submissions, paras.121 and 123)

2) The Ontario Government must improve communications between Ontario Provincial Police and First Nation communities.

a) Participants indicated that there needs to be protocols for law enforcement agencies who enter onto First Nation communities. For example, the police should have a main contact within the community so that if community members have questions concerning the police, they know who amongst their community members they can contact. Also, this would assist in First Nations communities becoming aware of changes in police personnel, which is frequent in some First Nation communities.

87. The OPP now has protocols with First Nations Police Services and First Nation communities addressing, amongst other things, access by police to First Nation communities. This issue has been worked on extensively since 1995. Establishing contact persons within communities is an important point that has been addressed, in part, through the enhanced networking described in the OPP Part II Submissions at para. 123.

b) Participants wanted to see more use of community based police committees which are helpful in building relationships with police. Although the committee should be separate from Chief and Council, a Councillor should sit on the committee to promote communications with the Chief and Council. Participants indicated that this will also help to reduce power and control issues between police and communities. Further, this would help address relationship building in light of the high turn over of police personnel.

88. We agree. The Regional Aboriginal Strategy Committees are designed to promote these communications, as well as the obligation of Detachment Commanders to regularly meet with local elected Chiefs.

c) Participants indicated that discussions between police, protesters and First Nation must begin at the earliest stages. Addressing the situation at its earliest stages will help to prevent the situation from becoming more complicated and contentious.

89. We agree. That is why the Framework, ART training, and the position of Aboriginal Liaison Officer – Operations stress pre-critical incident relationship building and awareness of potential issues.

d) Programs that support increased interaction and involvement between First Nations youth and law enforcement agencies in positive circumstances, such as the Ontario Provincial Police Bound program, should be developed and strengthened. This assists in relationship building and communications of both Police and First Nation youth.

90. We agree. These programs, one of which is OPPBound, have been fully described in the OPP Part II Submissions. (para. 117 and footnote 16)

3) The Ontario Government must support First Nations in training and resources to develop an Anishinabek Emergency Response team to address First Nation emergency situations.

a) Participants in consultations indicated that Anishinabek police officers are most aware of the communities they police and community members are also more comfortable with Anishinabek people, as a result situations are less likely to escalate.

b) Community participants want their own Anishinabek emergency response team so that conflicts are approached in a way that would not prevent culturally appropriate activities.

91. The OPP strongly supports the principle that First Nations should police themselves where desired. This means the First Nations should be able to decide whether they want, for example, their own emergency response teams. However, it must be recognized that there are large financial costs associated with emergency response teams, particularly those (like TRU) that require full-time officers who must constantly train to maintain perishable skills.² Some First Nations police services may not have the demonstrated need or the financial resources for such full-time specialty teams. As well, despite strong support for the principle that First Nations should police themselves, the difficulties for local First Nations police officers in policing Aboriginal occupations or protests (and potentially serving as TRU or POU members in their own communities) has been well recognized, and acknowledged by First Nations police services.³

92. As a result, there may always be a need for the OPP to provide some emergency response policing for Aboriginal critical incidents, even within a policing structure that financially and philosophically supports self-directed First Nations policing. That being said, the OPP supports access by officers of First Nations police services, where resources are available, to specialty training such as ERT and Crisis Negotiation so that First Nations officers can work seamlessly

² This same issue arises for most municipal police services which do not have the resources to maintain full-time emergency response teams. The OPP provides these teams in such circumstances.

³ See also Wawryk, at 29. In small communities, local police should interact with the community, leaving crisis management duties to qualified personnel brought in.

with OPP emergency response teams when issues arise. (OPP Part II Submissions, para. 112)

5) The code of ethics for police and conservation enforcement officers must include respect for constitutionally protected aboriginal and treaty rights.

a) Police and conservation officers currently do not have any reference to aboriginal and treaty rights in their code of ethics.

93. We agree that the code of ethics for police officers must include respect for Aboriginal and treaty rights. We cannot speak for other organizations or agencies. But the OPP has incorporated respect for Aboriginal rights and diversity into the OPP Promise, its training, and into its Police Orders which specifically address ethics, discrimination, bias-free policing and accountability.

Submissions – Longer Term

9) Natural resource conservation and police enforcement must be accountable to First Nations public in terms of enforcement activities and its costs.

a) 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.

94. This currently takes place in several ways. As witnessed during the OPP Incident Simulation, it is a well-established best practice for the OPP to seek permission, as part of a consultative process, before deploying OPP resources on First Nations territories. First Nations leaders, including local First Nations police services, are consulted during the incident, and are now briefed on the response when completed and where possible.

c) Police and Conservation Officers complaint processes must be more clearly communicated to Anishinabek First Nation people. Participants at consultations indicated that Anishinabek First Nation people are unaware of complaint processes against police and conservation enforcement officers.

d) 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.

95. Insofar as these submissions concern the complaint processes against OPP officers and oversight of the OPP, they are addressed, in large measure, in Bill 103. We also agree that the complaint process must be known to community members to ensure its use. Indeed, as noted in COO's Part II Submissions, Mr. Justice LeSage identified this as an issue deserving of attention when he stated:

Access to the system was one of the concerns that was most heavily emphasized. It was stressed that many Aboriginal persons, particularly those from Northern Ontario do not have an understanding of the current systems in place and that many do not speak English. Information and services should be made available in a number of Aboriginal languages

I was also informed that many Aboriginal persons choose leaders from their community as their first source for information and assistance when they have a problem. Despite this, there appear to be systemic barriers to the recognition of this role of community leaders. It was suggested that a community leader should be accepted as the agent of a complainant if the complainant has asked for this assistance, and should be kept apprised of developments in an ongoing investigation. A recommendation was also made that formal lines of communication should be opened between police services and leaders of Aboriginal communities.

96. OPP Professional Standards Bureau investigators are now instructed as a best practice that "they must endeavour to fully understand the dynamics of the incident under investigation. There may be unique cultural issues to consider. Where appropriate, investigators should consult with the complainant, complainant's family or First Nation governance officials to determine the best course of action during an investigation. Where appropriate, consultation may be

necessary to ensure that the most effective means is utilized to address substantiated incidents. The use of interpreters, the locations of interviews and hearings, resolution procedures and the personal background of a complainant are examples that may require further consideration or consultation.”

97. Insofar as the UOI submissions concern complaint processes and oversight respecting First Nations Police Services, the NAPS Part II Submissions also address the need for a legislative framework that extends the SIU mandate to those services.

10) The Ontario Government must provide more resources for First Nation police services.

a) Increased 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.

b) The Ontario government must develop an Aboriginal policing policy. An exceptional opportunity exists to develop this policy in partnership with First Nations and Provincial Treaty Organizations.

98. The OPP's own recommendations speak directly to these issues, particularly the importance of significantly enhanced financial resources for First Nations policing. (OPP recommendations 4-5)

13) A joint public education program about treaties, First Nation history and contemporary issues must be developed and implemented.

a) Public education must start within elementary and secondary school curriculum. Teacher associations and First Nation organizations are well positioned to develop guidelines and teaching tools for the development of curriculum that reflects local First Nation customs, history and language.

b) A joint public education program should be relevant to the local communities and treaty areas that it is delivered in. Each PTO should be provided with a level of resources to carry out this work within their respective treaty areas. This is particularly important in areas where there are contentious or complicated issues and the general public needs to stay informed.

99. The OPP's earlier submissions specifically address the UOI's recommendation in this regard. (OPP Part II Submissions, paras. 55, 202-203 and recommendation 16)

CANADIAN CIVIL LIBERTIES ASSOCIATION

100. CCLA proposes a much larger role for the government in directing both police policies *and* operations.

101. The CCLA appreciates that “existing arrangements are intended to avoid the politicization of the police. In order to ensure that its proposals do not unduly imperil this objective, it recommends the adoption of safeguards: To whatever extent the political authorities issue directives to the police, such directives should generally be in writing; and the police-government relationship – as well as police policies and practices generally — should be subject to self-generated audits by an independent agency that has ongoing access to police records, facilities, and personnel. “

102. The CCLA goes on to say:

As for the handling of Aboriginal protests, the police should not have the primary role. There should be no question that the government is in charge of the police and that the police are subject to government direction. As far as possible, the objectives should be to avoid the use of force as an instrument to end any contested occupations. And, to whatever extent there must be resort to force, the clear-cut policy should be to employ no more than is reasonably necessary in the circumstances. Apart from emergencies and front-line situations, the government, not police, should determine when and how far to use force.

In the event that private parties might seek an injunction to end an Aboriginal occupation of contested land, special measures should be considered. In the case of land in which the Aboriginal people have a “colour of right”, the courts should be required to defer to existing negotiations or claims processes. Moreover, before any court orders are issued that could irrevocably alter the land in question, the provincial

attorney general should be required to intervene to alert the court regarding the Aboriginal claims. While such an intervention could not – and should not – determine the outcome of the case, it is likely to ensure that the Aboriginal claims receive more weighty attention than might otherwise be forthcoming.

103. The OPP agrees with several of the points made by the CCLA, although has a fundamental disagreement over CCLA's submission that government, not police, should determine when and how far to use force.

104. First, we agree that the objective should be to avoid the use of force as an instrument to end contested occupations. Where force must be used, no more force than is necessary should be the operative principle. Indeed, this already represents OPP policy and has represented OPP policy for many years.

105. Second, we agree that in applying for injunctions, or considering whether injunctions should be brought in the context of Aboriginal occupations or protests, special considerations exist. As reflected in the OPP Part II Submissions, the OPP recognizes that, in some circumstances, applications for injunctive relief, the timing of such applications, or the terms of any injunctive relief, may not ultimately advance public safety and order, but may exacerbate tensions and actually inhibit the expeditious and peaceful resolution of the issues. It follows that great consideration should be given by applicants for injunctive relief (and by governments either bringing such applications or who appear as interested parties) to whether such applications will contribute to the peaceful resolution of the incident or even advance the long term interests of the applicant. The OPP

favours the creation of a government policy that complements the Framework's approach, and articulates factors that inform the approach to applying for, or supporting, injunctive relief, and the timing of such applications. The preservation of public order and safety should figure prominently in this policy. It is for parties other than the OPP to comment on the specific "special measures" suggested by the CCLA in addressing injunctive relief.

