

**IN THE MATTER OF THE
IPPERWASH PUBLIC INQUIRY**

**FINAL PART I SUBMISSIONS ON BEHALF OF
ABORIGINAL LEGAL SERVICES OF TORONTO**

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INTRODUCTION

There's always risk involved in leadership, okay? And Aboriginal leaders, sometimes when... when the facts and the information, the truth is there, they have to stay with that, even if it means reversing their previous role or position on issues. It's not an easy thing to do but if the truth is facing you, you have to do it. I mean, you -- you can't dismiss the truth, right. You have to side with it, even if it means taking some risk with your community.

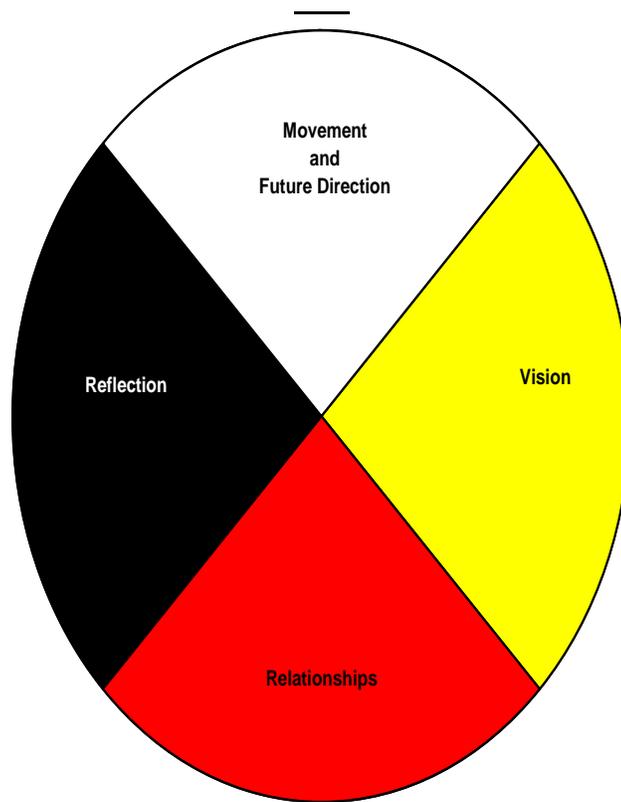
Evidence of O. Mercredi, April 1, 2005 p. 120 1.6-15

1. The wisdom in Chief Mercredi's words needs no elaboration. The truth that is facing this Honourable Commission is that Anthony O'Brien ("Dudley") George died at the hands of the State. Morally and legally it becomes a societal imperative that the circumstances of his death be fully and thoroughly canvassed out of respect for his memory and the communities that have suffered his loss, and in order to avoid similar tragedies in the future. In being the first killing of an Aboriginal person in relation to a land claims matter since the 19th century, Dudley George's death has triggered reverberations across innumerable segments of our Canadian communities (Aboriginal and non-Aboriginal) and at all levels of Canadian government.

2. The focus of this Inquiry submission by Aboriginal Legal Services of Toronto ("ALST") is on a select number of issues that relate to the roles and interactions of various government and police officials in the months and days leading up to the tragedy of September 6, 1995. Critical analysis of these parties' actions is essential to understanding many of the avoidable root causes of Dudley George's death. In this regard, it does a disservice to the memory of Dudley George to relegate all manner of

critical analysis of decisions made and actions taken as a simple exercise of “20/20 hind sight”. Similarly, it is no answer to simply point to “inevitable and unavoidable human frailties” as the explanation for mistakes made. Put simply, Dudley George did not have to die. That is the truth we all “have to side with”.

Guiding Principles: The Medicine Wheel



3. At the outset of the Inquiry, Commissioner Linden stated that:

Our hope is that the process of this Inquiry will contribute to healing and to moving forward for those whose lives were affected by the events of September 1995.

4. The goal of “healing” was raised on several occasions throughout the Inquiry process. However, the term “healing” was never defined. The Report of the Royal Commission on Aboriginal Peoples noted the following:

The word ‘healing’ is familiar to non-Aboriginal people, of course, but the idea that Aboriginal people have in mind when they use it is likely not. Healing, in Aboriginal terms, refers to personal and societal recovery from the lasting effects of oppression and systemic racism experienced over generations.

Royal Commission on Aboriginal Peoples, *Gathering Strength* (Canada Communication Group, Ottawa, 1996) p. 109

5. The teachings of the Medicine Wheel provide us with gifts to assist with healing. In the West, we are provided with the gift of reflection. The South directs us to examine relationships over time. The teachings in the North guide us to examine the movement that is needed for the future. Finally, the East provides us with the gift of new beginnings - the vision that we hope to achieve.

6. By necessity Aboriginal Legal Services of Toronto (hereafter “ALST”) is focusing its written submissions on a limited number of areas which coincide with some but not all of the directions of the Medicine Wheel. It is hoped that the Honourable Commissioner Linden, having had the benefit of both Part I and Part II submissions from all of the parties, will be able to complete the full circle of teachings from the Medicine Wheel through his final report.

7. As stated above, the Medicine Wheel teaches that from the West we derive the gift of reflection. It is submitted that it is this gift of reflection that lies at the heart of

Part I of this Honourable Commission's mandate to focus on factual history. Accordingly, ALST has organized its submissions to factually address what it perceives as some of the key areas for the Commission's consideration:

- The Land

- The Place of Aboriginal Peoples in the Common Sense Revolution

- The Voices of the Premier: The Harris Government's Messaging to Police Officers and Civil Servants;

- The Mystery Meeting: The "unusual" meeting of the Premier, members of his cabinet, civil servants and seconded police officers in the Premier's Dining Room that no one convened in which the "final call" was made;

- The Deliberate Misleading of the Legislature and the People of Ontario about the Dining Room Meeting
 - The Attorney General's Deliberate Deceptions
 - Premier Harris' Deliberate Deceptions

- Conduct of the O.P.P. in the Aftermath of the Sept 4, 1995 Occupation of Ipperwash Provincial Park:

