

CONCLUSION

Given what can be retrieved from memory of events that occurred more than a decade ago, and from the documentary record, I have inquired into and reported on events surrounding the death of Dudley George. I have also made many recommendations regarding what should be done to avoid violence in similar circumstances.

Ipperwash has always been controversial. Questions about the death of Dudley George were raised almost immediately: How could an apparently peaceful occupation and protest turn violent? What was the urgency in taking action? What was the role of the Premier and other senior government officials? What was the role of the federal government? Was racism or cultural insensitivity a factor? These and many other questions about Ipperwash have been answered in this report. What follows is a summary of the answers to some of the more important questions raised by the events of September 1995.

1. Why is Ipperwash important?

Over time, questions about the circumstances of Mr. George's death deepened. New information cast doubts on the original explanations of events at Ipperwash when it became clear that many of the initial reports were likely incorrect, particularly the early, unconfirmed reports that the occupiers had guns. Acting Sergeant Kenneth Deane's criminal conviction raised further questions about the propriety of the OPP's actions. Years of media reports and lawsuits intensified the long-standing but unproven allegations of political interference in police decision-making.

Ipperwash raised even more profound questions for Aboriginal peoples. Mr. George was the first Aboriginal person to be killed in a land rights dispute in Canada since the 19th century. To many Aboriginal peoples, the shooting of Dudley George was the inevitable result of centuries of discrimination and dispossession. Many Aboriginal peoples also believed that the explanation for killing an unarmed Aboriginal occupier in a peaceful demonstration was rooted in racism. From this perspective, Ipperwash revealed a deep schism in Canada's relationship with its Aboriginal peoples and was symbolic of a long and sad history of government policy that harmed their long-term interests.

Ipperwash is important because public officials and institutions need to be held accountable for their decisions and actions. Their credibility and legitimacy depend on knowing if, or how, they were involved in the death of an unarmed, peaceful protester.

Ipperwash is also important because it helps us understand the roots and dynamics of an Aboriginal protest. The Aboriginal occupation at Caledonia proves that Ipperwash was not an isolated event. Understanding Ipperwash can help us understand how to prevent Aboriginal occupations and protests in the first place or how to reduce the risk of violence if they occur.

Finally, Ipperwash is important to the future of Aboriginal and non-Aboriginal peoples in this province. There can be no reconciliation without truth. The truth must come out so that Aboriginal and non-Aboriginal Ontarians can move forward together to our collective future.

2. Why did Aboriginal peoples occupy Ipperwash Provincial Park?

The Aboriginal people who entered Ipperwash Provincial Park on September 4, 1995 were trying to take back land they believed had been improperly taken from them decades earlier by the federal and provincial governments. The occupation of the army camp and subsequently of the park was the culmination of years of Aboriginal resistance and frustration.

It is important not to overlook the long history of protest by the Kettle Point and Stoney Point communities *before* the occupation of the park in September 1995. This history is vital to understanding Ipperwash and the death of Dudley George.

The roots of the Ipperwash occupation go back as far as 1763, when King George III made the protection of Aboriginal land an official Crown policy. The 1763 *Royal Proclamation* established an “Indian country” where Aboriginal land was protected from encroachment or settlement. The *Royal Proclamation* established that territory beyond the settled colonies was forbidden unless it was voluntarily ceded to the Crown before non-Aboriginal settlers could occupy it. The Proclamation was intended to impose the Crown between the settlers and the Indians in order to avoid exploitation.

The fundamental commitment of the *Royal Proclamation* of 1763 was that First Nations were to be treated with honour and justice. The British government promised to protect Aboriginal lands from encroachment by settlers. Settlers could settle only on land that an Indian nation had ceded to the Crown. A year later, when Sir William Johnson came to Niagara Falls to explain the *Royal Proclamation* to 1,500 Anishnabek chiefs and warriors, he consummated the alliance with the Anishnabek by presenting two magnificent wampum belts, which embodied the promises contained in the Proclamation.

The Huron Tract Treaty of 1827, which resulted in the creation of the Kettle Point and Stoney Point reserves, was one of several treaties in which the Crown acquired First Nations lands to be used for settlements.

The detailed account of the negotiations leading up to the Huron Tract Treaty described in this volume of the report demonstrates that First Nations ended up ceding much more land than originally intended, and for considerably less compensation than their people had hoped to receive. In return for ceding over two million acres of their land, they retained four reserves for their exclusive use and occupation, which constituted less than one percent of their land.

Beginning in 1912, the Kettle and Stoney Point communities were under further pressure to surrender more land to the federal government. In 1927, part of the Kettle Point beachfront was surrendered, and in 1928, all of the Stoney Point beachfront was surrendered. Part of the Stoney Point lands were soon sold to the provincial government at three times the price paid to the First Nation by the federal government. Ipperwash Provincial Park was created out of these lands in 1936 after local residents agitated for an accessible beachfront.

The circumstances of the 1927 surrender have remained contentious with the First Nation for decades. The Kettle and Stoney Point First Nation challenged the legality of this surrender in the 1990s. Although the courts found the surrender of the land legally valid, the Court stated that the transactions had “the odour of moral failure”. The Ontario Court of Appeal subsequently suggested that the federal government’s “tainted dealings” might amount to a breach of its fiduciary duty to the First Nation. The 1928 surrender of the Stoney Point beach lands that included the Provincial Park has not been considered by the courts; however, the evidence before me indicated that the circumstances surrounding the 1928 surrender at Stoney Point had similar characteristics.