106. We disagree that government should direct operations. More specifically, government should not direct the police on how or when court orders, once issued, should be enforced, or on whether force should be used. Only the police are well situated to evaluate what enforcement measures should or should not be taken to preserve public order or safety, including the use of force. Police officers are made responsible under the *Criminal Code* for the unjustified use of force. Police officers would be in violation of their legal and statutory responsibilities if they were to use force that they believed was unjustified, even if so directed by the government. The concern identified at this Inquiry surrounds political interference, or the perception of such, in decisions properly to be made by the police. The CCLA proposal would jeopardize the perception, if not the reality, of policing devoid of political considerations in a way that cannot simply be rectified by added transparency in decision-making. In any event, this Inquiry has not identified as a systemic issue police readiness to use force against an Aboriginal occupation, in the face of government resistance to the use of force. Nor is it a tenable solution, as suggested by the CCLA, to differentiate between operational

“front-line” or “emergency” decisions and other operational decisions. Decision-making would be paralyzed in trying to draw these unworkable distinctions.

107. The CCLA’s concerns can best be addressed by recognizing the role that government appropriately plays in making policy decisions respecting Aboriginal occupations and protests, including whether to seek or support court processes, and by adopting recommendations that ensure that both government policy decisions and police operational decisions are informed by all relevant factors, and are as transparent as possible. The OPP recommendations address all of these matters.

**THE ESTATE OF DUDLEY GEORGE AND MEMBERS OF DUDLEY
GEORGE'S FAMILY**

Recommendations

8. When First Nations occupations or blockades occur, governments should always emphasize an approach of peace, prudence and caution.

108. The OPP agrees that First Nations occupations or blockades should be approached in accordance with the principles articulated in the Framework. These principles are compatible with those stated in this recommendation, and with Ron Fox's testimony (cited with approval in support of this recommendation) that these situations cannot be viewed in an overly simplistic way, but must be approached through identifying their unique complexities.

9. The use of force against First Nations occupations and blockades is never appropriate with respect to the underlying historical issues, and force should never be used to just "deal" with the dispute.

109. No one suggests that force should be utilized merely to address historical issues or to just "deal" with a dispute. Nor does the evidence at this Inquiry support such a characterization of the force used at Ipperwash.

16. The OPP should formally withdraw and publicly apologize for its September 7, 1995 press releases.

110. It is said, in support of this recommendation, that “the Inquiry has exposed the truth and the lies. It is now incumbent on those who propagated or repeated the lies to do their part, to retract the positions they have taken, and to publicly apologize for the harm they caused.”

111. The OPP has acknowledged through Commissioner Boniface and other senior officers that mistakes were made by the OPP at Ipperwash, and the OPP has apologized for those mistakes. They include the inaccurate press releases issued on September 7, 1995. Deputy Commissioner Carson also acknowledged errors in these press releases. Nonetheless, to be crystal clear, the OPP does apologize for inaccuracies in the September 7, 1995 press releases, and to the extent that press releases can be said to be withdrawn, hereby withdraws them.

112. However, it is unfortunate that the commentary to this recommendation suggests that “lies” have been exposed that must be retracted by those who “propagated or repeated the lies.” The evidence does not support these characterizations. The press releases were inaccurate, and not deliberately so. They represented Deputy Commissioner Carson’s beliefs at the time. The evidence (including contemporaneous recordings) overwhelmingly demonstrates

this fact. The suggestion is also incompatible with the spirit of Mr. Klippenstein's comments at the conclusion of Deputy Commissioner Carson's testimony. These comments are cited in the OPP Part I Reply, but for convenience are reproduced here:

MR. MURRAY KLIPPENSTEIN: Yes, Commissioner. I think I just -- on behalf of myself personally, on behalf of -- of my client who's sitting here, Sam George, and I think probably I speak for -- for all counsel, I want to express appreciation to the witness, Deputy Commissioner Carson who has made himself available for a very long period for difficult and detailed questioning. And it's been very important for the overall process of the Inquiry and we do appreciate the toll and strain it was on him and on some of the rest of us as well, but we do want to thank him.

AAZHOODENA AND GEORGE FAMILY GROUP

113. A number of points made by Aazhoodena and George Family Group concerning Aboriginal and treaty rights accord with OPP recommendations in its Part II Submissions. For example, there is agreement on the need for an effective process for resolving land claims and disputes over Aboriginal and treaty rights, and for a process to enable the federal and provincial governments to resolve, in a timely way, disagreements between them about their share of responsibility for past actions of the Crown (OPP recommendations 4,5, 19; Aazhoodena recommendations 15, 21) There is also agreement on the importance of public education on Aboriginal issues and history. (OPP recommendation 16; Aazhoodena recommendations 56 and 57) As well, the OPP agrees that consideration should be given to the creation of a roster of negotiators to be called upon to assist in the resolution of First Nations occupations or protests. (Recommendation 61). These negotiators would address the substantive issues in dispute between the parties, which is not the role of the police.

Recommendation No. 38

The Province of Ontario should amend the *Police Services Act* to provide that there be a police services board for the Ontario Provincial Police.

114. The OPP Part II Submissions at paragraphs 180-187 fully address whether a police services board should be introduced for the OPP. In summary, although the OPP is not philosophically opposed to being governed by a police services board, there are significant impediments to its introduction. It may be questioned whether adding another police services board would cause confusion, diffuse accountability, and fail to truly promote province-wide public participation in its processes. It is also questionable whether the evidence at this Inquiry compels such a complex and costly reform. Finally, as the Aazhoodena and George Family Group itself notes in its commentary, politicians also do serve on police services board. Such boards are not perfect “buffers” from politicians either.

Recommendation No. 62

The Province of Ontario should enact a regulation requiring that any substantive interaction between a politician or civil servant and any police officer concerning any police operation must be fully and permanently documented by all the parties to the interaction, and that such documentation must be made public as soon as such disclosure would not interfere with the operation.

115. Aazhoodena and George Family Group acknowledges that “it would be very difficult to devise precise guidelines restricting interaction between

politicians and police officers. ... Maintaining a bright line between government and police operational decisions may not always be possible in the context of disputes over Aboriginal and treaty rights. These types of conflicts raise public policy and legal issues that are beyond the scope of police forces. In virtually all such cases, only political intervention can resolve the dispute.” (paras. 296 et seq.) Accordingly, it is suggested that the solution may lie in ensuring that interaction between government and police concerning operations be fully documented and ultimately made public.

116. This submission shares significant common ground with the OPP position. As reflected in the OPP Part II Submissions, operational and policy decisions do and should intersect, and this is particularly so in the context of Aboriginal occupations and blockades. Government may properly make decisions within its “policy” sphere that should be communicated to police in a timely way to inform police operational decisions. There is also information in the possession of the police that should appropriately be communicated to government to inform its policy decisions. Precise definitions to delineate what information or views should or should not be communicated are impossible. Information should be shared when doing so would benefit informed policy decisions by government or informed operational decisions by the police, *and* where those benefits are not outweighed by the dangers associated with the sharing of those views to neutral policing and the perception of such. Although there is a wealth of internal and external accountability mechanisms that already exist for OPP operational

decisions, transparency in decision-making by the police and government can be enhanced in several ways. Those reproduced in bold typeface below are similar to those proposed by Aazhoodena and George Family Group:

- A government policy should be created that addresses the relationship between government and the OPP. Its features are described in the OPP Part II Submissions at paras. 173 et seq.;
- The policy could extend to all relevant Ministries, with appropriate recognition of the Solicitor General as the responsible Minister for the OPP;
- **Where government shares information with the OPP in the context of an ongoing operational matter, the information exchange should, where practicable, be documented. We agree with the Hughes Report that accountability for government interventions during an event is best achieved through appropriate record keeping and effective case management. Government directives or interventions are thereby preserved for posterity and, if needed, for review;**
- **Significant “policies of operation” should generally be reduced to writing and, where possible, publicly available;**

- **The Commissioner may request that governmental direction be reduced to writing in the form of a Ministerial directive;**
- Post-critical incident, the OPP should brief affected communities on the decision-making process. Such briefings must be practicable, and done in a manner that complies with the law, and recognizes overriding interests such as public safety, privacy, preservation of ongoing investigations or confidential sources, and not prejudicing ongoing court proceedings. (OPP Part II Submissions, paras. 160 et seq. and particularly 187)

Recommendation No. 47

The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that persons (other than police officers doing first aid) who provide medical assistance at the request of or by arrangement with police officers must be paramedics or other medical personnel who are independent of the police.

117. The OPPA, which represents Ted Slomer, can best address the purported evidentiary foundation for this recommendation. However, the OPP cannot support this recommendation in any event.

118. The Chief Coroner has recommended that police services that have ERT, CMU, and/or TRU capabilities should incorporate a Tactical Emergency Medical Support (TEMS) component with qualified personnel trained as part of the operational response whenever these specialized policing units are employed. The Chief Coroner has also recommended that the TEMS component be a full-time feature to permit ongoing training with the emergency and tactical response units, coordination with civilian emergency medical services (EMS), hospitals and other health care providers whose services may be required in the event of injuries to officers or civilians.

119. As reflected herein in connection with the Chief Coroner's submissions, the OPP's current program is under review. However, it is imperative that any such medical units be permitted to train with ERT, POU or TRU teams to enhance the quality of their medical support, and to ensure their personal safety.

Recommendation No. 45

The Province of Ontario should enact a regulation pursuant to the *Police Services Act* making it an offence for a police officer to use a vehicle marked as an ambulance (or otherwise marked so as to indicate that it is a vehicle used for the provision of medical services) for any operational purpose other than rendering of medical assistance.

120. With respect, it is not the answer to every identified issue to create offences. The OPP has agreed that St. John Ambulance equipment and vehicles should not be used for purposes unrelated to St. John's mandate and function as an ambulance service. That agreement has equal application to other ambulance services. An offence section is unnecessary.

Recommendation No. 39

The Province of Ontario should amend Regulation 926 to the *Police Services Act* so that it restricts police officer's pointing of any firearm (not only a handgun) at a human being to situations where the officer believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm. More specifically, section 9 of Regulation 926 should be amended so as to read as follows (the proposed amendment is that the italicized words be added):

A member of a police force shall not draw a handgun, *point any firearm at a human being*, or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.