- Losing the Park: – the “Chief is probably going to ask” (Parkin) – “Their day will fucking come” (Korosec)
- The Plan to Take Back the Park: - “we want a piece of paper” (Wright) – “amass a fuckin army” (Korosec)– “don’t you say we go get those fucking guys” (Wright) – “daylight’s a wasting” (Wright)
- Carson Goes to Dinner – “When the Dove’s Away, the Hawks will Play” – the Wright/Korosec Agenda
- The Relationship between the OPP and the MNR
- The O.P.P. March on the Occupiers
- Failed Intelligence Gathering
- Failed Negotiation Strategies
- Events Following the Shooting Death of Dudley George
 - The S.I.U. Investigation – the “window of opportunity” – the Deane defence team
 - Racist Memorabilia
 - The Sham Investigation
 - Racist Utterances recorded on Logger Tapes
 - The internal investigation/staunch defence of Cossitt

8. A “full excavation” of the facts will allow us to look to the North in order to develop recommendations that could permit movement towards achieving the ultimate vision (the East) of ALST:

Aboriginal Peoples are the original inhabitants and caretakers of this land, and as such, relationships with Aboriginal people shall be fostered on a nation-to-nation basis, and the inherent rights of Aboriginal peoples will be recognized and respected by all levels of Canadian governments, police and the public.

I. THE LAND

The importance of the land to Aboriginal Peoples

9. A common characteristic amongst all Aboriginal peoples is that each Indigenous nation is spiritually connected to the land. Professor Darlene Johnston, specifically spoke to the significance of the land to the Aboriginal people of the Great Lakes, in her expert report:

As a descendant of Great Lakes Aboriginal ancestors, I have been taught that our people come from the land and that we are shaped by the land. Aboriginal history and self-understanding is conveyed across generations by stories and teachings that are grounded in particular landscapes.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 2

10. For the Aboriginal people of the Great Lakes, there is both a physical and spiritual aspect to identity and landscape. Furthermore, the relationship between people and place is created and maintained by totemic identity and that the relevance is understood when approached from an Aboriginal perspective of creation.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 3

For the Anishnaabeg, the Great Lakes region is more than geography. It is a spiritual landscape formed by and embedded with the regenerative potential of the First Ones who gave it form...

In tracing the connection between Anishnaabek peoples and Great Lakes landscapes, it is vital to be attentive to evidence of totemic identity. It is important to understand that totemic identity is a matter of inheritance, not choice.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 6

11. The Aboriginal connection to the land is also expressed in the signatures of the Aboriginals signatories to the treaties. The totemic marks fuse genealogy and territory in a landscape that is both geographic and spiritual.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 12

...wampum belts served as evidence of ownership of territory. It also shows the link between totemic identity and territory. Specific tribes are given responsibility of specific regions. We know from other documentary records that Chief Yellowhead was a White Rein Deer (or Caribou) chief. When he signed treaties, he drew the figure of a Rein Deer. He drew his authority from his fathers and grandfathers before him back to the first White Rein Deer. He understood that his role was to stand in the place assigned to his ancestors until the end of time.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", pp. 11-12

Aboriginal burial grounds

12. During the forced relocation of Aboriginals peoples during the 19th century by the euro-western Canadian government, the Chippewas demonstrated a strong attachment not only to their reserves but to the graves of their ancestors.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 23.

When faced with the loss of their traditional lands, the Chippewas of Lake Huron chose discrete reserves in specific locations. I assume that they did so for a reason: that the Sauble River Reserve was chosen because there were people who wanted to remain on the southern shores of Lake Huron, not at Sarnia, or Walpole, and or further north on the Saugeen Peninsula. In spite of pressures from surrounding settlement and a Government interested in economies of scale, the Chippewas persisted in retaining their distinctive communities and never consented to be removed elsewhere.

The trauma of loss of ancestral lands can, at least in part, be attributed to the enforced separation from the graves of one's ancestors. This loss cannot be fully

understood without an appreciation of the relationship between the Living and the Dead among the Anishnaabeg...

Anishnaabeg attachment to lands can be related to a corresponding attachment to the graves of ancestors. Because the Living are obliged to care for the Dead, proximity to family burial grounds is extremely important. Just as Creation Story ties people to place, so there is a connective force in burial traditions. They tell us much about Anishnaabeg understanding of human beings, their bodies and souls, and their connection to land and their ancestors, both human and other than human.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 24

13. For Aboriginal peoples there is an ongoing relationship between ancestors who have passed through the western door and the descendents who remain to carry on their legacy. The descendents have responsibilities to their ancestors, an integral part of which is to ensure that they are buried according to sacred practices. Location of internment is of significance as the land and spirit are intertwined. Failure to adhere to such spiritual obligations will result in an imbalance impacting both the living and spiritual world. Such traditions exhibit intergenerational continuity.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 24.

14. Furthermore, the remains of the Dead retain a spiritual essence requiring ongoing respect.

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 27.

This notion of the souls of bones is key to understanding both the reverence with which human remains are treated after death and the abhorrence of grave disturbance which persists among the Anishnaabeg. The belief that a spiritual essence remains bound to the body after death was shared with me by Elders during an 8-day vigil which we kept on an unceded burial ground within the city limits of Owen Sound back in 1992. The vigil resulted in federal recognition of

the burial grounds' reserve status under Treaty No. 82. Many Euro-Canadians miss the redundancy in the expression "sacred Indian burial ground". How could burial grounds not be sacred if they contained the Body-Souls of one's ancestors?

Exhibit P-1, Professor Darlene Johnston's Expert Brief – Volume 1, "Connecting People to Place: Great Lakes Aboriginal History in Cultural Context", p. 28.

The land dispute

The selection of Stony Point as a reserve

15. The Huron Tract Treaty of 1827 was negotiated over a nine-year period between the Chippewa Nation and the British Crown according to the protocol established in the *Royal Proclamation of 1763*. The terms of the treaty dictated that over two million acres of Chippewa land was ceded to the Crown in return, the Chippewas were granted perpetual annuity. With regard to a land base, four reservations, comprising less than 1 per cent of the land, were established out of the cession in locations chosen by the Chippewas. Two of these reserves were on Lake Huron: Kettle Point and Stony Point.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background" p. 3.