In 1942, the federal government appropriated the entire Stoney Point reserve in a manner unprecedented in Canadian history. The appropriation was contrary to the expressed wishes of the Kettle and Stoney Point Band. It also contravened the treaty obligations of the Crown and the procedures and principles the Crown was required to observe in its dealings with Aboriginal lands. The appropriation was carried out pursuant to the emergency powers under the *War Measures Act*, which were interpreted such that the government was entitled to override the treaty rights of the Kettle and Stoney Point First Nation.

First Nation soldiers from Stoney Point, returning from the War, were shocked to see their community destroyed. They were devastated to learn that the Canadian government had appropriated the reserve land, that their community no longer existed, and that the Stoney Point cemetery had been desecrated.

When the Department of National Defence (DND) appropriated the reserve from the Kettle and Stoney Point First Nation in 1942, it promised to return it to them after the war if it was no longer required for military purposes.

World War Two ended in 1945 and the federal government has still not returned the Stoney Point reserve. Over that period, the federal government has

been responsible for many false hopes and broken promises to return the reserve. The most notable example was when former Prime Minister Jean Chrétien, then the Minister of Indian Affairs, made a concerted effort in the early 1970's to push the DND to return the Stoney Point Reserve. Contrary to Mr. Chrétien's expectations, the DND was simply not interested.

In 1990, the DND granted a Stoney Point group permission to bury one of its people, Dan George, at the Stoney Point cemetery. This raised the hopes of the Aboriginal people that the federal government would soon return the land.

A round of active political protest at Camp Ipperwash began about July 1990. Starting then, Aboriginal peoples took a series of increasingly assertive steps to get governments to return the land that they believed was rightfully theirs. In 1993, exasperated with their failed attempts to have their reserve returned, people from Stoney Point decided to occupy the military range at Camp Ipperwash. For them, the occupation of Ipperwash Provincial Park in September 1995 was the natural next step after the occupation of the adjacent military range in 1993 and the occupation of the military barracks in July 1995. The occupiers hoped to attract the attention of the federal government to return the land.

3. Was the provincial government prepared for the occupation?

The provincial government's position at both the civil service and political levels in the summer of 1995 was to treat Ipperwash as a "watching brief." This was understandable. A new provincial government had just been elected. Nothing significant had happened to the provincial park. It was summertime and it was easy to blame the federal government for the problem. However, although they were aware that there was the potential for an occupation, provincial government officials did not make sufficient efforts during this period to inform themselves about the Aboriginal peoples' historic grievances or to identify and appoint a mediator who might have headed off the occupation.

Ipperwash might have turned out differently if the provincial government had taken more assertive steps to defuse the growing tension and try to prevent the occupation in the first place. The provincial government could have appointed a mediator or tried to understand the historic grievances of the Stoney Point people, including the claims of an Aboriginal burial site in the park. It could have reached out to Stoney Point people, learned more about the dynamics within the community, or proactively identified potential mediators or facilitators.

We do not know if these actions would have prevented the occupation or Dudley George's death. However, we do know that relationship building and establishing communications *before* an occupation increases the likelihood of

peaceful outcomes by helping to build trust and confidence between governments, police and occupiers. These relationships could have proven helpful to defuse tensions when the occupation eventually did take place.

4. Did the provincial government respond appropriately to the occupation?

Premier Harris believed that the occupation was a law enforcement issue, not a First Nation's matter. It was the Premier's position that the park belonged to the province; he therefore concluded that the occupiers were trespassing. As there was no evidence available to him at that time to support the claim of a burial site, he was not prepared to contemplate the occupiers' suggestion that there was one or that the park belonged to them. In light of this, no consideration was given to the possibility of third-party involvement for the purposes of negotiation with the occupiers.

The evidence demonstrated that the Premier and his officials wanted the occupation to end quickly, but there is no evidence to suggest that either the Premier or any official in his government was responsible for Mr. George's death.

The evidence demonstrated that Premier Harris and his officials had a different perspective than the OPP on how the occupation should be handled by the police. The OPP's wish to pursue a go-slow approach contrasted with the government's desire for a quick end to the occupation. Civil service officials agreed in principle with the OPP's approach, but deferred to their political masters on questions of policy.

The provincial government's imperative for a speedy conclusion to the occupation is difficult to justify by events on the ground. The provincial park was closed for the season. There were no campers in the park. Nor was there any proven, substantial risk to public safety that would justify this urgency. In short, there did not appear to be any public safety justification for a "hawkish" response.

The provincial government's priorities reflected its larger concerns about the potential *implications* of Ipperwash. The government was concerned about establishing a precedent for Oka-like occupations in the future. The government also wanted to prove that it was tough on 'lawbreakers' and that Aboriginal peoples would be treated the same as everyone else. The government also did not want a prolonged occupation to deflect it from its larger agenda.

Whether one agrees with these decisions or not, they were within the authority of the provincial government to establish policy, including the policy of how to respond to the occupation at Ipperwash. However, once the Premier and the provincial government established these policies they are accountable for them.

The imperative for speed foreclosed the possibility of initiating a constructive dialogue with the occupiers or others on ways to resolve the occupation peacefully and, as a result, the potential for a peaceful, negotiated resolution became less likely.

5. Was there political interference in police decision-making?

The allegation of political interference in OPP operations and decision-making was one of most significant concerns about Ipperwash. It was therefore the subject of intense interest at the evidentiary hearings and analyzed in detail in our policy review of police/government relations, found in Volume 2.