Recommendation No. 40

The Province of Ontario should amend Regulation 926 to the *Police Services Act* to require a use of force report if a police officer points any firearm (not only a handgun) at a human being. More specifically, section 14.5 (1)(a) of Regulation 926 should be amended so as to read as follows (the proposed amendment is that the italicized words be added):

s. 14.5 (1) A member of a police force shall submit a report to the chief of police or Commissioner whenever the member, (a) draws a handgun in the presence of a member of the public, excluding a member of the police force while on duty, *points any firearm at a member of the public*, or discharges a firearm;

121. Leaving aside issues of draftsmanship that are beyond the OPP's mandate, Commissioner Boniface testified that she does not object to the proposed amendments.

Recommendation No. 46

The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that, whenever a police force is planning a "public order" operation, the force must ensure that there

be appropriate medical assistance available in case any civilians or police officers are injured. In addition, in such circumstances the force must ensure that counselling is made available as soon as possible to any civilians who suffer psychological trauma as a consequence of the police operation.

122. It is unnecessary to enact a regulation that a police force should ensure that appropriate medical assistance is available. There are circumstances that may dictate rapid deployment of an integrated response or POU unit, even where ideal medical assistance is unavailable. Where such operations are contemplated in advance, a medical plan already forms a component of the overall planning.

Recommendation No. 48

The Ontario Provincial Police should institute a program of periodically reminding officers that they must have “reasonable and probable grounds” before they place persons under arrest. The reminders should include hypothetical or real examples of situations in which there were not reasonable and probable grounds, such as with respect to the detentions of Marcia Simon, Melva George, Pierre George and Carolyn George on September 6, 1995.

123. The parties at this Inquiry disagree on the presence or absence of reasonable grounds in connection with the above arrests. However, there is no evidentiary foundation for the need for “a program to periodically remind officers” of their obligation to form reasonable and probable grounds before arresting. Indeed, it must be remembered that the Crown was asked for advice in this regard, and supported the existence of reasonable and probable grounds for the arrests.

Recommendation No. 55

The Government of Ontario should offer appropriate apologies and compensation (unless such has already been settled) to the First Nations people who were victimized by the Ontario Provincial Police at Ipperwash in 1995, including Marcia Simon, Melva George, Pierre George and Carolyn George.

124. It is not for the OPP to comment on the issue of compensation. The OPP will consider what this Inquiry has to say, if anything, on this issue in determining what further public statements should be made by the OPP. Commissioner Boniface undertook that the evidence would be reviewed in this regard.

Recommendation No. 51

As part of their training in first aid, police officers should be taught that it is important that information from family members or others

about the circumstances of the injury and the medical history of any victim be made available to medical personnel treating the victim.

125. Police officers are well aware of the importance of providing available, relevant information to medical personnel. There is no evidentiary foundation at this Inquiry to support a systemic need for additional training in this respect.

Recommendation No. 42

The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that, whenever there is an incident which is likely to be investigated by the Special Investigations Unit (SIU), all police officers who are potential witness or subject officers must be segregated pending their being interviewed by the SIU.

During the period proceeding the SIU's completing initial interviews with all such officers, no individual can discuss any aspect of the event with more than one of the officers involved. In particular, if any officer wishes legal advice preceding the officer's being interviewed by the SIU, she or he must obtain it from a lawyer who has not discussed the event with any other officer.

126. Commissioner Boniface testified that the segregation of such officers is SIU policy, and mandated for OPP officers. Indeed, the segregation of such officers is also addressed in Regulation 673/98 to the *Police Services Act*:

6. (1) The chief of police shall, to the extent that it is practicable, segregate all the police officers involved in the incident from each other until after the SIU has completed its interviews. O. Reg. 673/98, s. 6 (1).

(2) A police officer involved in the incident shall not communicate with any other police officer involved in the incident concerning their involvement in the incident until after the SIU has completed its interviews. O. Reg. 673/98, s. 6 (2).

7. (1) Subject to subsection (2), every police officer is entitled to consult with legal counsel or a representative of the association and to have legal counsel or a representative of the association present during his or her interview with the SIU. O. Reg. 673/98, s. 7 (1).

(2) Subsection (1) does not apply if, in the opinion of the SIU director, waiting for legal counsel or a representative of the association would cause an unreasonable delay in the investigation. O. Reg. 673/98, s. 7 (2).

127. The OPP does not support a legislative amendment to limit an officer's choice of counsel in the way described in the above recommendation. As Commissioner Boniface noted in her testimony, the conduct of counsel is subject to the Law Society's Rules of Professional Conduct. Those Rules would address a lawyer's complicity in a violation of the *Police Services Act*. As well, it may constitute a constitutional infringement to limit an officer's choice of counsel (in the absence of misconduct or conflict of interest) or prohibit a counsel from

providing legal advice to an officer only on the basis that the counsel has discussed the event with another officer (even in the absence of any sharing of information by that counsel).

Recommendation No. 43

The Province of Ontario should enact legislation to ensure that Special Investigation Unit investigations are conducted in a free and independent fashion and that “parallel investigations” such as occurred into the death of Dudley George do not occur in the future.

128. The OPP disagrees. The interplay of the SIU with Ontario police services has been extensively examined outside of this Inquiry. With respect, this Inquiry is not well situated to make this recommendation. It did not hear from the OPP or SIU officers who headed up the parallel investigations, nor has it heard any systemic evidence on all of the advantages to such parallel investigations. Nor does the record permit the inference that the independence of the SIU investigation was affected here; indeed, the evidence shows the contrary.

Recommendation No. 50

The Province of Ontario should enact a regulation under the *Police Services Act* creating an offence for police officers to assist a fellow officer’s defense to criminal charges as part of their paid duties.

129. Again, the answer to every issue raised at the Inquiry is not to create an offence. Second, the OPP recognized and addressed this issue.

Recommendation No. 44

The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that Ontario police forces must each adopt a policy of “zero-tolerance” towards racism by police officers.

130. Ontario Provincial Police Orders mandates zero tolerance for racism. Strong policies on racism and diversity are the starting point. Recruitment strategies to promote diversity and eliminate candidates with racist or intolerant views complement those policies. Ongoing training across the OPP and through the life of OPP officers represents another means of promoting a culture of tolerance.

131. Racist behaviour or expression is a disciplinary offence. Allegations of racism are sensitive investigative matters that are brought to the attention of the OPP Commissioner. A Professional Standards Bureau investigator assigned to a complaint raising First Nations issues (including racism) will have attended the Native Awareness Training course. The most senior officers, including the Commander, will act as case managers for the most sensitive or complex

matters, and where appropriate, may seek (and indeed have sought) input from community leaders.

132. All that being said, immediate and irrevocable dismissal of staff is not always the answer. The answer is not to create inflexible rules on what discipline will or will not be imposed in cases that are fact specific, but to ensure that anti-racism policies are followed, and that discipline, when required, takes all relevant facts into consideration, including racism. That presently occurs. Officer Dyke's statements compelled the immediate termination of his contract. Officer Whitehead's involvement suggested a different approach that recognized his role, level of remorse and potential rehabilitation. Wally McKay spoke eloquently at the OPP Forum in response to Mr. Rosenthal's proposal favouring automatic dismissal. In his view, 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 is often likely that the law will not support dismissal. (OPP Part I Submissions, paras. 238-241)

133. As noted elsewhere, the Chippewas of Nawash Unceded First Nation has recommended that racism includes "any communication, action or course of conduct, *whether intentional or unintentional*, which denies recognition, benefits, rights of access or otherwise abrogates or derogates from the constitutionally recognized rights and freedoms of any person or community on the basis of their

membership or perceived membership in a racial group” (recommendation 35). Other parties have made the valid point that the absence of a racist intent does not minimize the consequences to the affected group. Commissioner Boniface made the very same point in reviewing the investigative report into the memorabilia and other offensive items. However, as Commissioner Boniface noted, lack of intent is not a defence to offensive conduct, but it is relevant in determining the appropriate disciplinary action. Mandated dismissals (leaving aside constitutional or due process impediments) are, with respect, not appropriate.

134. The OPP is prepared to consider amending existing policies to more clearly articulate two operative principles:

- (1) Evidence that conduct, including statements, was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor shall be treated as an aggravating circumstance in determining what disciplinary action should be taken. This tracks the language contained in section 718.2 of the *Criminal Code*.
- (2) Where conduct was so motivated, this should figure prominently in assessing whether measures short of formal discipline are appropriate.

135. It will be for the Province of Ontario to determine whether these principles should be incorporated into the *Police Services Act*, together with a related principle that conduct so motivated shall be deemed by the adjudicator to be an aggravating circumstance in determining an appropriate sanction.

Recommendation No. 41

The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring that all telephone calls and radio transmissions made by police officers in the course of performing their duties be recorded in all cases in which it is practical to do so.

136. At present, all radio and phone communications coming into and going out of the Provincial Communications Centres are recorded and stored digitally. At Level 2 Incidents involving the integrated response, all radio communications are recorded and stored digitally, as are all TRU radio communications on a separate frequency, and all crisis negotiations. Where practicable, the telephone lines in the Command Post are also recorded and stored digitally. The OPP does not support a regulation mandating the recording of *all* telephone and radio transmissions made in the course of duty where practical to do so. This Inquiry has not examined (nor should it have) all of the implications associated with such a wide-ranging and mandatory provision. Commissioner Boniface responded to the suggestion by repeatedly raising practicality. Practicality, in this context, must reflect limited financial resources and prioritization. For example, Commissioner

Boniface described the pilot projects in Toronto, Kenora and Ottawa to introduce in-car cameras, a positive development for officers and the public. The introduction of in-car cameras province-wide, if the pilots are successful, are still subject to financial resources.

- Evidence of Commissioner Boniface, June 14, 2006, pp. 228-234; June 15, p.62

**SUBMISSIONS ON BEHALF OF THE RESIDENTS OF AAZHOODENA
(ARMY CAMP)**

137. The Residents of Aazhoodena submit that recommendations made in previous inquiries (particularly the Royal Commission on Donald Marshall Jr., the Royal Commission on Aboriginal Peoples and the Commission of Inquiry into matters related to the death of Neil Stonechild) generally have application to them. They recognize that “meaningful steps have been made by the Police to improve the standard of policing of First Nations people.” Rather than attempting to “re-invent the wheel”, they recommend that a subcommittee of a special adjudicative body be established “to compile the recommendations with respect to policing as laid out in the Marshall and Stonechild Reports and compare these with what has been done on municipal, provincial and federal policing, and where the recommendations have not been met, to set appropriate timelines for the full implementations of same.”