16. The reservations were arguably selected based on designated land use and significance to the Chippewas, including Kettle Point and River Aux Sauble (Stony Point). Within her expert brief, Ms Holmes states:

the chiefs were negotiating to give up a huge tract of land and must have carefully considered the specific areas they wished to retain ensuring that they held on to the most precious and significant locations.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 13 and p. 17.

17. Prior to the establishment of the reserve at River Aux Sauble there is evidence to support the Chippewas use of the land. Furthermore, evidence supports that in 1826, a gravesite near the mouth of the river is visible from the Chief's house.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 20.

Burial ground, Ipperwash Provincial Park

18. In 1932, Ontario created Ipperwash Provincial Park on ceded lands from the front of Stony Point Reserve in 1928.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 5

19. As early as 1937, the Chief and Council notified park authorities that there was a burial ground in the park and asked them to protect the site.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 5.

20. In August of that same year, the Kettle and Stony Point Band passed a council resolution appealing to the Department of Indian Affairs to intervene and: "... to request the provincial Govt to preserve the old Indian burial grounds on the Government park at Ipperwash Beach and have their Engineer mark out and fence off the grounds so that they will be protected."

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 55.

Exhibit P-8, Joan Holmes Book of Documents, Tab 97.

21. Subsequent to the band council resolution, the Department of Indian Affairs, requested that the Province through the Ontario Department of Lands and Forests, preserve intact the "old Indian cemetery." In response, the Deputy Minister gave his assurance that he would "do [his] best to make such arrangements as will respect the natural wishes of the Indians."

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", pp. 5, 55

Exhibit P-8, Joan Holmes Book of Documents, Tabs 99, 100.

22. Despite government assurances to "respect the natural wishes" of the Chippewas, no action was taken to protect the remains of their ancestors. Sometime during the 1950s, human remains were located in the park and provided to an archaeologist but have since been lost. The only evidence of the remains are photographs which were examined in the 1990s by two independent anthropologists. One anthropologist concluded the burial was likely an Ojibwa child of about 11 years of age interred some time in the late 19th or early 20th century, suggesting that this was a Kettle and Stony Point ancestor. While the second anthropologist concurred in the age of the individual and that the manner of burial was consistent with an Aboriginal burial but did not speculate on the date of the burial.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 5

The taking of the remainder of Stony Point under the War Measures Act

23. In 1996, a claim was filed against Canada alleging that the surrender and sale of the land was invalid. The claim is currently under consideration by the Department of Justice. According to Ms Holmes' report the beachfront at Stony Point was surrendered and sold in 1928, noting that a 377-acre property was sold for \$13,500 (\$35 per acre).

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 5

24. In 1942, during World War II, the Department of National Defence (DND) sought the remaining Stony Point Reserve lands for use as a training camp. DND contacted Indian Affairs and began investigating the site in February 1942. Indian Affairs approached the Band encouraging them to surrender the reserve less than two months later. The Kettle and Stony Point people did not want to sell their reserve and rejected the surrender by an overwhelming majority.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 5

25. The Kettle and Stony Point Band very quickly objected to the proposed taking, noting that the Reserve was held under treaty to be expressly reserved to "the said nation of Indians and their posterity at all times here after for their own exclusive use and enjoyment."

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 48

Exhibit P-8, Joan Holmes Book of Documents, Tab 81.

26. Despite the community's resistance to surrender the lands, the DND persisted. The Indian Agent saw it as an opportunity to consolidate the Kettle Point and Stony Point communities onto a single reserve and remove non-band members. Consequently, as the surrender did not pass, DND appropriated the reserve using its authority under the *War Measures Act*. They renamed the reserve Camp Ipperwash.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 5

27. DND obtained an Order in Council approving the taking of the 2,240-acre Stony Point Reserve under the authority of the *War Measures Act* on April 14, 1942. The preamble to the Order in Council further stipulated that a promise had been made that:

... if, subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 51

Exhibit P-8, Joan Holmes Book of Documents, Tab 89

28. Stony Point community members were forced to relocate to the Kettle Point Reserve where they were allotted small land portions. Band members who were displaced were compensated for improvements, such as cultivated land and out buildings, and had their houses moved. However, they did not receive compensation for

unimproved land. DND had authority to expend no more than \$50,000 in acquiring the Stony Point Reserve. After deducting the cost of moving expenses and the appraised value of buildings they had only \$36,000 to pay for approximately 2,273 acres of land, which amounts to only \$15 per acre.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 5

29. At the end of the war, Chippewa soldiers who had fought against the oppression of another people returned to discover that their own people were forcibly relocated to Kettle Point and their community of Stony Point was destroyed.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 6

30. Those very soldiers were the first to raise the issue of damages to the cemetery enclosed within DND's Camp Ipperwash. The Indian Agent stated that the military had promised to respect and protect the cemetery when they appropriated the reserve. Both Department of Indian Affairs and an official from National Health and Welfare took the matter seriously. At length a fence was erected around the cemetery. People originally from Stony Point resumed burying members in the old cemetery in 1990.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 6

Stony Point continues to be withheld after WWII

31. Ms Holmes explained in her report that, shortly after the end of the Second World War, DND indicated in writing that they were willing to return the Stony Point Reserve and lease back any areas still required. However, this proposal was soon withdrawn when the military resolved to keep the camp for training cadets.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 6

32. Negotiations between the Department of Indian Affairs and DND for the return of selected portions of Camp Ipperwash began as early as 1946. In May of that year, the Deputy Minister of DND stated that though it was desirable to hold on to the camp for training purposes, "this Department recognizes that it would be unjust to the Indians to continue our ownership of the Ipperwash Camp area into the post-war period if such is, as you state, a violation of their treaty rights." He suggested instead that an agreement be reached to have ownership of the camp returned to the "former Indian owners who would then grant the Army permission to continue to use that area during certain periods of the year for the training of the Reserve Units."

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background", p. 59

Exhibit P-8, Joan Holmes Book of Documents, Tab 101.