The provincial government had the authority to establish policing policy, but not to direct police operations. The Premier and his government did not cross this line. There is no evidence to suggest that either the Premier or his government directed the OPP to march down the road toward Ipperwash Provincial Park, on the evening of September 6.

Incident Commander Carson knew of the Premier's desire for a quick resolution to the occupation, as did other members of the OPP directly involved in the policing of the occupation. This was unfortunate and should not have occurred. However, having this information does not constitute political interference nor does it mean that Incident Commander Carson or any other member of the OPP involved in the policing of the occupation were influenced by it, in their operational decision-making. Although the Incident Commander was aware of the Premier's desire for a quick resolution when he left for dinner at 7:00 pm, he expected that the status quo would be continued through the night. Earlier in the day, the Premier had expressed his desire that the occupiers be out of the park and the occupation ended, but later that night, when Inspector Carson decided to deploy the CMU and TRU, it was with the express objective of ensuring that the occupiers went back into and stayed in the park, not to remove them from the park.

This is not to say that the interaction between the police and government at Ipperwash was proper or conducive to a peaceful resolution. There was a considerable lack of understanding about the appropriate relationship between police and government. This lack of understanding had significant consequences. An important example is the overlapping and sometimes contradictory reports provided to the provincial government by the OPP and officials from the Ministry of Natural Resources (MNR). MNR officials circulated unverified, inaccurate and extremely provocative reports about automatic gunfire in the park at government meetings. MNR officials did not have the expertise to assess the reliability or accuracy of these reports, nor were they aware of the potential implications of passing this unverified information directly to the Interministerial Committee

composed of political staff, civil servants, and seconded OPP officers, one of whom was in contact with the Incident Commander. Lines of communication and chains of command were blurred. There was also a lack of clarity regarding the relationship between political staff and professional civil servants.

Taken together, the interaction between the police and government at Ipperwash created the appearance of inappropriate interference in police operations.

Another fundamental problem in police/government relations at Ipperwash is that key decisions were neither transparent nor accountable. A large part of the Inquiry was devoted to discovering what transpired at several Interministerial Committee meetings and at the “dining room meeting” on September 6, 1995. This is the meeting in which the Premier, several Cabinet ministers and deputy ministers, and other officials discussed the provincial government’s response to the occupation at Ipperwash Provincial Park. This is the meeting where former Attorney General testified that he heard Premier Harris say “I want the fucking Indians out of the park”. This is the same meeting at which former Deputy Solicitor General Todres testified that she heard former Minister of Natural Resources Hodgson say, “Get the fucking Indians out of my park.” Both denied making these comments but the Premier acknowledged at the Inquiry’s hearings that the statement, attributed to him, would be racist. I have found that the statements were made and that they were racist, whether intended or not.

Governments and elected officials must be publicly accountable for their role in important decisions and meetings. Public trust in impartial and non-partisan policing depends on ministers and governments being forthright and truthful about their role in important decisions and meetings. Unfortunately, both the Attorney General Charles Harnick and Premier Harris misled the Legislature about the “dining room meeting” with the result that it took a public inquiry for the public to learn the details of this key event.

It is impossible to hold individuals or institutions responsible for their actions unless what happened and who participated in key decisions is clear. Secrecy or the lack of transparency is a breeding ground for abuse of power, public cynicism, and attacks on the legitimacy of important public institutions. Secrecy or lack of transparency in police/government relations may conceal inappropriate government interference in policing or give the appearance of inappropriate interference.

6. Did the OPP respond appropriately?

The OPP planned for the occupation. Undercover officers were in the park before the end of August. During the last week of August 1995, Inspector Carson led a team of officers in planning for the potential occupation. The plan was called Project Maple and its objective was “to contain and negotiate a peaceful resolution”.

In the event of an occupation, the plan called for the OPP to cohabitate with the occupiers in the park. The OPP thought that they and the occupiers could peacefully remain in the park until a solution to the occupation could be arrived at. It was the Incident Commander's intention that, during cohabitation, officers would be physically close to the occupiers and not stationed "a hundred yards away watching them with binoculars". He wanted the police to interact and communicate with the occupiers in an attempt to keep the situation "as calm as we could". Inspector Carson believed that if officers engaged the Aboriginal people in dialogue, there was less risk of harm.

The possibility of gunfire and violence was raised in the planning process and it was known that the occupiers had weapons because they were hunters. The concern was not with the occupiers from Kettle and Stony Point but with "outsiders". During the planning process it was clear that there had "never been any situation where the OPP [had] been challenged with a firearm" by these Aboriginal people. There had not been one incident between OPP officers and Aboriginal people occupying the Camp Ipperwash rifle range since 1993, and the built up area since July 1995 that involved guns. Inspector Carson did not believe that the Stony Point people would use firearms against the OPP officers and he wanted to ensure that his management team for the incident knew this. However, there were aboriginal people from other areas with different backgrounds that the OPP "couldn't be so confident of".

Project Maple was a good plan in theory. However, it had some shortcomings that manifested themselves as the occupation developed. The first shortcoming was the issue of communications with the occupiers. Inspector Carson agreed at the hearings that the Negotiations Response Plan did not contain a communication strategy for important messages that ought to be conveyed to the occupiers, the technical aspects of how the OPP would communicate with the occupiers, or specified people outside the OPP who could communicate with the occupiers. There was no plan to use written messages in the event that the occupiers did not wish to speak to the OPP. On the evening of September 6, 1995, the OPP did not have available and did not consider using a bullhorn to communicate to the occupiers that they had no intention of entering the park and that what they wanted was for the occupiers to remain inside the park.