138. In our view, this Inquiry is well situated to evaluate what has been done by the OPP to address the issues raised at this Inquiry. This Inquiry is also well situated, should it so choose, to review the recommendations made by previous inquiries to determine the extent to which they address issues here, and provide recommendations that this Inquiry should adopt. Some of those recommendations clearly have application here (for example, recommendations by the Royal Commission on Aboriginal Peoples concerning public education are

important). A number of those recommendations address very different issues, and have more limited application here, although they all assist in increasing awareness of, and sensitivity to, Aboriginal issues of general concern.

THE CHIPPEWAS OF KETTLE AND STONY POINT

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

140. While the credible evidence does not support the First Nation’s characterizations concerning the events of September 1995, nor with the factors (such as racism, lack of respect for Aboriginal culture or a woeful lack of patience) said to explain Ipperwash, the OPP agrees, of course, with the proposition that police respect for Aboriginal peoples and culture, resourcefulness, patience, and bias-free policing assist in avoiding violence. We also agree with the First Nation that

the best way to avoid future policing incidents would be for the general community to be educated in the same way about Aboriginal peoples, their history and communities as well. The best policing incident is no policing incident.

141. The OPP also agrees that the timely settlement of Aboriginal land claims must be a high priority.

142. There is an extensive discussion in the First Nation's submissions concerning the use of injunctions. The First Nation notes that a common, if not necessary, feature of demonstrations and occupations by Aboriginal protestors and claimants is the injunction. It expresses concern about the use of what is essentially a private law, equitable remedy to apply to public land. It also notes that injunctions are sought by public authorities more often *ex parte* than on notice, which only gives relief limited under the *Rules of Civil Procedure* in time and frequently, in the exercise of judicial discretion, by other terms and conditions such as provisions regarding service.

143. The First Nation relies upon the paper "Trespass and Expressive Rights" in which Wesley Pue notes that the standard is somewhat different where the Attorney General seeks a "public rights injunction", citing the decision in *Ontario (Attorney General) v. Ontario Teachers' Federation*:

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

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

144. The First Nation would add consideration of Aboriginal and treaty rights and the government's duty to consult to the factors to be considered by a court in the case of a public rights injunction involving an Aboriginal protest or dispute. It suggests that a recommendation to that effect would have persuasive value in the courts. It is also suggested that a very recent decision of the Superior Court of Ontario in *Platinex v. Kitchenuhmaykoosib Inninuwug et al.* (Court File No. 06-0271 -Thunder Bay- July 28, 2006 per G.P. Smith, J.) illustrates the kind of considerations argued for here. It is said that the same considerations should be applicable in contempt proceedings.

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

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

147. Parties other than the OPP are better situated to comment on the jurisprudence surrounding injunctions. Further, it is not appropriate for the OPP to comment here on the court orders made in Caledonia. That being said, the First Nation's discussion on the use of injunctions is a helpful one.

148. As reflected in the OPP Part II Submissions, the OPP recognizes that, in some circumstances, applications for injunctive relief, the timing of such applications, or the terms of any injunctive relief, may not ultimately advance public safety and order, but may exacerbate tensions and actually inhibit the expeditious and peaceful resolution of the issues. It follows that great consideration should be given by applicants for injunctive relief (and by governments either bringing such applications or who appear as interested parties) to whether such applications will contribute to the peaceful resolution of the incident or even advance the long term interests of the applicant. The OPP favours the creation of a government policy that complements the Framework's approach, and articulates factors that inform the approach to applying for, or supporting, injunctive relief, and the timing of such applications. The preservation of public order and safety should figure prominently in this policy. We agree with the First Nation that consideration of Aboriginal and treaty rights and the government's duty to consult may be factors that should inform any government policy on applying for, or supporting injunctive relief, and ultimately inform a court decision when injunctive relief is sought.

149. The First Nation's discussion on injunctions is helpful in another way. It must always be remembered that injunctive relief is also available to First Nations to seek, for example, termination of various land uses, such as exploratory drilling, mining or construction, pending determination of competing claims. Indeed, the *Platinex* decision makes the point well. Although the OPP recommendations are largely directed to injunctive relief against an Aboriginal occupation or protest, we must remain mindful of the larger implications of our recommendations and those of other parties.

Policing Issues

Training

150. The First Nation submits that the Manitoba Justice Inquiry provided a detailed list of the types of training that law enforcement officers should receive. The First Nation supports the Manitoba recommendations, and the involvement of Aboriginal peoples in the development of such training. The Manitoba Justice Inquiry is cited for the following:

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

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

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

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

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

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

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

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

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

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

- **Aboriginal Community Life Today.** The current political, social and economic realities of life in Aboriginal communities should be explained. The efforts being made by Aboriginal people to improve life in their communities, and the services that are available to people and to the

justice system, should be understood. Advances made in the fields of education, health and welfare, child welfare, budgetary control, alcohol reduction and abuse programs should be described.

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

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

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

Presentation

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

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

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

151. Some of the proposed training is designed for participants in the administration of criminal justice other than police officers. That being said, the OPP training on Aboriginal issues addresses almost all of the areas proposed by the Manitoba Justice Inquiry.

152. Once hired, a recruit must first attend the OPP Academy for a one-week orientation. Since 1998, First Nations Programs staff provides a half-day training on Aboriginal issues, addressing:

- A general understanding of First Nations policing, including self-directed and OPP administered;
- Awareness of the roles that dispute resolution and restorative justice play in First Nations communities;
- Understanding how the OPP's mission statement, values, and policies impact on services provided to Aboriginal people.

153. They are assigned a research project to be completed while at the Ontario Police College with the support of the recruit's Coach Officer. The assignment is to:

- Identify all First Nations police services in the region to which they are posted;
- Identify all Aboriginal cultural affiliations within their detachment/regional area;

- Specify a minimum of three Aboriginal concerns impacting on policing service;
- Identify at least one police strategy and the partnerships required to address one of the identified concerns.

154. After they complete Basic Training at the Ontario Police College, they return to the OPP Academy for four weeks. Commencing in 2003, two additional days on Aboriginal issues were inserted into this training period. The training includes:

- Background on cultural groupings within First Nations necessary to understand current community dynamics;
- Aboriginal ceremonies, rituals and symbols used to support healthy communication;
- Current historical trends especially in relation to land use, treaties, and the effects of legislation;
- Police roles in responding to disputes concerning treaty rights, land claims, and Aboriginal rights;
- Learning that effective police interventions to protect people requires understanding.

155. This content is similar to the one-week program, but in less detail and without substantial cultural teaching.

156. After leaving the OPP Academy and during their probationary period, officers job-shadow a First Nations police officer (assuming proximity of a First Nations police service) for two weeks. As well, in several Regions, recruits participate in a day of Regional training on the community-specific issues in their area.

157. Then, as fully documented in the OPP Part II Submissions, many front-line officers attend the one-week Native Awareness Training course, which is also mandatory for a number of positions or teams. The curriculum for the one-week course (which is constantly updated and modified to meet local needs) forms an attachment to the draft OPP Part II materials (Aboriginal Initiatives: Building Respectful Relationships), distributed at the OPP Forum. A review of that curriculum shows an extensive program capturing many of the features referred to by the Manitoba Justice Inquiry. It culminates in the preparation of, and participation in, a sweat lodge.

158. Aboriginal officers teach the course, with contributions from many others, including officers who speak about their personal experiences in residential schools.

Racism Policy

159. The First Nation submits that the Commissioner should recommend an amendment to the *Police Services Act* mandating a “zero tolerance” policy for all police services in Ontario.

160. Ontario Provincial Police Orders mandates zero tolerance for racism. We do not see the *Police Services Act* as the appropriate placement for anti-racism policies.

Discipline

161. The First Nation submits that “it should be clear to all officers that racist behaviour or expression in any form is a matter for discipline. The Commissioner of the OPP should develop a specific policy for such discipline and submit it for review and comment to a broad spectrum of human rights organizations, including the Chiefs of Ontario Office, its member organizations and independent First Nations. Where the inappropriate conduct involves Aboriginal people, there should be provision for an Aboriginal elder to participate in the discipline process. The discipline policy should make it clear that dismissal is an immediate option and that continued service is probationary if remedial training or counseling are indicated on the basis of some realistic expectation of reform.”

162. With respect, it is abundantly clear to all officers that racist behaviour or expression is a disciplinary offence.

163. The OPP has strong policies on racism and discrimination. Allegations of racism are sensitive investigative matters that are brought to the attention of the OPP Commissioner. A Professional Standards Bureau investigator assigned to a complaint raising First Nations issues (including racism) will have attended the Native Awareness Training course. The most senior officers, including the Commander, will act as case managers for the most sensitive or complex matters, and where appropriate, may seek (and indeed have sought) input from community leaders.

164. In addition, OPP Professional Standards Bureau investigators are now instructed as a best practice that “they must endeavour to fully understand the dynamics of the incident under investigation. There may be unique cultural issues to consider. Where appropriate, investigators should consult with the complainant, complainant’s family or First Nation governance officials to determine the best course of action during an investigation. Where appropriate, consultation may be necessary to ensure that the most effective means is utilized to address substantiated incidents. The use of interpreters, the locations of interviews and hearings, resolution procedures and the personal background of a complainant are examples that may require further consideration or consultation.”

165. With respect, the answer here is not to create additional policies on what discipline will or will not be imposed in cases that are fact specific, but to ensure that anti-racism policies are followed, and that discipline, when required, takes all relevant facts into consideration, including allegations of racism. That presently occurs. That being said, the OPP is prepared to consider amending existing policies to more clearly articulate two operative principles:

(1) Evidence that conduct, including statements, was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor shall be treated as an aggravating circumstance in determining what disciplinary action should be taken. This tracks the language contained in section 718.2 of the *Criminal Code*.

(2) Where conduct was so motivated, this should figure prominently in assessing whether measures short of formal discipline are appropriate.

166. It will be for the Province of Ontario to determine whether these principles should be incorporated into the *Police Services Act*, together with a related principle that conduct so motivated shall be deemed by the adjudicator to be an aggravating circumstance in determining an appropriate sanction.

Reviews and Promotion

167. The First Nation submits that the policies of the OPP and other police services should include “consideration of past interactions with Aboriginal persons, communities and enforcement matters with a view to having a scoring factor that affects performance reviews and promotions. Again, Aboriginal groups should participate in the development of such policies.”

168. The OPP has addressed this issue. When officers seek promotion, they appear before Promotional Boards. The criteria for selection of Board members include diversity. At least one of the questions directed to applicants for promotion requires officers to address Aboriginal issues. The Framework now figures prominently in the promotional process.