33. By February 1947, DND had gone so far as to agree, in writing, to return at least a portion of the Stony Point lands to the Department of Mines and Resources. The agreement stipulated that the land transferred would be leased back to DND for 99 years

at a nominal rental of \$1.00 per annum but that the “local Indian Tribe” would be allowed to cultivate a portion of the lands. Ms Holmes explains that, by October of 1947, correspondence indicated that an agreement was very close. By May 1948, however, the military backed away from negotiations, opting instead to keep the base for the purposes of a cadet training camp.

Exhibit P-7, Joan Holmes’ Expert Brief, “Ipperwash Commission of Inquiry Historical Background”, p. 59

Exhibit P-8, Joan Holmes Book of Documents, Tabs 92, 104.

Failed negotiations and a “legitimate grievance”: “a serious injustice” continues

34. In 1963, a second attempt at negotiating the return of the camp also failed when DND refused to enter into discussions.

Exhibit P-7, Joan Holmes’ Expert Brief, “Ipperwash Commission of Inquiry Historical Background, p. 59

35. Over the course of the following years, attempts to return the camp were met with no success. In 1972, then Minister of Indian Affairs, Jean Chrétien cautioned the DND that the community was becoming impatient to have their land returned and failure to return the land could lead to civil disobedience. In response to the National Defence position that the Camp was still required, Chrétien warned the Defence Minister in a 1972 confidential memo that:

It seems to me that the Indian people involved have a legitimate grievance. They did not agree to surrender the land in the first place, but it was appropriated in the national interest prevailing in 1942. It is now 1972, and they have not got it back. Yet they desperately need it to improve the Band’s social and economic position.

In addition, there is their deeply rooted reverence for land and their tribal attachment to it.

...

They have waited patiently for action. There are signs, however, that they will soon run out of patience. There is bound to be adverse publicity about our seeming apathy and reluctance to make a just settlement. They may well resort to the same tactics as those employed by the St. Regis Indians at Loon and Stanley Islands, in 1970 – to occupy the lands they consider to be theirs...

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background pp. 6, 59-60

Exhibit P-8, Joan Holmes Book of Documents, Tab 106.

36. Again, subsequent efforts to arrive at a settlement were unsuccessful. By March 1974, \$66,000 for the purchase of farm land and buildings adjoining Kettle Point Reserve was advanced to the Band.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background, pp. 6, 60-61

37. It was not until 1980 that a draft agreement was presented to the Kettle and Stony Point Band members for approval. The agreement was ultimately approved by Order in Council on February 26, 1981. The Order in Council directed that \$2,426,535.95 was to be paid as compensation and that the management of mines, minerals, sand, gravel and timber rights were to be transferred to the Department of Indian Affairs for the use and benefit of the Kettle and Stony Point Band of Indians. Ipperwash camp was also to be returned to the Band without any "commitment by the Crown to decontaminate the lands" or guarantee that entry upon the lands could be made without risk.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background, p. 61

Exhibit P-8, Joan Holmes Book of Documents, Tab 93

38. By 1990, the Stoney Point group won permission from DND to bury one of their members at the Stoney Point cemetery, raising hopes that the camp would soon be returned. The following year, Parliament's Standing Committee on Aboriginal Affairs supported the Stoney Point group, stating, "The government [must] rectify a serious injustice done to the Stoney Point Aboriginal... by returning the land at Stoney Point to its original inhabitants and their descendents from whom the land was seized."

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background, p. 62

39. However, newspaper reports in early 1991 reveal that DND had decided that "There is a continuing military requirement for the use of this land. Therefore, we cannot recommend its transfer to the natives of Kettle and Stony Point."

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background, p. 62

40. The Band continued to press the matter in subsequent months, arguing that the land was no longer needed for a military purpose and was being used simply as a retreat.

Exhibit P-7, Joan Holmes' Expert Brief, "Ipperwash Commission of Inquiry Historical Background, p. 62

41. The people had become increasingly impatient with the lack of resolution and, as is well-known, some Stony Point descendants occupied Camp Ipperwash in 1993 and then moved into the park in September 1995.

II. THE PLACE OF ABORIGINAL PEOPLES IN THE COMMON SENSE REVOLUTION

when I was at the MNR briefing with the Minister of Natural Resources and also at the -- with the Premier's office staff, that the message that I got back after saying that there are -- that Aboriginal people do have special rights that are protected by Section 35 of the Constitution Act, I was told, Well, we don't care.

Evidence of Julie Jai, August 30, 2005 at p. 69 l. 9-15.

Fox: *Okay well let me just give the I went through this meeting John we're dealing with a real redneck government.*

Carson: *Okay.*

Fox: *They are fuckin barrel suckers they just are in love with guns.*

Carson: *Okay.*

Fox: *There's no question.*

Carson: *So.*

Fox: *they couldn't give a shit less about Indians.*

Exhibit P444A, Tab 37, transcript of audio loger selected tracks September 5 to 7/95 Volume 1.

43. Aboriginal rights are inherent rights that are inextricably linked to the spirituality of Aboriginal peoples. The Harris Government however, misclassified and relegated Aboriginal and treaty rights to "special rights" akin to those afforded to minority groups.

44. The Harris pre-election campaign material clearly stated that if elected a different approach would be taken than that taken by the predecessor government. The Common Sense Revolution noted:

Our political system has become a captive to big special interests. It is full of people who are afraid to face the difficult issues, or even talk about them. It is full of people doing all too well as a result of the status quo. We need a revolution in this province...a Common Sense Revolution.

It will be a revolution of practical ideas for making government work better for the people it serves...[emphasis not in original]

Exhibit P-922 "The Common Sense Revolution" at p. 2.

45. In Harris' Bring Common Sense To Community Development, the conservative party took the position that:

Native Canadians are a *special group in our society, with unique recognition in the Constitution and specific needs and concerns.*

...

While Canadian history and law both mark this group as unique, we are committed to integrating the rights and needs of all Ontarians in our policies in this area.

That's what The Common Sense Revolution is all about! [emphasis not in original]

Exhibit P-924 "Bringing Common Sense to Community Development" at p. 15

46. The Harris government's approach to Aboriginal rights was to ignore that they are inherent rights, protected by the Royal Proclamation, treaties and the Constitution.