Another shortcoming was intelligence. The intelligence component of Project Maple had several weaknesses. Intelligence was originally omitted from the organizational chart in Project Maple.

Intelligence had four functions in Project Maple: (1) to identify as many occupiers as possible; (2) to develop biographical profiles on those identified; (3)

to attempt to identify visitors to the Ipperwash area; and (4) to collect, analyze, and disseminate all pertinent intelligence relating to this operation.

The intelligence unit did not report directly to the Incident Commander but reported through Detective Sergeant Richardson, who was the primary criminal investigator and not an intelligence officer.

Project Maple also did not put in place the “classic” intelligence system under which an Incident Commander relies on his or her intelligence team to provide a finished product in which raw data has gone through the intelligence cycle. Under the traditional model of intelligence, all raw data flows through the intelligence unit and then to the Incident Commander. This eliminates potential misinformation or unanalyzed information from being transmitted to the Incident Commander. While Project Maple called for analysts, on September 4, 5 and 6, no analyst was assigned to perform the intelligence functions described in Project Maple.

In addition, Inspector Carson did not have specific training in intelligence in 1995. Moreover, Inspector Carson said that in 1995 he would not have made an operational decision based on intelligence. Intelligence clearly did not play a central role for Inspector Carson at Ipperwash. Training for intelligence operations was lacking, both for the Incident Commander and other senior OPP officers. It is important that the leader of the intelligence unit report directly to the Incident Commander, which was not the case in Project Maple.

7. Why did the OPP march toward Ipperwash Provincial Park on the night of September 6? What went wrong?

The OPP marched down the road on the night of September 6, 1995 because they misperceived the intentions of the occupiers, just as the occupiers misperceived the intentions of the OPP. In addition, the Incident Commander had inaccurate and unverified information that he relied upon to make the key decision to deploy the Crowd Management Unit (CMU) and the Tactics and Rescue Unit (TRU).

When the Incident Commander left the command post that evening to go to a friend’s home for dinner at approximately 7:00 pm, he believed the situation was stable at the park. Inspector Carson was hopeful that the injunction motion in Sarnia the following morning would resolve some of the issues surrounding the park. Inspector Carson’s approach from the outset was to move slowly – to inform the occupiers they were trespassing on provincial property, to try and negotiate with the occupiers, and to wait for the MNR to seek an injunction. This was in conformity with the objectives in Project Maple.

But under Inspector Linton's command that night, the situation at the park was perceived to be escalating. That perception was based on Acting Detective Staff Sergeant Wright's encounter with the Aboriginal people, the inaccurate reports about the incident involving Gerald George and Stewart George, the occupiers' preparation of the yellow school bus, the increased vehicular traffic, the movement of women and children out of the park, and the belief that a fire was burning in the sandy parking lot. When Inspector Carson was contacted at his friend's home that evening, he tried to halt what he perceived to be Inspector Linton's precipitous decision to call out the TRU team. Inspector Carson immediately returned to the command post, despite Inspector Linton's view that this was unnecessary.

When Inspector Carson returned to the command post that evening, "[I]t was chaos ... " "There was a lot of information, a lot of discussion and a lot of things being shared back and forth". Inspector Carson decided that night to mobilize the CMU and use TRU to observe and provide intelligence, and to cover the CMU. Inspector Carson took personal responsibility for the decision to deploy the CMU and the TRU.

The OPP acted with undue haste when it decided to mobilize and deploy the CMU and TRU in darkness on the night of September 6, 1995. The necessary time should have been taken to allow Constable Poole's written statement of his interview with Gerald George to reach the command post. This would have cleared up the confusion and refuted the inaccurate report that the Aboriginal occupiers had beaten a female civilian's car with baseball bats. Time should also have been taken to authenticate the unconfirmed report of Gerald George that there were guns in the park. And time should have been taken to verify whether there was in fact a fire built in the sandy parking lot.

Inspector Carson described the TRU Team as "the eyes" of the Incident Commander but prior to the deployment of the CMU, the TRU Sierra team was not able to successfully move into position to be "the eyes" on the sandy parking lot. Even when the CMU was initially deployed, one of the officers on the Sierra team alerted the Tactical Operations Centre that the Sierra team was not in position and did not yet have an "eye" on the park. Yet the CMU officers proceeded to march down East Parkway Drive to the sandy parking lot.

The OPP should have considered other options while it waited for confirmation about reports of the Gerald George and other incidents. For example, cottages in proximity to the park could have been evacuated while the OPP waited to authenticate reports concerning the activities of the occupiers, and they could have waited for daylight.

The occupiers did not understand that the OPP had no intention that night, of entering Ipperwash Provincial Park nor of removing the occupiers from the park.

At no time did the OPP use a bullhorn or post written material outside the park or on the park fence to communicate this important message to the occupiers.

There was a perception by the occupiers of increased police presence on September 6, 1995 in the Ipperwash Provincial Park area. The boat surveillance on Lake Huron, and the low-flying helicopter surveillance caused agitation and anxiety amongst the First Nations people. This caused the occupiers to engage in preparations for what they believed was an aggressive OPP move against them. They collected rocks and sticks, fueled the school bus, and arranged for the women and children to leave the park. On the scanner, they overheard the OPP communicate that they planned to march to the park that evening.

Inspector Carson was a conscientious and competent Incident Commander at Ipperwash during the September 1995 events. He is a man of integrity who clearly wanted the Aboriginal occupation to be resolved peacefully. But on the night of September 6, 1995, I believe it was a mistake to deploy the CMU and TRU down East Parkway Drive toward the sandy parking lot.