169. In order for officers to qualify as Level 2 Incident Commanders, they must successfully complete 7 mandatory fields, one of which is “managing Aboriginal issues”; failure to demonstrate the required knowledge, skills and abilities results in the officer failing the course, and not being designated as a Level 2 Incident Commander. Similarly, two of the ten questions at the crisis negotiator selection board are directly related to Aboriginal issues management.

170. These are illustrations of the attention given to Aboriginal issues in evaluating the performance of officers, and determining whether they should be

promoted. The OPP is always prepared to consult on whether its performance reviews and promotional processes should be further enhanced.

Incident Reports and Records

171. The First Nation submits that a recommendation should be made that, in cases of CMU/TRU mobilization:

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

172. In the OPP's submission:
- a. All radio and phone communications coming into and going out of the Provincial Communications Centres are recorded and stored digitally. At Level 2 Incidents involving the integrated response, all radio communications are recorded and stored digitally, as are all TRU radio communications on a separate frequency, and all crisis negotiations. Where practicable, the telephone lines in the Command Post are also recorded and stored digitally. These policies are described in the OPP Part II materials, Tab 4 (OPP Emergency Response Services: A Comparison of 1995 to 2006, Appendix A and Appendix B.) One lesson well learned from Ipperwash has been the general inadvisability of non-uniform taping of telephone calls which is dependent upon their content.
 - b. Digital recording makes duplicate recording facilities unnecessary, and in any event, cost inefficient.
 - c. Current OPP note-keeping practices, as contained in Police Orders, were identified by Commissioner Boniface in her testimony, and summarized in the OPP Part II materials, Tab 8 (OPP Daily Journals and Note Taking: A Comparison of 1995-2006 (Police

Orders)). The timeliness of note-keeping is specifically addressed in current Police Orders. As well, qualified scribes now prepare Incident Commanders' notes, which must be corrected and adopted by the Incident Commanders. A scribe accompanies Public Order Commanders on the scene with a micro-cassette recorder.

- d. Officers' notes are provided to the SIU as required by law.
- e. Any amendments to current use of force reports should be addressed province-wide, and in the context of a fulsome discussion on the purpose and use of such reports.

Local Incident Management Teams

173. Acknowledging the function and value of the Commissioner's Select Liaison Group on Aboriginal Affairs, the First Nation recommends that the Ontario Provincial Police establish, within each of its regions, an Aboriginal Incident Management Team. This team would be comprised of police representation from within the particular Region, and those outside the organization, including municipal officials, emergency service, First Nation community members, local Band leadership, and at least one First Nation elder.

174. The duties of the Team would include:

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

175. With respect, it is highly inadvisable (and inconsistent with many recommendations made by First Nations parties at this Inquiry) to create an Aboriginal Incident Management Team of this breadth to advise on operational matters. Indeed, it raises all the issues of perception of political or community-based interference in operational decisions that have animated this Inquiry.

176. That being said, the OPP is currently networking in many ways to facilitate communication and good relations with Aboriginal communities, and obtaining information on issues of concern to the community:

- The Commissioner obtains advice from the Commissioners' Select Liaison Council on Aboriginal Affairs, as well as through meetings with Aboriginal leaders, elected Chiefs, Chiefs of Ontario and the PTOs;
- Senior regional command staff also has relationships with leaders of the PTOs. Regional Commanders meet with the Grand Chiefs. Detachment Commanders are required to meet regularly with local First Nations police services and local elected leaders to discuss issues of mutual interest;
- Regional Aboriginal Strategy Committees regularly provide additional community input to the OPP. As previously noted, the OPP is also developing Regional Liaison Councils;
- The role of the Aboriginal Liaison Operations Officer includes consultation with the Aboriginal community and its leadership on issues of importance. As well, many detachments have designated liaison officers who work with the First Nations communities, particularly where the OPP administers the First Nations police services. These liaison officers meet regularly with community members;
- Members of the Integrated Support Services Unit and ART consult with First Nations communities on a daily basis as part of their functions;

- The Manager, First Nations Programs consults daily with OPP policed communities, self-directed First Nations police services, as well as Elders involved in cultural teachings;
- The OPP senior management participates in the First Nations Chiefs of Police Association, including the Commissioner.

177. It should also be noted that many of the OPP administered First Nations police services have local police committees that are longstanding and facilitate consultation between the OPP and First Nations leadership.

Anthony O'Brien "Dudley" George

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

179. The OPP takes no objection to a monument or memorial to Dudley George. It is for others to discuss funding. The OPP takes vigorous objection to the suggestion that such a monument should commemorate his "murder at the hands of the OPP." Ironically, this recommendation follows a recommendation

that funding be provided for counselling to contribute to the healing process. The proposed terms of this monument are antithetical to any notion of healing or reconciliation; indeed, the suggestion is provocative and inflammatory.

CHIEFS OF ONTARIO

180. The Chiefs of Ontario make a number of recommendations arising out of the OPP and COO Forums. Indeed, a number of those recommendations have already been adopted by the OPP, as reflected in the testimony of Commissioner Boniface and in the OPP Part II Submissions.

181. As well, a number of the Chiefs of Ontario's recommendations in its more recent Part II Factum accord with recommendations made by the OPP. For example, COO, like the OPP, recognizes the importance of a timely, efficient, fair process to resolve land claims; Professor Coyle's valuable contribution to that issue, and the importance of public education regarding Aboriginal rights, issues and history. (COO recommendations C1-3).

G. Policing Aboriginal Occupations and Protests

182. As reflected below, the OPP agrees with many of the recommendations made by COO in this category, although not with some of the commentary that precedes those recommendations. For example, it is inaccurate to say that, "with a few recent exceptions", neither the police nor governments have resorted to diplomacy in resolving disputes, and that, as a general rule, federal, provincial and municipal police services are too quick to respond to the pressures of non-

Aboriginal governments and the public to “restore order”. (para.105) Apart from Ipperwash, the OPP have had great success in utilizing diplomacy in resolving disputes. It is incorrect to say that “typically, there is no effort made to communicate with the leadership of the community involved.” (para.110). Indeed, the opposite is true. (See, for example, *Platinex v. Kitchenuhmaykoosib Inninuwug et al.* (Court File No. 06-0271 -Thunder Bay- July 28, 2006 per G.P. Smith, J.)

183. It is incorrect to make generalized comments about racist responses to Aboriginal occupations or blockades based upon “celebratory t-shirts and pins” (paras. 106-109). It is incorrect to say that First Nations-directed police services are not systemically included in the resolution of a conflict. (para.111). Many of the successful resolutions of Aboriginal critical incidents have involved a collaborative effort between the OPP and First Nations police services. Indeed, the local dynamics that prevented any assistance being offered by the Kettle and Stony Point Police Service at Ipperwash have been well documented and are not typical.

184. COO notes in its commentary at paragraph 113 that “without proper training and supports, junior officers are often posted in isolated First Nation communities and immediately put on the ‘front line’.” This has been identified as a problem for NAPS. The NAPS Investigative Support Unit is designed, in part, to address this very concern.

Police Complaints Process

G.1 The Chiefs of Ontario welcome the opportunity – at the appropriate time - to discuss further changes to the OPP policy “*A Framework For Police Preparedness for Aboriginal Critical Incidents*” with the OPP in light of current and on-going events in Ontario.

185. As previously articulated by Commissioner Boniface and in the OPP Part II materials, the OPP has already adopted a number of recommendations made by COO respecting the Framework and its dissemination, and also welcomes the opportunity to continue that dialogue with COO.

G.2 Protocols should be negotiated between police services in Ontario and First Nations political representatives (at the community and regional political organization levels) to avoid and/or to resolve conflicts without incident.

186. The OPP indicates in paragraphs 67 and 68 of its Part II Submissions that if First Nations political organizations in Ontario (whether COO or the PTOs) wish to explore operational or public safety protocols in Ontario, the OPP would be highly receptive to doing so. COO at its Part II Forum emphasized the

importance of a direct dialogue between the OPP and COO on mutual issues, and it is expected that ongoing discussions will lead to a communication/dialogue protocol to enhance that direct dialogue, and promote consultation on First Nations issues. The OPP is currently working with the Chiefs of Ontario and Nishnawbe-Aski Nation to develop such communication/dialogue protocols.

187. Operational protocols raise additional issues. Ontario has a significantly more complex First Nations policing environment than any other province or territory. The ongoing development of nine First Nations police services, aligned primarily along the lines of PTOs, significantly affects the efficacy of a protocol with operational components that crosses policing jurisdictions. Operational protocols already exist with most First Nations police services, and some First Nations communities. Operational protocols with the same communities policed by First Nations police services invite “bypassing” of First Nations police services by their communities. This would seriously undermine the First Nations police service and its Board.

G. 3 Police services in Ontario should be strongly encouraged to:

- a. establish an alternative complaint and investigation process in collaboration with First Nations to ensure fairness and transparency;**

188. Bill 103, drawing upon Justice LeSage's recommendations, addresses fairness and transparency in the complaint and investigative process. As reflected below, COO supports the recommendation of Justice LeSage to create an independent civil body.

b. establish senior level liaison processes with First Nations' leadership to regularly address issues of mutual concern and to facilitate cooperative problem-solving;

189. The OPP is currently liaising at a senior level with First Nations' leadership in a variety of ways, which include:

- The Commissioner obtains advice from the Commissioners' Select Liaison Council on Aboriginal Affairs, as well as through meetings with Aboriginal leaders, elected Chiefs, Chiefs of Ontario and the PTOs;
- Senior regional command staff also has relationships with leaders of the PTOs. Regional Commanders meet with the Grand Chiefs. Detachment Commanders are required to meet regularly with local First Nations police services and local elected leaders to discuss issues of mutual interest;

- Regional Aboriginal Strategy Committees regularly provide additional community input to the OPP. As previously noted, the OPP is also developing Regional Liaison Councils;
- The role of the Aboriginal Liaison Operations Officer includes consultation with the Aboriginal community and its leadership on issues of importance. As well, many detachments have designated liaison officers who work with the First Nations communities, particularly where the OPP administers the First Nations police services. These liaison officers meet regularly with community members;
- Members of the Integrated Support Services Unit and ART consult with First Nations communities on a daily basis as part of their functions;
- The Manager, First Nations Programs consults daily with OPP policed communities, self-directed First Nations police services, as well as Elders involved in cultural teachings;
- The OPP senior management participates in the First Nations Chiefs of Police Association, including the Commissioner.