Former Chiefs of Ontario, Chief Gordon Peters spoke to this issue at the Inquiry:

12 When we talk about the -- the proposal on
 13 the -- on the part of the -- the -- the Conservative
 14 government who, in their -- in their pre-election
 15 campaign maligned the NDP about the way they handled the
 16 native agenda and said that they were going to deal with
 17 us in terms of equality, for us that means assimilation.
 18 It means that -- that on the parts of
 19 government that they're going to -- they're going to step
 20 up their processes of assimilation. They're going to try
 21 to bring us into the -- into the mainstream. It means
 22 they're going to disregard our treaty relationships and -
 23 - and virtually revert back to the 1969 White paper that
 24 set out a process about how -- how indigenous peoples
 25 would be swallowed up within the politic of Canada.

Evidence of G. Peters, March 31, at p. 182 l. 12-25.

Mr. Peters went on to say:

1 And we had been -- we had been on a -- on
 2 a growing process since the early '80's for recognition

3 of not only government-to-government process, but a
 4 nation-to-nation process. There had been studies that
 5 had been conducted that had already taken place by the
 6 UN, validating the treaties; that the treaties were still
 7 in existence that they hadn't -- they were still
 8 international instruments that had to be recognized.

9 And all of a sudden we get a government
 10 who said we're going to treat you equally like other
 11 Ontario citizens and we're just going to disregard all
 12 that, and we're going to move forward together. And --
 13 and we're going to look at economic opportunity and jobs
 14 and those kinds of issues that they were dealing with --
 15 with the remainder of the Ontario public.

16 So that was our perspective from -- from
 17 that agenda process that was being discussed.

Evidence of G. Peters, March 31, at p. 183 l. 1-17.

47. The Harris pre-election campaign position remained a staple of the Harris government's approach to Aboriginal rights and treaty rights when they assumed office in the Spring of 1995 as illustrated in the reaction to Ms. Jai's briefing paper on section 35(1) of the Constitution:

9 But I know particularly when I was at the
 10 MNR briefing with the Minister of Natural Resources and
 11 also at the -- with the Premier's office staff, that the
 12 message that I got back after saying that there are --
 13 that Aboriginal people do have special rights that are
 14 protected by Section 35 of the Constitution Act, I was
 15 told, Well, we don't care.
 16 Our policy is Aboriginal people have the
 17 same rights as everybody else. We believe in, you know,
 18 equal treatment of all -- of all people and that's our
 19 policy.
 20 And even after I had reiterated and kind
 21 of pointed out that, in fact, you can't take that
 22 position legally, that the Government is bound by the
 23 constitution and that there are reasons why Aboriginal
 24 people do have special rights by virtue of the fact that
 25 they were the original occupiers of this land and that

1 that has been recognized in agreements, in the Royal
 2 Proclamation, in the Constitution Act.

3 So, in fact, the province did not have the
 4 ability to treat Aboriginal people the same way as other
 5 people in all instances.

6 I was again met with this sort of, Well,
 7 we don't really care about that. Our position is there's
 8 no such thing as special rights for Aboriginal people.

Evidence of J. R. Jai, August 30, 2005 at p. 69 l. 9-p.70 l. 8.

Aboriginal Rights Are Not “Special Rights”

48. Aboriginal rights and treaty rights are distinguished from “special rights” afforded to minority groups, which are enshrined in legislation to offer protection from the majority dominant culture.

49. The treaties negotiated between Aboriginal people and the Crown are political and constitutional assertions of their partnership to co-exist distinct from minority “special rights” recognized and codified in legislation.

Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples: Looking Forward Looking Back, vol. 1 (Ottawa, Minister of Supply and Services, 1996), online: Indian and Northern Affairs Canada <http://ww.ainc_inac.gc.ca/ch/rcap> at 1.4 [RCAP, vol. 1].

50. A classification of Aboriginal rights as minority “special rights” fails to encapsulate the significance of the relationship or the obligations owed to Aboriginal peoples, in Jerome Slavik’s words “promises in the treaty are not merely contractual in nature but also fiduciary.” Scott Hutchinson, on his final day of testimony, also pointed out that the Province was in a fiduciary relationship with Aboriginal people.

J. Slavik, Book Review of *Parallel Paths: Fiduciary Doctrine and the Crown – Native Relationship in Canada* by Leonard I. Rotman (1997) 36 Alta. L. Rev. 312 at 318.

Evidence of S. Hutchison, August 30, 2005, at p. 43 l.19

51. As part of the fiduciary obligation, Aboriginal people assume that the Crown will act honourably, with integrity and good faith and most importantly in a manner that is consistent with the best interests of the Indigenous party in the context of treaty relations and obligations.

J. Slavik, Book Review of *Parallel Paths: Fiduciary Doctrine and the Crown – Native Relationship in Canada* by Leonard I. Rotman (1997) 36 Alta. L. Rev. 312 at 318.

52. With the inception of section 35(1) of the *Constitution Act, 1982*, Aboriginal treaty rights are entrenched in Canada's supreme law as sources of constitutional law. Constitutional entrenchment ensures added protection. Section 35(1) is an explicit acknowledgement that treaties are instruments of mutual respect between the Aboriginals and the Crown.

James [Sákéj] Youngblood Henderson, "Empowering Treaty Federalism" (1994) 58 Sask. L. Rev. 241 at 244.

53. ALST submits that the Harris regime failed to meet its obligations to the Aboriginal community, refused to act honourably, and chose to ignore the law of Canada. The Harris government's failures come to light upon reviewing how they mishandled the events at Ipperwash Provincial park.

III. THE VOICES OF THE PREMIER: THE HARRIS GOVERNMENT'S MESSAGING TO POLICE OFFICERS AND CIVIL SERVANTS

Q: And so again I ask you, sir, based on the information I've imparted to you from the scribe notes, from the notes of -- of parties at meetings, does this information now create some doubt in your mind as to the existence of political pressure on the OPP?

A: Having seen that, I think, using one of your phrases, a reasonable person might feel that there was a perception of -- there's a perception of influence.

...