CMU officers, dressed in hard Tac equipment with their helmets and shields, marched shoulder-to-shoulder in formation toward the park. There were thirty-two officers, an eight-man arrest team, two canine teams, and two prisoner vans. Several CMU officers were nervous as they marched toward the park in darkness. TRU officers walked ahead of the CMU with assault rifles and semi-automatic pistols, providing cover. The CMU leader yelled commands to his officers as the police marched toward the sandy parking lot. The Aboriginal people were terrified as they saw the officers dressed in “riot gear” marching toward the park. The Aboriginal occupiers were not armed with guns, but some did have baseball bats, stones and sticks.

The OPP’s plan to have the occupiers return to the park from the sandy parking lot seemed to work, at least initially. As the CMU advanced to the fence line outside Ipperwash Provincial Park, the occupiers retreated from the sandy parking lot into the park. As the CMU came to a halt, the last few occupiers walked through the turnstiles into Ipperwash Provincial Park. Sergeant Hebblethwaite radioed to the Tactical Operations Centre that “the badgers are in the park.” The CMU Incident Commander, Staff Sergeant Lacroix, thought the CMU’s mission was complete.

An Aboriginal man, subsequently identified as Cecil Bernard George, whose fear of the police had turned to anger, walked into the sandy parking lot waving a steel pipe that he picked up. He yelled that the park property was Aboriginal land, and that his grandfather was buried on this land. CMU officers had backed up at this time to Army Camp Road. The CMU Incident Commander yelled “punchout”. CMU officers ran toward Cecil Bernard George and a confrontation

ensued between the OPP and the occupiers. The police fired their guns during the altercation and Dudley George, a thirty-eight year old occupier, was shot and killed by Acting Sergeant Deane.

Deploying the CMU was an offensive not a defensive strategy. It was a show of force. It was designed to clear occupiers or protestors from a particular area. If the strategy does not work, the potential for violence increases. Using the CMU was a calculated risk that was within Inspector Carson's authority to make. The use of any force must be to ensure public safety. Based on the information that he had, Inspector Carson made a decision to use the CMU to clear the sandy parking lot. In his view, public safety required it. But the information upon which Inspector Carson made the decision was incorrect. If Inspector Carson had correct information, I believe that he would not have made a decision to deploy the CMU. If Inspector Carson had waited until the TRU Sierra Teams were in position and reported back to him on what was happening in the sandy parking lot and kiosk, he would have learned that there was not a fire in the sandy parking lot, how many people, if any, were in the sandy parking lot and whether they had any guns. He would have had better information upon which to make his decision. One of the problems was that there was not an appropriate intelligence system in place to verify the information about guns that had been provided to him. Inspector Carson should have also considered using a bullhorn to inform the occupiers that the OPP had no intention of entering the park and that the OPP simply wanted them to leave and stay out of the sandy parking lot.

The decision to deploy the CMU and TRU in this way, was not in keeping with the peaceful approach called for in Project Maple and did not adequately contemplate the characteristics of an Aboriginal protest. Moreover, this level of response to a perceived escalation of activity increased the potential for violence. Given the heightened tension created by this situation, one could have, and in my view, should have, contemplated that any unexpected occurrence – such as Cecil Bernard George walking out the park turnstile into the sandy parking lot – might set off a confrontation. This is exactly what happened.

Inspector Carson should have realized that sending a large number of officers in darkness, with helmets, shields and guns to confront the occupiers could have easily erupted and resulted in a confrontation between OPP officers and the occupiers. Inspector Carson thought that he knew the occupiers. He did not believe that they would use violence against the OPP. Except for isolated incidents involving the military, the occupiers had not used violence. And, until September 4 and 5, the occupiers had not resorted to violence against the OPP. Inspector Carson misjudged and did not anticipate the reaction of the occupiers to the arrest of Cecil Bernard George. The OPP should have ensured that Inspector

Carson had a robust intelligence capability to help him assess the situation quickly and accurately.

This was the first time that the CMU and TRU had been deployed together in this manner and, in my view, the OPP officers had insufficient experience with this approach. In addition, they had little and sometimes conflicting information about what they were about to confront.

Notwithstanding the many progressive reforms undertaken by the OPP in recent years in relation to policing Aboriginal occupations, the OPP, as an institution needs to be accountable and take some responsibility for the tragedy that occurred on September 6, 1995.

8. Did racism or cultural insensitivity contribute to Dudley George's death?

Cultural insensitivity and racism on the part of some of the OPP officers involved, were evident both before and after Dudley George's death. They created a barrier to understanding and thus made a timely, peaceful resolution of the occupation more difficult. The most obvious instance of racism and cultural insensitivity was a conversation among members of the OPP intelligence team on September 5, 1995, in which an Aboriginal person was referred to as a "big, fat, fuck Indian" and the suggestion was made that they (i.e., the Aboriginal people in the park) could be baited into "a net as a pit" with "five or six cases of Labatt's 50", which "works in the south with watermelons".

These comments were racist against the Aboriginal people who were under surveillance at the time, and they were racist against persons of colour. Not one witness in the hearing tried to defend or rationalize these comments, including the Incident Commander, John Carson, who described the comments as "inappropriate", "unacceptable", and "not to be tolerated".

The racist comments noted above were not an isolated incident; there were a number of other tape-recorded conversations of officers making derogatory remarks about Aboriginal people at the time of the occupation.

The Inquiry also learned of several inappropriate activities after the occupation, including the production and distribution of offensive coffee mugs, and t-shirts containing racist imagery to commemorate the OPP's actions at Ipperwash.