190. It should also be noted that many of the OPP administered First Nations police services have local police committees that are longstanding and facilitate consultation between the OPP and First Nations leadership.

191. That being said, communication/dialogue protocols with First Nations organizations such as COO can be expected to further institutionalize and enhance these activities.

c. develop and implement culturally-sensitive cross-cultural training initiatives in cooperation with First Nations, including regular First Nations community-based training sessions involving Elders and community leaders, First Nations constables, women, youth, etc.;

192. In its commentary, COO recognizes the OPP Native Awareness Training Program, and recommends that it be mandated for all ranks within the OPP. It is noted that the OPP's own post course evaluation results recommended that the course "be made available or mandatory for all OPP members with a priority given to our front line members working with First Nations communities."

193. The OPP welcomes COO's input, including its resolution 06/66 that supports, amongst other things, working with the OPP to enhance its training course to reflect the diversity of First Nations within Ontario. The ultimate goal, subject to the available financial and human resources, is to ensure that the

Native Awareness Training course is provided to all OPP officers. There is a high demand for the course, and priority is given to officers working with First Nations communities, and to specialty teams and positions for which the course is mandated.

d. hire more First Nations members into and advancement through all levels of authority in Ontario police services.

194. The OPP's outreach and inreach initiatives, fully described in its Part II Submissions, are designed for this very purpose, and have high priority within the organization. (OPP Part II Submissions, para. 117; OPP Part II materials, Tab 2, Section D)

G.4 There is a need for more recognition, support and financial resources from both Ontario and Canada for First Nations-directed police services in Ontario and for First Nations-based administration of justice systems.

195. The OPP has recommended that the federal and provincial governments significantly increase funding for First Nation police services and those police services which deliver services to the First Nation communities (paras. 111, 113 and recommendation 23).

G.5 There is a need for greater recognition of First Nations' law and support for First Nation enforcement processes, together with a commitment to reciprocal arrangements for implementation of First Nations-based justice systems.

196. Recommendations concerning First Nations-based justice systems are beyond the mandate or expertise of the OPP. However, the OPP welcomes any initiatives that address existing deficiencies in providing justice, in a manner compatible with First Nations teachings.

G.6 The Government of Ontario should act upon the recommendation of The Honourable Mr. Justice Patrick LeSage in his final report into the Police Complaints System in Ontario and create an independent civilian body, which would include First Nation representation, to administer the public (police) complaints system in Ontario.

197. Bill 103, founded on recommendations made by Justice LeSage establishes an Independent Police Review Director and a new public complaints process. In our view, it is somewhat beyond the scope of this Inquiry to analyze Justice LeSage's recommendations or Bill 103. However, the OPP is supportive of a process that enhances transparency and accountability. (OPP Part II Submissions, para.108)

H. Aboriginal People and the Criminal Justice System

198. The COO commentary at paragraph 131 refers to two deaths, one of which involved the OPP. That was the August, 2003 death of Geronimo Fobister. COO states that the case “raises serious issues of mistrust and racism while at the same time leaving open unanswered questions of dishonest and deficient police conduct.”

199. Whenever a non-peaceful outcome to an incident occurs, it is always deeply regrettable, and may generate dispute. The Fobister case is such an example. However, in fairness, the SIU “found that the officer was justified in his actions.” We do not agree with the characterization of the case reflected in the COO commentary.

ABORIGINAL LEGAL SERVICES OF TORONTO

200. ALST makes recommendations that stress the importance of an appropriate resolution process of land claims and disputes relating to Aboriginal and treaty rights, and public education respecting an accurate history of Ontario's Aboriginal peoples, lands, and treaty rights (ALST recommendations 3 and 6). The OPP recommendations also address the importance of a speedy and just determination of Aboriginal claims, and the promotion of public education about Aboriginal peoples, their history, concerns and aspirations, in consultation with Aboriginal leadership. (OPP Part II Submissions, paras. 16-17; 199-200, recommendation 4; paras. 55, 202-203, recommendation 16)

201. ALST will be filing its Part II Submissions in September 2006, which will be responded to thereafter. However, some of its Part II recommendations are contained in its Part I Factum. Without prejudice to later amplifying upon our responses, it is appropriate to respond to some of these recommendations now.

Recommendation 11: The Government of Ontario amend the *Police Services Act*, R.S.O. 1990, c.P.15 to create a police services board for the Ontario Provincial Police. The Ontario Provincial Police Services Board shall contain dedicated seats for Aboriginal representation. The number of dedicated Aboriginal seats on the Police Services

Board and the appointment process will be established by the Province in consultation with the Aboriginal community.

202. The OPP Part II Submissions at paragraphs 180-187 fully address whether a police services board should be introduced for the OPP. In summary, although the OPP is not philosophically opposed to being governed by a police services board, there are significant impediments to its introduction. It may be questioned whether adding another police services board would cause confusion, diffuse accountability, and fail to truly promote province-wide public participation in its processes. It is also questionable whether the evidence at this Inquiry compels such a complex and costly reform.

203. That being said, should a police services board be created, the OPP agrees that it should contain Aboriginal representation to be determined by the Province in consultation with the Aboriginal community.

Recommendation 12: The Government of Ontario cease the practice of police officer secondment within government. In the alternative, the Government of Ontario shall create strict guidelines for the conduct of police officers seconded to other government agencies.

204. OPP Liaison Officers have historically performed a valuable role within government, and should be permitted to continue to do so. Concerns about

political interference or the perception of such can be addressed through enhanced transparency in decision-making outlined in the OPP Part II Submissions, particularly paragraph 187.

Recommendation 15: The Government of Ontario implement regulations under the *Police Services Act*, R.S.O. 1990, c.P.15 mandating that all police services in Ontario establish an Aboriginal Resolution Team (ART). The composition of the ART shall include Aboriginal police and Aboriginal civilians that have extensive knowledge and understanding of Aboriginal people, and Aboriginal and treaty rights. The ART will also contain members that are skilled negotiators and mediators.

205. To state the obvious, the OPP strongly supports the creation and deployment of ART teams. The OPP intends to expand its ART and MELT membership, drawing upon officers across the Province who have familiarity with local issues and individuals, as resources permit. However, while this Inquiry can commend ART as a best practice, it should not mandate its establishment for all police services, regardless of need or resources.

206. ART members draw upon Aboriginal civilians as resources and intermediaries. However, it is impractical for civilians to form part of ART for a

variety of reasons, including the need for dedicated training, operational experience etc.

Recommendation 15.1: The OPP shall develop a protocol to control access to, and the dissemination of, operational information by non-police civil servants.

207. The OPP has introduced a proposed policy for regulating access to an operational Command Post. It has also articulated a test for when information can be shared by government and the police, to be supported by government policy. (See OPP Part II Submissions, paragraphs 160 et seq.)

Recommendation 16: The OPP shall ensure that a properly trained intelligence officer be appointed for all significant incidents.

208. The OPP has already addressed this point in the following ways:

- Intelligence Analysis is now seen as the heart of the intelligence process – the transformation point from information to intelligence;
- Analytical resources have been increased dramatically in line with recognized best practices;
- Intelligence analysis (both strategic and tactical) is a primary component of all intelligence operations;

- When intelligence becomes an integral partner to a critical incident (at any point in its evolution) an analyst is attached to act as the filter/advisor to the Incident Command;
- Attempts are being made to ensure that all intelligence operations are “led” by analysis. (OPP Part II materials, Tab 7 (OPP Intelligence Services: A Comparison of 1995 to 2006))

Recommendation 17: All OPP officers shall receive training concerning their potential role within the intelligence cycle.

209. The OPP has already addressed this point in the following ways:

- Intelligence training has been enhanced in relation to intelligence clients. Key consumers of intelligence, including Incident Commanders, now receive training on the utilization of intelligence – including the evaluation techniques and the difference between intelligence and information;
- OPP frontline officers receive intelligence training at annual In-Service Training sessions. Further the Bureau provides regular Strategic Intelligence Briefs including instruction on the intelligence process and how it is utilized in the OPP;

- The Bureau has also proposed the delivery of intelligence training to OPP recruits although this has not occurred as yet. (OPP Part II materials, Tab 7 (OPP Intelligence Services: A Comparison of 1995 to 2006))

Recommendation 18. The OPP shall appoint a senior officer under the direction of the OPP Commissioner's office during any significant incident to address all interactions with elected officials.

210. The OPP explains in the OPP Part II Submissions (paras. 190-198, and recommendations 33-34) why there should be no inflexible rule that Commanders cannot communicate with politicians or other community leaders. Commanders, as was the case with Deputy Commissioner Carson, may be assigned to an incident for months or several years. There will be times when concerns about political influence or overwhelmed Commanders are negligible. Commanders may have relationships with community leaders that can be utilized to reduce the likelihood of violence. These relationships should not automatically be discarded. The better approach is to recognize, through training, the concerns that have been identified at the Inquiry, and that those concerns should inform a Commander's discretion as to whom he or she will meet with and when. Rather than institutionalize yet another position – that is, a Community Liaison Officer as a buffer, the OPP accepts that the specific assignment of a senior officer as a buffer should be a resource available to a Commander. In most cases, it can be

served by the Aboriginal Liaison Officer – Operations, and/or members of the ART and MELT teams, the Detachment Commander or the local Chief of Police. It should also be remembered that the current OPP command structure distributes decision-making functions in a way that better enables buffers to be created between community leaders and on-the-scene operational decision-makers.

211. The OPP approach will also be complemented by the proposed policy on access to an operational Command Post. (OPP Part II Submissions, paras. 191-193, 198 and recommendations 33-34)

Recommendation 19: In order to sufficiently recognize that Aboriginal peoples asserting their inherent rights in a public manner is distinguished from a mainstream public protest or crowd, the OPP must amend their tactical operations to a manner that best responds to the unique character of First Nations occupations. Thus, the approach must be one that fosters mutual respect and tolerance.

212. This point has already been addressed by the OPP in a variety of ways, including:

- The Framework articulates the OPP approach to an Aboriginal critical incident. That approach accords with the ALST recommendation;

- Specific training is directed to the managing of Aboriginal incidents. The training accords with the ALST recommendation;
- That training is being enhanced as a result of suggestions made at the OPP Incident Simulation and Orientation. POU Commanders and ERT members, in addition to the training currently undertaken, will be specifically instructed on the special considerations and unique responses involving an Aboriginal blockade, occupation or land dispute;
- The OPP response to Aboriginal critical incidents is now the subject of a mandatory review, as is any OPP response to a Level 2 Incident.