Q: Would you be so confident that there was no political pressure?

A: I would have some concern.

Evidence of T. O'Grady, August 24, 2005, p.288, 1.12-1.20, p.290, 1.1-1.3

54. ALST submits that the Premier and the political side of government exerted inappropriate pressure on both the police and civil service from the beginning of the occupation and up to the date of the shooting. The nature of the political pressure became progressively more intense as the events unfolded, and operated through a variety of channels. The consistent message was that the government wanted the occupiers removed from the park very quickly, that the Premier was personally involved and "hawkish", and that the OPP had made mistakes in allowing the occupation to occur. The cumulative effect was that the police and the civil service operated under a sense of urgency and crisis that was created by politicians, and which was inconsistent with the objective facts on the ground.

Political Pressure on the Police

55. The instances of political pressure directed at the O.P.P through the period September 4 through September 6, 1995 are summarized in the table below:

<p>Deb Hutton to Ron Fox (and others) – Jai IMC Notes P-536 (Inq. Doc. 1012579)</p>	<p>“Prem. is hawkish on this issue” (Sept.5, p.4)</p>
<p>Deb Hutton to Ron Fox (and others) – Hipfner IMC Notes P-510 (Inq. Doc. 1011739)</p>	<p>“this may be the time/place to move decisively” (Sept.5, p.4)</p>
<p>John Carson, H/W Police Scribe Notes, P-427, p.390</p>	<p>“Marcel Beaubien calling Premier” (Sept.5 at 8:34am)</p>
<p>John Carson to command team, H/W Police Scribe Notes, P-427, p.438</p>	<p>“Premier no different treatment from anybody else” (Sept.5 at 2:35pm)</p>
<p>Ron Fox to John Carson, P-444(a) Tab 16 p.116</p>	<p>“Premier’s made it clear to her [Hutton] his position that there be no different treatment ah of ah the people in this situation in other words ah native as opposed to non-native” (Sept.5 at 2:47pm)</p>
<p>Wade Lacroix to John Carson, P-444(a) Tab 22 p.182</p>	<p>Lacroix: “Harris is involved himself and ah quite uptight about it”</p> <p>Carson: “Okay.”</p> <p>Lacroix: “And the Ministry I guess the Solicitor General I imagine is to do a press release momentarily or soon saying law will be upheld no matter who is involved.”</p> <p>Carson: “Okay.”</p> <p>Lacroix: “So I would say the signal is that ah we’re gonna end</p>

	<p>up evicting.”</p> <p>Carson: “I would suspect.”</p>
<p>Wade Lacroix to John Carson, H/W Police Scribe Notes, P-427, p.443</p>	<p>“Wade Lacroix briefed Carson re discussion with Marcel Beaubien” (Sept.5 at 4:31pm)</p>
<p>John Carson to command team, H/W Police Scribe Notes, P-427, p.450</p>	<p>“Heat from political side” (Sept.5, 6:05pm)</p>
<p><i>Evidence of Carson</i>, May 18, 2005 at p.31</p>	<p>“Obviously, the – the information that’s being passed along through Staff Sergeant Lacroix. There’s also the comments from Mayor Thomas, Ken Williams. I mean there’s – there’s a number of people at the various areas of responsibility who are voicing concerns and issues, so it’s, quite frankly, coming from all angles.”</p>
<p>John Carson to Mayor Fred Thomas, Typed Police Scribe Notes, P-426, p.52-53</p>	<p>“Premier and Solicitor General want to deal with this” (Sept.6 at 8:17am)</p>
<p>Deb Hutton to Ron Fox (and others) – Jai IMC Notes P-536 (Inq. Doc. 1012579)</p>	<p>“He wants them out in a day or two” (Sept.6, p.3)</p>
<p>Deb Hutton to Ron Fox (and others) – Hipfner IMC Notes P-636 (Inq. Doc. 1011784)</p>	<p>“Premier’s view that the longer occupiers are there, the greater the opportunity they have to garner support, arm selves” (Sept.6, p.5)</p>
<p>Ron Fox to Julie Jai – Jai h/w note of phone call with Fox, Sept.6 P-515</p>	<p>“he [Taman] cautioned about rushing in with ex parte injunction – can’t interfere with police discretion – but Prem. and Hodgson came out strong”</p>
<p>Ron Fox to Mark Wright, P-444(a) Tab 34 p.252</p>	<p>“And that’s as I said to John that’s my big job is to keep the political folks out of the hair of the operational people so.”</p>

	(Sept.6 at 12:06pm)
Ron Fox quoting Premier Harris to John Carson and Chris Coles, P-444(a) Tab 37 (Sept.6 at 2:00pm)	<p>“the political people are really pushing” (p.260)</p> <p>“John we’re dealing with a real redneck government” (p.262)</p> <p>“Well John I’m here to tell you this guy [Premier Harris] is a redneck from way back” (p.263)</p> <p>“the OPP in my opinion made mistakes they should have done something right at the time and he said that will I’m sure all come out in an Inquiry sometime after the fact” (p.263-64)</p> <p>“He believes that he has the authority to direct the OPP” (p.264)</p> <p>“Okay the Premier is quite adamant that this is not an issue of Native rights and then his words ah I mean we’ve tried to pacify and pander to these people for too long. It’s now time for swift affirmative action. I walked in the tail end Chris with him saying things like well I think the OPP have made mistakes in this one. They should have just gone in. He views it as a simple Trespass to Property that’s in his thinking.” (p.274)</p>
Tim McCabe to John Carson, P-444(b) Tab 39 at p.271	<p>“I think the thing that has gotten people particularly concerned here is the reports of gunfire last night” (Sept.6 at 2:36pm)</p>
John Carson to Jim Hutchison, P-444(b) Tab 42 at p.282	<p>Carson: “Well we’ve had some alligators.”</p> <p>Hutchison: “Oh is that right.”</p> <p>Carson: (laughs)</p> <p>Hutchison: “Friendly ones or ones on the outside.”</p> <p>Carson: “Oh well we just just some political pressures if you would.”</p> <p>(Sept.6 at 3:41pm)</p>