Equally disturbing was the manner in which the OPP dealt with this behaviour. In some instances, they never found out about it. In other cases, senior officials decided that it did not amount to "misconduct." In cases where they did find misconduct, it was determined that the officers should be disciplined under the "informal" procedures set out in the *Police Services Act*.

The OPP's response to these incidents was insufficient. Officers were either subject to internal, informal disciplinary processes or not disciplined at all. Several incidents were not discovered or dealt with until years later when they were "discovered" in the lead up to, or during, this Inquiry. These circumstances call into question the disciplinary regime for this kind of conduct and the internal mechanisms within the OPP for reporting it.

Another example of racism towards Aboriginal people in the period before Dudley George's death was the Ontario Ministry of Natural Resources' race-specific enforcement policy, "Procedures for Dealing with First Nations People". This policy, developed with the assistance of an OPP officer, was issued in August 1995 for the Pinery and Ipperwash Provincial Parks. This policy is an example of inappropriate, racially biased policing and is not acceptable in our society.

Cultural insensitivity and racism did not cause Dudley George's death but it may have contributed to the lack of a timely and peaceful resolution of the occupation. Some members of the OPP held negative stereotypes and thought the worst of the occupiers. While I do not believe this to be true of Inspector Carson, I do believe cultural insensitivity and racism exhibited by some members of the OPP contributed to misunderstandings and misinterpretations of the occupiers' actions and intentions on the crucial days between September 4 and 6, 1995.

Some occupiers also held negative stereotypes and thought the worst of the police. This was also unfortunate but cannot be equated with the stereotypes held by some members of the OPP. Police officers and police services have the authority to enforce the laws and to use force. Accordingly, police officers have a responsibility to treat all persons fairly and to be free of bias and prejudice. Neither cultural insensitivity nor racism has any place in a police force in a civilized society such as Canada.

Cultural insensitivity and racism do not have any place in the highest offices of the province. Both the Premier and the Minister of Natural Resources made racist comments on September 6 that were offensive and inappropriate in any circumstance and particularly when voiced by the leaders of the province. These views also created a barrier to understanding and did not contribute to resolving Ipperwash peacefully.

9. Is the federal government responsible?

The federal government bears the primary responsibility for the occupation of Ipperwash Provincial Park by protesters in September 1995

The people of the Kettle and Stony Point First Nation, including the occupiers at Stoney Point/Aazhodena have been, and continue to be, neglected by the federal government.

Consider this simple chronology:

- Eighty years have passed since the “odour of moral failure” surrounding the 1927 “surrender” of the Kettle Point and Stoney Point lands; the 1928 surrender of the Stoney Point lands had similar characteristics.
- Seventy years have passed since the Kettle and Stony Point Council asked for protection of their burial site in Ipperwash Provincial Park.
- Sixty-five years have passed since the Department of National Defence took over the Stoney Point reserve for military training.
- Sixty-two years have passed since the end of World War Two, at which time the residents of Kettle and Stony Point First Nation expected the land to be returned.
- Twenty-six years have passed since the federal government agreed to return Camp Ipperwash, in whole or in part, when it was no longer needed for military training.
- Thirteen years have passed since the Minister of National Defence announced that the military no longer needed Camp Ipperwash.
- Twelve years have passed since Dudley George died asserting his community’s right to the lands reserved by treaty for their exclusive use 180 years ago.

Unfortunately, the issues that were at the heart of the Ipperwash occupation remain unresolved by the federal government, to this day. This inexcusable delay and long neglect, by successive federal governments, are at the heart of the Ipperwash story.

10. Who is to blame for Dudley George’s death?

There is no doubt that OPP Acting Sergeant Ken Deane shot and killed Dudley George. He was found guilty in a criminal court and nothing in this Inquiry challenges or undermines Mr. Deane’s conviction.

However, Acting Sergeant Deane should not have been in a position to shoot Mr. George in the first place. The federal government, the provincial government, and the OPP must all assume some responsibility for decisions or failures that increased the risk of violence and made a tragic confrontation more likely.

The federal government has allowed the land issue to fester for decades. This was the catalyst for the occupation in the first place.

The provincial government could have appointed a mediator or negotiator at any time, but did not. The Premier could have urged patience, rather than speed. These decisions effectively foreclosed the possibility of initiating a constructive dialogue with the occupiers or others on ways to end the occupation peacefully.

The OPP was committed to a negotiated, peaceful resolution but unfortunately mistakes were made. The OPP should have used Aboriginal facilitators and mediators to try to liaise with occupiers. The OPP should have more effectively communicated their intention not to enter the park. Their intelligence failures contributed to their misinterpretation of the actions and words of the occupiers. The CMU and TRU teams should have been held back until information was verified and waited until daylight. Each of these failures increased the risk of violence and made a peaceful resolution less likely. Neither the provincial government nor the OPP wanted a confrontation or violence to occur but neither institution took sufficient steps to minimize the prospect of violence.

It is impossible to attribute Mr. George's death to a single person, factor, decision or institution. On the contrary, it was the combination of these that made a violent result more likely, particularly when they all came together in the space of a few short days and hours in the context of a highly-charged confrontation. Individuals and institutions need to be held accountable for the consequences of their decisions and actions, whether those consequences were intended or not.