Recommendation 20: The Government of Ontario implement regulations under the *Police Services Act* R.S.O. 1990, c. P.15 restricting the creation and distribution of any memorabilia by any police officer or police service in Ontario of any policing operation.

213. This point is adequately addressed through the existing policy on the use of OPP insignia. Nor would it be appropriate to prohibit the creation and distribution of memorabilia relating to any policing operation. Non-confrontational operations (such as a power blackout) might well be memorialized. It should be further noted (given the heading that precedes this recommendation) that the

evidence at this Inquiry supports the characterization of the memorabilia as deeply offensive, but not motivated by racism. Finally, Commissioner Boniface has advised the Inquiry of the specific measures to be taken to address any existing memorabilia from Ipperwash once the current t-shirt investigation is completed.

Recommendation 21: The Government of Ontario amend Bill 103-*Independent Police Review Act, 2006* to legislate that the Independent Police Review Director have exclusive non-delegable jurisdiction to investigate all public complaints relating to allegations of racism.

214. Bill 103, founded on recommendations made by Justice LeSage establishes an Independent Police Review Director and a new public complaints process. In our view, it is somewhat beyond the scope of this Inquiry to analyze Justice LeSage's recommendations or Bill 103. (See OPP Part II Submissions, para.108).

Recommendation 22: The Government of Ontario shall prohibit the employment of on-duty police officers and the use of official police resources for the legal assistance of police officers charged with criminal offences.

215. The OPP recognized and addressed this issue. A prohibition is not required.

Recommendation 23: The Government of Ontario amend the *Police Services Act*, R.S.O. 1990, c. P.15 to require that all internal complaints relating to racism be required to proceed by way of a discipline hearing.

216. The OPP proposes another approach, rather than proceeding in the inflexible way described above. Former Commissioner O'Grady and Commissioner Boniface described how the totality of circumstances must be considered in fashioning an appropriate response to allegations of misconduct. As Commissioner Boniface noted, the public interest may, in some circumstances, best be served through proceeding by way of informal discipline. The correct approach is to take all relevant facts into consideration, including allegations of racism, in determining what disciplinary action should be taken.

217. That being said, the OPP is prepared to consider amending existing policies to more clearly articulate two operative principles:

- (1) Evidence that conduct, including statements, was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation

or any other similar factor shall be treated as an aggravating circumstance in determining what disciplinary action should be taken. This tracks the language contained in section 718.2 of the *Criminal Code*.

(2) Where conduct was so motivated, this should figure prominently in assessing whether measures short of formal discipline are appropriate.

218. It will be for the Province of Ontario to determine whether these principles should be incorporated into the *Police Services Act*, together with a related principle that conduct so motivated shall be deemed by the adjudicator to be an aggravating circumstance in determining an appropriate sanction.

Recommendation 24: The Government of Ontario amend the *Police Services Act* R.S.O. 1990, c. P.15 to allow members of the public to seek standing at discipline hearings related to internal complaints of racism.

219. The OPP does not support this recommendation. The rules at a discipline hearing must also accord with principles of fundamental justice, including procedural fairness. It is debatable whether conferring standing upon members of the public at a discipline hearing would accord with those principles.

220. It is important to emphasize, in this regard, that victim impact or community impact evidence may be receivable at a discipline hearing from specific victims or from community leaders or members who can speak to the impact of the misconduct upon their community.

Recommendation 25: The Governments of Canada and Ontario provide funding to bring together schools of journalism, journalists, editors, academics, and the Aboriginal community to establish Best Practices for reporting on Aboriginal peoples, and Aboriginal issues.

221. The OPP will not address the issue of funding for such a study. But some comments are warranted.

222. The study commissioned for this Inquiry by the ALST on the Ipperwash media coverage was cited in the OPP Part II Submissions, despite the fact that the study makes the point, amongst others, that in the aftermath of September 6, 1995, the police perspective was given disproportionate voice in the media, and that the occupiers were demonized in a variety of ways.⁴

223. At Caledonia, the OPP has witnessed the intemperate opposition to the OPP measured response at Caledonia given a disproportionate voice (often through anonymous sources) in the media. The Wawryk paper notes at page 26

⁴ See Miller, Ipperwash and the Media: A Critical analysis of how the story was covered (December 15, 2005)

that “anonymous critics of measured response can “contribute to the demonization of the protestors (indeed of the police) and skew public opinion.”

224. This makes the peaceful resolution of Aboriginal disputes more difficult. It inflames antagonists from all sides, and makes the healing process in the aftermath of a dispute much more difficult. The failure of the media to give equal voice to the basis for Aboriginal claims also makes resolution and acceptance of substantive negotiations by the non-Aboriginal public more difficult. (Here, we are not discussing whether substantive negotiations should or should not proceed in the face of alleged disobedience of a court order. That issue is currently before the courts.)

225. The coverage of this Inquiry raises important issues as well. It would be unfair to label, without differentiation, the media coverage of this Inquiry, some of which has been excellent (even when critical of the OPP), and some of which appears uninterested in evidence that challenges preconceived notions about the facts. But leaving those concerns aside (which are difficult to address systemically and which are highly debated), it is undeniable that the media is often uninterested in positive news.

226. The media frenzy during former Premier Michael Harris’ testimony is to be contrasted with the complete lack of media interest shown by the mainstream media organizations in the wealth of evidence tendered on how the OPP has

evolved as a police service, and particularly in its initiatives to build respectful relationships with the Aboriginal community. This is not just an OPP complaint. It is deeply unfortunate that the media does not contribute to informing the Aboriginal community or the public at large about the significant positive relationships that exist: it makes recruitment of Aboriginal officers more difficult; it results in missed opportunities to reduce tensions and anxieties in the community, and perpetrates one-dimensional views of the police, in the same way that the ALST can make the valid point that media coverage often promotes stereotypical notions about Aboriginal peoples.

ROBERT RUNCIMAN

227. Mr. Runciman makes two recommendations: (1) that the Commission consider the re-introduction of a police commission or police services board to supervise the work of the OPP while providing a buffer between the government and the police; and (2) that the Commission consider whether First Nations emergencies might best be responded to by highly trained First Nations police units.

228. In relation to (1), the OPP Part II Submissions at paragraphs 180-187 fully address whether a police services board should be introduced for the OPP. In summary, although the OPP is not philosophically opposed to being governed by a police services board, there are significant impediments to its introduction. It may be questioned whether adding another police services board would cause confusion, diffuse accountability, and fail to truly promote province-wide public participation in its processes. It is also questionable whether the evidence at this Inquiry compels such a complex and costly reform.

229. In relation to (2), the OPP strongly supports the principle that First Nations should police themselves where desired. This means the First Nations should be able to decide whether they want, for example, their own emergency response teams. That being said, it must be recognized that there are large financial costs

associated with emergency response teams, particularly those (like TRU) that require full-time officers who must constantly train to maintain perishable skills. Some First Nations police services may not have the demonstrated need or the financial resources for such full-time specialty teams. As well, despite strong support for the principle that First Nations should police themselves, the difficulties for local First Nations police officers in policing Aboriginal occupations or protests (and potentially serving as TRU or POU members in their own communities) has been well recognized, and acknowledged by First Nations police services.⁵

230. As a result, there may always be a need for the OPP to provide some emergency response policing for Aboriginal critical incidents, even within a policing structure that financially and philosophically supports self-directed First Nations policing. That being said, the OPP supports access by officers of First Nations police services, where resources are available, to specialty training such as ERT and Crisis Negotiation so that First Nations officers can work seamlessly with OPP emergency response teams when issues arise.

⁵ See also Wawryk, at 29. In small communities, local police should interact with the community, leaving crisis management duties to qualified personnel brought in.

MARCEL BEAUBIEN

231. Mr. Beaubien's submissions note that the situation in Caledonia can be regarded as involving similar circumstances to Ipperwash. The OPP certainly agrees that the lessons of Ipperwash have application to Caledonia and, indeed, to other Aboriginal occupations or protests. However, the OPP does not share Mr. Beaubien's implicit or explicit description of Caledonia or, with respect, his purportedly "simple recipe" to avoid violence.

232. A private developer owns the lands occupied in Caledonia, but the provincial government has agreed to purchase the subject property. The OPP approach to the occupation involves the extensive use of ART and MELT officers, the Aboriginal Liaison Officer – Operations, the application on a daily basis of the Framework, a markedly different command structure, an ongoing dialogue with the occupiers, traditional and elected Band Councils, and First Nations leadership, and no shooting or death. The OPP has played an important role in facilitating the involvement of stakeholders in substantive negotiations. It has worked with the Six Nations Police Service in allocating policing responsibilities. The suggestion that the occurrence of violence "has been greater in Caledonia than it was at Ipperwash, but without the death" undervalues the importance of the measures taken to avoid serious bodily harm or death.

233. With respect, it is over simplistic to believe that merely condemning self-help is likely to reduce the likelihood of violence in the future. It must be recognized that occupations or protests will take place, regardless of whether they constitute lawful or unlawful conduct, and that the OPP must anticipate and respond to them. It must also be recognized that how and when the law is enforced is contextual and involves the exercise of discretion, particularly when one is mindful of the overriding objective of acting to promote public safety and public order.

234. Mr. Beaubien's recommendations at paragraphs 160-166 address communications between police and local elected officials. He suggests that no recommendation be made that reduces such communications, citing Deputy Commissioner Carson's testimony as to their importance. Mr. Beaubien recommends that an Incident Commander retain his or her discretion to meet with local officials or community leaders, with the option of delegating that task to another officer who has credibility and seniority. Mr. Beaubien also reflects that the Incident Commander may wish to speak directly to local officials when the incident is not at a peak time and matters are calm.