<p>Marcel Beaubien to John Carson and Dale Linton, Typed Police Scribe Notes, P-426, p.69-70</p>	<p>“Marcel Beaubien advised that he had sent a fax to the premier advising of his intentions and that he wanted a return phone call regarding his intentions” (Sept.6 at 6:42pm)</p>
<p>Dale Linton to Marcel Beaubien, Typed Police Scribe Notes, P-426, p.69-70</p>	<p>“Linton questioned if there is anything from the Solicitor General?” (Sept.6 at 6:42pm)</p>
<p>Marcel Beaubien to John Carson and Dale Linton, H/W Police Scribe Notes, P-427, p.472</p>	<p>“Premier is in constant touch good communications” (Sept.6 at 6:42pm)</p>
<p><i>Evidence of Fox</i>, July14, 2005 at p.98</p>	<p>Q: Yes. So when the Premier said in the House, on May 29, 1996 “we would not have offered any opinion”, that is not consistent with your memory of exactly what he did with you, correct?</p> <p>A: Correct.</p> <p style="text-align: center;">* * * *</p> <p>Q: And it’s fair to say that what this Premier did on September 6, 1995 as far as you read this Hansard, is fairly inconsistent with the Hansard, isn’t it?</p> <p>A: It would be, yes.</p>
<p>Wade Lacroix to Brian Deevy (P-1361 p.5,)</p>	<p>Lacroix: “I wonder what the government is saying.”</p> <p style="text-align: center;">* * * *</p> <p>Lacroix: “... political side – it couldn’t have been better.” (Sept.7)</p>

56. The OPP Commissioner at the relevant time, Thomas O'Grady was presented in cross-examination with much of the above evidence, suggesting that his officers had been exposed to political pressure during the course of the Ipperwash occupation. Mr. O'Grady quite properly conceded that the evidence gave rise to a reasonable perception of political interference:

12 Q: And so again I ask you, sir, based on
13 the information I've imparted to you from the scribe
14 notes, from the notes of -- of parties at meetings, does
15 this information now create some doubt in your mind as to
16 the existence of political pressure on the OPP?

17 A: **Having seen that, I think, using one**
18 **of your phrases, a reasonable person might feel that**
19 **there was a perception of -- there's a perception of**
20 **influence.**

21 Q: And you'd agree with me that that
22 perception of influence arises because of the indications
23 in the records that the Premier's opinion, among other
24 things, was being passed on to operations at the OPP,
25 correct?

1 COMMISSIONER SIDNEY LINDEN: Well
2 again --

3
4 CONTINUED BY MR. JULIAN FALCONER.

5 Q: You'd agree with me that in some
6 people's minds, that's all I said, I didn't say it
7 happened in some people's minds. You have people saying
8 the Premier is uptight. You have people saying the
9 Premier's hawkish. You have people saying the Premier
10 wants them out in two (2) days.

11 These are opinions. The Premier may never
12 have said any of these things. Mike Harris one day will
13 take the stand and we'll hear from him. But, these were
14 the impressions passed onto incident command.

15 It's based on those impressions being
16 passed on that you say there's a perception of political
17 influence; isn't that right?

18 A: **A person looking in knowing that**
19 **could come to the conclusion I think that they perceived**
20 **that there was political pressure.**

21 Q: And if you had known this
22 information, I shared with you this afternoon in such a
23 painful way, if you had known about this information
24 would it create some doubt in your mind as to the
25 existence?

1 Would you be so confident that there was
2 no political pressure?

3

A: I would have some concern.*Evidence of T. O'Grady, August 24, 2005, p.288, 1.12-p.290, 1.3*

57. Not surprisingly, the members of the command team who testified at the Inquiry denied that they were influenced by any of the pressure that they were exposed to. It would be naïve to accept this evidence at face value. First, their denials are self-serving in the sense that to admit otherwise would be to confess to professional misconduct. A more charitable interpretation of their evidence is that their denials reflect the justifiable pride that these senior officers would have about their professionalism and integrity. Second, their answers cannot exclude the subconscious impact that such pressures would likely have on their conduct.

58. Wade Lacroix's denial that he was influenced by political pressures is most illustrative of the likely impact that the messages sent by the political side of government would have had on officers on the ground:

2 Q: Fair enough. And then the next line
3 right after is where you say:
4 "Harris is involved himself."
5 Have you ever been involved in a situation
6 where the Premier was involved directly, personally in
7 something you were doing?
8 **A: Never.**
9 Q: Must have been quite a responsibility
10 that you felt to get it right when you passed it on to
11 the Incident Commander?
12 You wanted to get it right?
13 **A: Just that he was showing an interest**
14 **in the whole -- the whole affair, yeah, I mean --**
15 Q: And you took from the interest that
16 was being described to you by Mr. Beaubien, you took from
17 that interest, not only that Harris was quite uptight or
18 anxious or upset, you also took that he's involved
19 personally. Do you see that?
20 "Is involved himself."
21 Yes?
22 **A: Hmm hmm.**
23 Q: Sorry?

24 A: Yes. I see what you're getting at --
 25 Q: And then --
 1 A: -- Harris has involved himself.
 2 Q: Yeah. And then you also took, quote:
 3 "I would say the signal is that we're
 4 going to end up evicting."
 5 Right?
 6 A: Right. But I also meant if we get
 7 this Court order, et cetera, there's going to come
 8 pressure. I -- my inference there was as it's heating
 9 up, because we were doing contain and negotiate until
 10 whenever.
 11 But as it becomes -- when I say political
 12 the press played into that, too. So, like, if it becomes
 13 a really hyped up. I was saying to him, we get that
 14 Court Order, there's going to become pressure to actually
 15 evict, is what I felt my inference was.
 16 Q: Sure. And by the term 'pressure' you
 17 just described two (2) sources of pressure. You said --
 18 A: That's right.
 19 Q: -- pressure from the Premier
 20 personally, himself. You said that. Nut you also added
 21 the media as well?
 22 A: Yes. It gets going in the papers and
 23 people start to, you know, feed it. There's more
 24 pressure on the police to do something.