11. What can be done to prevent violence in the future?

Volume 2 contains a detailed analysis of the causes and consequences of Aboriginal occupations and protests. It also analyzes the considerable progress that has been made by the OPP and others in how to police Aboriginal occupations and protests peacefully. The OPP and others have learned important lessons from Ipperwash and elsewhere about how to avoid violence in similar circumstances. I believe that the recommendations made in this report, if implemented, will reduce the potential for violence even more.

Aboriginal occupations and protests are not inevitable, nor are they inevitably violent. If I could answer the question above in a single paragraph, it would be this:

The provincial government and other institutions must redouble their efforts to build successful, peaceful relations with Aboriginal peoples in Ontario so that we can all live together peacefully and productively. There have been significant, constructive changes in the law and to key public institutions in the twelve years since Ipperwash. Yet more is needed. We must move beyond conflict resolution by crisis management. And we cannot be passive; inaction will only increase

the considerable tensions that already exist between Aboriginal and non-Aboriginal citizens in this province.

Research in the course of the Inquiry showed that the flashpoints for Aboriginal protests and occupations are very likely as intense today as they were during Ipperwash, Oka, Burnt Church, or Gustafsen Lake. No one can predict where protests and occupations will occur, but the fundamental conditions and catalysts sparking such protests continue to exist in Ontario, more than a decade after Ipperwash. Indeed, it appears that the flashpoints for Aboriginal protests and occupations may be intensifying.

Usually, the immediate catalyst for most major occupations and protests is a dispute over a land claim, a burial site, resource development, or harvesting, hunting, and fishing rights. The fundamental conflict, however, is about land. Contemporary Aboriginal occupations and protests should therefore be seen as part of the centuries-old tension between Aboriginal peoples and non-Aboriginal peoples over the control, use, and ownership of land. The frequency of occupations and protests in Ontario and Canada is a symptom, if not the result, of our collective and continuing inability to resolve these tensions. Volume 2 of this report, *Policy Analysis*, contains specific recommendations about these matters.

12. What about the land?

Gina George, like many other witnesses, stated that the confrontation with the police and Dudley George's death never would have happened if the federal government had returned the land.

Marcia Simon said: "there's a general awareness now that we do indeed have a right to the land ... We're not taking from anyone else, we're just taking back to live on what is ours."

Despite many lessons learned from the events of September 6, 1995, not much has changed in relation to the land that lay at the heart of the occupation. The occupiers continue to occupy Ipperwash Provincial Park and the army camp. Local residents from nearby non-Aboriginal communities and elsewhere do not have access to the park. Title to the army camp continues to be held by the Department of National Defence. Title to the park continues to be held by the Province of Ontario, with a notice to the public posted on the Parks of Ontario website (as of February 2007) that Ipperwash Provincial park is "Temporarily Closed" and identifying it as an "operational" public park. The provincial government has not indicated an intention to restore the park to operating status, and provincial government staff have apparently not been on the site for several years. The OPP do not patrol the park

or the army camp. The Kettle and Stony Point First Nation and residents of Aazhoodena continue to have their differences regarding who should have ultimate “control” over the lands comprising the park and the army camp.

Sam George, Dudley George’s brother, stressed the importance of addressing the unresolved issues concerning the land when he was asked about what is needed to heal those most affected by the events of September 1995:

I don’t think it would work if the provincial government ended up saying to my community, “You folks do some healing, we’ll keep the land.” I think healing needs to be done amongst our people of both communities before that can start to take place. They need to look at what’s hurting our people. If you don’t go back and find the source that is making a person hurt, then you can never heal it.

Our people have been hurting since these lands were taken. I think the only way healing can possibly start amongst our people is to have the lands returned to them. All the lands have to come back. I think at that time a healing process may start among the people ... the land itself also has to heal. The land itself is probably hurting right now from the activities that have taken place on there. The land was taken for conflict reasons. It was taken by conflict, used for conflict. I’m talking about the wars. People were trained there to go and do that, and the conflict is still very much alive there. As long as that land is in other people’s names that healing won’t take place and you can’t heal that conflict.

The whole section of land, which is the park and the base, has to come back to the First Nation people’s hands. I think the people at that point can start a process of maybe trying to heal themselves and look at each other and look at what the land needs to be fixed back up.

I believe these words point us in the right direction. The land was the fundamental catalyst for the Ipperwash occupation and Dudley George’s death. Therefore, resolution of the land issue must be part of the way forward and is key to the healing of those most affected by these events.

However, during the Inquiry, I noted that as a provincially constituted commission of inquiry, I do not have the jurisdiction or the mandate to resolve the issues of the army camp or the surrender of the land comprising Ipperwash Provincial Park and therefore we did not call evidence or seek submissions on these issues. Nevertheless, I could not preside over these proceedings for two

years without developing views on the subject and I believe it is incumbent upon me to share these views in these final pages of my report. This issue was like “the elephant in the room”. It was obvious to everyone that it was there, but we could not deal with it. I am reluctant to propose one specific solution regarding the disposition of the park land and prefer to confine my remarks to issues of process and options but I believe the situation regarding the future of the former army camp land is different.

Although the Inquiry has not been involved in, or privy to, discussions that are underway between the Kettle and Stony Point First Nation and the federal government regarding the future of the army camp, I am aware that they are occurring.

In my view, the most urgent priority is for the federal government to return the former army camp to the Kettle and Stony Point First Nation immediately. This land was appropriated in 1942 for a specific, military purpose and it has been decades since it last served that purpose.