235. These recommendations bear similarities to those proposed by the OPP in its Part II Submissions, paras.190-198, and recommendations 33-34. There, the OPP explains why there should be no inflexible rule that Commanders cannot communicate with politicians or other community leaders. Commanders, as was

the case with Deputy Commissioner Carson, may be assigned to an incident for months or several years. There will be times when concerns about political influence or overwhelmed Commanders are negligible. Commanders may have relationships with community leaders that can be utilized to reduce the likelihood of violence. These relationships should not automatically be discarded. The better approach is to recognize, through training, the concerns that have been identified at this Inquiry, and that those concerns should inform a Commander's discretion as to whom he or she will meet with and when. Rather than institutionalize yet another position – that is, a Community Liaison Officer as a buffer, the OPP accepts that the specific assignment of a senior officer as a buffer should be a resource available to a Commander. In most cases, the Aboriginal Liaison Officer – Operations, and/or members of the ART and MELT teams, the Detachment Commander or the local Chief of Police, can serve this function. It should also be remembered that the current OPP command structure distributes decision-making functions in a way that better enables buffers to be created between community leaders and on-the-scene operational decision-makers.

236. The OPP approach will also be complemented by the proposed policy on access to an operational Command Post. (OPP Part II Submissions, paras. 191-193, 198 and recommendations 33-34)

237. We do not support the absence of any restrictions whatsoever on what information should be communicated between community leaders and the police. As reflected in the OPP Part II Submissions, we support the sharing of information between government and the police, particularly in the context of Aboriginal occupations or protests, when the sharing of that information would benefit informed policy decisions by government or informed operational decisions by the police, and where those benefits are not outweighed by the dangers associated with the sharing of those views to neutral policing and the perception of such. We also support the development of government policy that reflects this principle and others. (paras. 172-174, 187 and recommendations 27-28).

THE MUNICIPALITY OF LAMBTON SHORES

238. The Municipality identifies communication as a central theme for most of its recommendations. It correctly notes that communication is the “cornerstone of any successful resolution.” “Communication should begin long before a crisis erupts; and it must be clear, meaningful, timely and direct.” The Municipality’s recommendations address communication between it and the Provincial Government, the OPP and the Federal Government.

Communications between the Municipality and the OPP

239. The Municipality eloquently explains why direct and timely communications between the Incident Commander and the Municipality are essential during a crisis situation. “The relationship between an Incident Commander and the Municipality is one of mutual benefit. The Municipality provides important information regarding the concerns of the community, which assists in intelligence gathering and in providing information to assist police in strategizing for operational decisions. The Municipality is equally dependent on receiving timely and direct information from the Incident Commander to allay the concerns of their community and defuse tensions. This is a relationship of co-dependency.”

240. It correctly notes that *Project Maple* highlighted the importance of communication with the local Municipality during a crisis situation. Mayor Thomas' consultation with the Incident Commander was consistent with the objectives identified in *Project Maple*. Equally important, direct contact with municipal officials is a practical means of relaying the concerns of a community. Commissioner Gwen Boniface agreed that such communications are often necessary for the OPP to be able to effectively manage incidents of community interest. As noted by the Municipality, this approach accords with the 1996 findings of the OPP Working Group on Emergency Preparedness in the OPP, and with the recommendations contained in the Wawryk paper. (The OPP commends the excerpts of each cited by the Municipality.) Accordingly, the OPP supports the Municipality's second recommendation:

Recommendation 2

It is recommended that direct and timely communication continue between the OPP Incident Commander and Municipal leaders during a crisis situation.

241. Such communication should take place within the context of the proposed OPP policy on access to an operational Command Post. As well, a senior officer may be utilized as a "buffer", where needed and in the discretion of the Incident Commander. (OPP Part II Submissions, paras. 191-193; 198 and recommendations 33 and 34)

242. The Municipality also notes the existence of the Commissioners' Select Liaison Council on Aboriginal Affairs as an ongoing, expert consultation forum with First Nations representation, and argues the need for a similar forum for consultation with municipal leaders:

Recommendation 3

It is recommended that the OPP establish an equivalent to its Selection Liaison Committee to include Municipal leaders with the goal of fostering long-term relationships between the OPP and Municipalities.

243. The OPP agrees that ongoing consultation with municipal leadership is important. However, the relationships that currently exist must be understood. The OPP provides direct policing services to approximately 182 municipalities not policed by another service, and to another 130 municipalities via 103 contracts. Where municipalities contract the policing services of the OPP, a police services board is established (section 10 of the *Police Services Act*) that, amongst other things,

- Determines objectives and priorities for police services;
- Establishes local policies with respect to police services; and
- Monitors the performance of the Detachment Commander.

244. Where the OPP provides police services to a municipality that does not have a police service and no contractual arrangement with the OPP (Section 5(1) of the *Act*), it may establish a community policing advisory committee. Its role is to advise the Detachment Commander respecting objectives and priorities for the police service.

245. What this means is that the OPP has longstanding relationships with municipalities, through its interaction with municipal police boards, community policing advisory committees and with elected officials, often through the Detachment Commander. As well, an OPP representative participates on the Ontario Association of Police Services Board section 10 Working Group. The OPP also attends OAPSB “zone” meetings and its annual conference. The OPP Commissioner speaks at that conference.

246. Accordingly, it is not feasible, nor is it necessary, to superimpose additional liaison committees with each municipality.

247. The Municipality’s recommendation 6 seeks to reinforce the importance of federal and provincial governments keeping municipal leaders informed about progress in land claim negotiations. The OPP agrees with the principle captured by this recommendation.

**CHIEF CORONER FOR ONTARIO AND THE OFFICE OF THE CHIEF
CORONER**

Recommendations

- 1. It is recommended that police services that have ERT, CMU, and/or TRU capabilities should incorporate a Tactical Emergency Medical Support (TEMS) component with qualified personnel trained as part of the operational response whenever these specialized policing units are employed.**

- 2. It is recommended that the TEMS component of a police service be a full-time feature to permit ongoing training with the emergency and tactical response units, coordination with civilian emergency medical services (EMS), hospitals and other health care providers whose services may be required in the event of injuries to officers or civilians.**

248. In 1995, the Emergency Medical Technician – Tactical (EMTT) program was formally adopted in the OPP. The EMTT program is the OPP version of TEMS. The EMTT 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.

249. As reflected in the OPP Part II Submissions at paragraphs 200-201, Toronto EMS advanced paramedics are now assigned as part of the OPP POU response whenever possible. Toronto EMS has 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 critical-care paramedics on a part-time basis⁶ for all 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).

3. It is recommended that police services have representation on local community emergency planning initiatives as well as with local area hospitals to have a fulsome understanding of medical services capabilities and contacts to provide timely alerts and coordination of appropriate medical services in times of emergent situations.

250. We agree. Significant work in this area is already being done. Pursuant to the requirements of the *Emergency Management Act*, the OPP has representation on local community emergency planning groups and participates in formulating and practicing emergency plans. Detachment Commanders are

⁶ To clarify our Part II materials, these are contemplated to be personnel who hold full-time employment as critical-care paramedics, but who would be contracted for part-time by the OPP.

generally involved in this process. It is accepted that understanding of medical services capabilities and coordination can always be improved.

4. It is recommended that there should be greater availability through local EMS services of paramedics with advanced life support (ALS) capabilities.

251. We agree.

5. It is recommended that there be an improved communication link and coordination between police services engaged in responding to public order events or major incidents with pre-hospital care providers (EMS) to ensure rapid land or air evacuation of injured to health care centers that have appropriate services to treat life-threatening trauma.

6. There is a need in training and educational programs for police, EMS personnel and hospital staff to improve communications between police involved in major incidents and hospital staff with respect to information known about the incident and the injured person.

252. Emergency medical plans form an important component of operational planning. As reflected above, further enhancements to existing EMTT policy (including contracting critical-care paramedics for all high-risk and Public Order events) are under review. Enhancements to existing EMTT policy should include attention to the issues of communication, coordination and training, as described by the Chief Coroner. Having said that, police officers are well aware of the importance of providing available, relevant information to medical personnel. The presence of critical-care paramedics would further assist in ensuring accurate medical information is obtained and communicated in a timely way.

7. Police should not make use of St. John Ambulance equipment and vehicles when responding to major incidents where confrontation and violence may occur.

253. The OPP agrees that St. John Ambulance equipment and vehicles should not be used for purposes unrelated to St. John's mandate and function as an ambulance service. The OPP does not agree that St. John Ambulance equipment and vehicles should never be used in connection with a major incident where confrontation and violence may occur; however, their use should not compromise the safety of St. John Ambulance personnel and must, again, be compatible with St. John's mandate and purpose.

All of which is respectfully submitted.

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APPENDIX A (OPP DIVERSITY COUNCILS AND DIALOGUES)

There are currently two *Diversity Advisory Councils* in the OPP. The first Council was initiated in 2003 in the former GTR, now the Highway Safety Division. West Region developed a Council in 2004. The purpose of the Councils is to support the diversity strategy at a local level by encouraging and enhancing understanding and sensitivity of diversity within their workplaces and their communities served. This is carried out by providing advice and guidance to their Commands on diversity issues, by building relationships and engaging the OPP with those who share a common interest in diversity (e.g. diverse community groups, educational institutions, other law enforcement agencies, and through the provision of educational activities to maintain a welcoming work environment.) Each Council is comprised of uniform and civilian employees from all ranks/levels who represent their respective sites and locations.

OPP Diversity Dialogues

Valuing Diversity in society and in the workplace is one of the OPP's core values. Additionally, *Meeting the Needs of Diverse Communities* is one of the OPP's Mission Critical strategies. The goal is to create a workplace culture that is welcoming to all current and future OPP employees and to ensure effective and sensitive service delivery to all communities served by the OPP.

Since that time the OPP has implemented several elements that form the foundation for a diversity strategy. One of these elements is a communication plan intended to inform all employees about the business case for diversity in the OPP. Recognizing the importance of communication that would make the issues “real and close to home”, we developed a DVD featuring 10 OPP officers and civilians from differing backgrounds (culture, race, ethnicity, sexual orientation) who courageously shared personal and professional experiences in relation to diversity. We also wished to create an environment that would enable open, candid dialogue.

Thus, throughout 2006 – 2007, the DVD, entitled *Valuing Diversity* is being shown to all OPP uniform and civilian employees and Auxiliary members in small discussion groups across the province. These *Diversity Dialogues* represent the first step in the OPP’s dialogue about diversity in the organization and in our communities served. OPP Executive carefully selected and provided two day training to 84 senior officers, constables and civilian employees to work as teams to co-facilitate the dialogue sessions. The goal of the dialogues is to raise awareness of the business case for diversity and to encourage discussion about its relevance/meaning for individuals and their work units. Feedback from these sessions will be sought on a quarterly basis to inform the diversity strategy and to provide opportunities for customizing business plan commitments at a local level (i.e. Regional/Bureau level).