As part of the return, the federal government should undertake and pay for the environmental clean up of the camp that is required. My understanding is that this process has already begun; its completion should not be a reason for delaying the return of the land. In addition, successive federal governments’ failure to return the land, for so many years, warrants an apology and appropriate compensation to the Aboriginal people affected. An apology and appropriate compensation will bring a measure of acknowledgement, dignity and justice to the Aboriginal communities affected by the federal government’s failure to return the land, in a reasonable period of time, after the war ended.

The solution regarding the future of the park land is more difficult. The one thing I learned during this Inquiry, is that regardless of the solution for the park land, the way forward must be through a process that is fair, inclusive and transparent. This approach would be consistent with the central themes of this Inquiry and report. Furthermore, any process that is designed to resolve the park land issue must promote reconciliation and the long-term interests of all the communities involved. To this end, the communities affected must be actively involved in the process. Therefore, the best I can do is to recommend a process for going forward. Indeed, given the reasons stated above, it would be inappropriate for me to offer a specific solution for the park land.

The park land is adjacent to the former army camp and is not part of the negotiations between the federal government and the First Nation. The park is under provincial jurisdiction as a result of the 1928 surrender and subsequent purchase by the province.

Allowing the status quo to continue, with respect to the park, is not in anyone’s interest. The park land is currently not part of the First Nation reserve, nor

is it pragmatically subject to provincial management. It is a tribute to the patience and restraint of the occupiers and the local residents that there have been no serious, adverse incidents since 1995. But this unresolved status should not continue.

The division that continues to exist between the Kettle and Stony Point First Nation and the residents of Aazhoodena complicates any proposed solution. These communities need to resolve their differences, perhaps with the assistance of First Nations organizations and, if requested, with the federal and/or provincial government, but these differences should not be used as a reason for not resolving the status of the park.

Unfortunately, there are no perfect solutions and past experience has taught us that solutions that are recommended or imposed by external third parties, are rarely successful. The residents of Aazhoodena must be involved with the First Nation and the non-Aboriginal local community in any discussions regarding the future of the park. I urge all those with an interest in the future of these lands, to put their differences aside and work together to address the common interest of healing and moving forward.

I have already said that I believe the status quo is not an acceptable solution; nor, would it be acceptable in my view, if the park were re-opened unilaterally, by the Government of Ontario, as a provincial park.

One obvious solution is to return the park land, with the army camp, to the Kettle and Stony Point First Nation with the participation of residents of Aazhoodena as I have indicated above. This solution has considerable attraction given the Aboriginal peoples' historical connection to the land, the circumstances of the occupation in 1995, the fact that the occupiers have been occupying the land since that time, and the fact that the two parcels of land have effectively merged into one – as they once were – due to twelve years of inaction by successive provincial and federal governments.

The circumstances of the 1927 surrender of West Ipperwash beach remained contentious with the First Nation for decades. The Kettle and Stony Point First Nation challenged the legality of that surrender in the 1990s, and although the courts found the surrender legally valid, the Court stated that the transactions had “the odour of moral failure”. The Ontario Court of Appeal subsequently suggested that the federal government’s “tainted dealings” might amount to a breach of its fiduciary duty to the First Nation. Although the courts have not considered the 1928 surrender of the Stony Point beach lands, that included Ipperwash Provincial Park, the evidence before me indicated that the circumstances of that surrender had similar characteristics.

This solution of returning the park land is not as simple as it might seem, as it would require the co-operation of the Aboriginal communities as well as

the federal and provincial governments. The provincial government would have to transfer the land to the federal government if it is to be re-constituted as part of the reserve.

In my view, another solution worth considering is a co-management arrangement whereby the Aboriginal communities operate a re-opened park for the benefit of all Ontarians and visitors alike. If this solution is to be pursued, the park land could be put into a trust, similar to what has been done with the disputed land in Caledonia. An independent committee could be established, with provincial government assistance and composed of the First Nation and the residents of Aazhoodena and representatives of the local, non-Aboriginal community. The purpose for this committee would be to negotiate with the provincial and, to the extent necessary, with the federal government, toward achieving this objective. To be effective, this committee would require adequate resources and binding decision-making authority. There would be considerable expense involved as the park infrastructure has completely deteriorated and would have to be re-built.

This option has some attraction because it would enable the Aboriginal people to be responsible for the stewardship of the park land, including the identification and protection of burial sites. In addition, any proceeds from the operation of the park would flow to the Aboriginal community. This solution provides an opportunity for the provincial government and Aboriginal and non-Aboriginal communities to work together in a joint enterprise, with mutual benefit.

There may be other potential solutions for the park land that could be developed by those most directly affected. However, any solution to the situation at Ipperwash should not be regarded as a precedent for other land disputes; each situation requires its own solution, crafted by the people most directly affected.

Following Dudley George's death, Sam George and his siblings expressed their fundamental wish:

In the beginning, all we asked them to do was tell us the truth. We just wanted someone to tell us something. I would much rather not have gone down that path myself. I didn't expect to be in litigation for seven years. I didn't think asking for the truth would become such a hard thing to get at.

As Chief Justice Lamer stated in *Delgamuukw v. British Columbia*¹, "let us face it, we are all here to stay". My hope is that not only will we face this reality; we will embrace it in the original spirit and intent of the treaties. As I discuss in Part 2 of

¹ [1997] 3 S.C.R. 1010, para.186

this report, these treaties envisioned Aboriginal peoples and settlers sharing the wealth and stewardship of this great land. Since we are all here to stay, we must continue to build relationships of trust, mutual respect and support. The road to reconciliation may be long and difficult, but it is a road that all peoples, Aboriginal and non-Aboriginal, must walk together. I hope the Inquiry process and this report have helped us to take a few steps forward along this road.