* * * *

14 Q: That's right. And you've -- you've
 15 handled high pressure situations before and it doesn't
 16 help the situation to get grief, does it?
 17 A: No, you do not need a lot of media or
 18 you don't need a lot of political interference; that
 19 doesn't help.
 20 Q: Right. And so if you hear you're not
 21 going to get political interference by doing --
 22 A: Right. I think --
 23 Q: -- a certain approach, that would
 24 make you happy?
 25 A: Yes. I think that's kind of what
 1 he's talking about, but just going back to one (1) thing
 2 you said a minute ago is, I didn't -- I don't think we
 3 have -- you almost made it sound, a second ago, like we
 4 would have an option to evict if we got the injunction.
 5 My understanding was if we got a court
 6 order it basically instructed the OPP to do something.
 7 Q: Yes, you would have to do it
 8 immediately --
 9 A: Yeah. Yeah.
 10 Q: Is that right?
 11 A: Yeah, that's what I thought.
 12 Q: Right.
 13 A: So I thought you just said something

14 a minute ago before this conversation, that somehow I
15 could sit on that.

16 Q: Or that the -- no that's -- I didn't
17 use the word 'sit on it' but you're quite right that I
18 proposed in a suggestion to you a different scenario
19 whereby the OPP didn't act immediately.

20 But it was your understanding that there
21 was an obligation to act immediately once you get the
22 injunction.

23 A: Well, back then I -- I thought we had
24 to. Now, I'm watching one going on and they're not. But
25 I thought we had to. That was my --

1 Q: And --

2 A: -- recollection at the time. If we
3 got that court order there was no if, ands or buts, you -
4 - it was court order.

5 Q: Right.

6 A: And would you agree with this, that
7 whether or not that was your thinking, you didn't tie the
8 fact of evicting to the obtaining of an injunction.

9 On page 182 at the top you tied the act of
10 evicting to the personal views of the Premier. You said:

11 "So I would say the signal is that
12 we're going to end up evicting."

13 A: Yeah. And I'm going to -- and I'll
14 tie those two (2) together now. Okay?

15 Q: Okay. Now --

16 A: So to me, I am -- I'm saying that if
17 we get this court order and the Government really want to
18 see something done, I would guess that means we're going
19 to evict.

Evidence of W. Lacroix, May 9, 2006, p.244, l.2-p.245, l.24; p.254, l.14-p.256, l.19

59. It is clear from this passage, that Mr. Lacroix was aware of the Premier's personal interest in the police operation, and the unusual profile that the Ipperwash operation had attracted from the political side of government. It is also clear that Mr. Lacroix as at September 5, 1995 was anticipating that the pressure on the police from the political side, along with the media, was likely to increase as the occupation continued. He further concedes that the Government's desire to have the occupiers "evicted" will ultimately be translated into action by the police.

60. The influence that the political pressure had on John Carson can be inferred from the surrounding circumstances. Counsel for the OPP took great pains to elicit evidence from numerous witnesses that Mr. Carson was a calm, deliberate and professional incident commander. ALST does not dispute this evidence. Further, the theme underlying Operation Maple, as well as the approach favoured by OPP management to Aboriginals occupations generally, was to “contain and negotiate a peaceful resolution”. Mr. Carson’s character, and OPP practice, makes it very difficult to account for the sense of extreme urgency that overtook the command team on the evening of September 6, 1995. The sense of crisis was all out of proportion to the presentation of objective facts on the ground. The march itself betrays a level of gross incompetence and haste that is simply out of character for an operation led by Mr. Carson.

61. The dissonance between Mr. Carson’s personal attributes and skill and what happened on the evening of September 6, 1995 calls out for alternative explanations. The most plausible of these is that the command team as a whole was gripped by a sense of urgency that was imposed, not by the events on the ground, but from the outside. In particular, there was extreme concern, if not panic, in the surrounding local community. The atmosphere within the police and wider communities was rife with fear and rumour. The unmistakable signal from the political side of government was that “there is a new sheriff in town”: that the OPP’s cautious approach would not be supported politically and that the OPP was expected to take a more aggressive posture with a view to removing the occupiers quickly.

Interference with Civil Servants

...the Premier, for practical purposes in this type of setting is the Government.

Evidence of L. Taman, November 16, 2005, p. 66 l. 20-23

62. The evidence at this Inquiry is overwhelming that Deb Hutton, speaking on behalf of the Premier, exerted an undue and inappropriate degree of influence over the Inter-ministerial Committee process.

63. The evidence of Julie Jai, Elaine Hipfner and Anna Prodanou was that Ms Hutton adopted an aggressive and disrespectful posture at the IMC meetings of September 5 and 6, 1995. She conveyed the clear impression that she spoke on behalf of the Premier. The contemporaneous notes of Ms Jai and Ms Hipfner are replete with references to Ms Hutton's advocacy of a bellicose and swift response to the occupations:

- "Prem. is hawkish on this issue"
- "this may be the time/place to move decisively"
- "He wants them out in a day or two"
- "Premier's view that the longer occupiers are there, the greater the opportunity they have to garner support, arm selves"

64. Ms Hutton repeatedly pressed the attendees at the meeting on what the police response to the occupation should be, and conveyed dissatisfaction at the responses she received.

Exhibit P-536, Handwritten Notes of Julie Jai Sep5 & 6, 1995
Exhibit P-510, Handwritten Notes of Aboriginal Emergency Committee by Eileen Hipfner Sep5/95

Exhibit P-636, Ms. Hipfner's handwritten notes Sep 6 & 7/95

Evidence of J. Jai, August 30, 2005, p.222, 1.6-p.223, 1.19; August 31, 2005, p.71, 1.6-16; September 13, 2005, p.42, 1.4-10

Evidence of E. Hipfner, September 15, 2005, p.51, 1.8-24; p.93, 1.4-p.96, 1.25; p.102, 1.6-19

Evidence of A. Prodanou, September 21, 2005, p.17, 1.10-p.18, 1.17

65. Ms Hutton's conduct had a direct and unfortunate impact on the IMC process. The IMC was conceived as a vehicle for officials for the civil service to co-ordinate the efforts of the various government ministries affected by a Aboriginals occupation, and to develop options for a coherent and co-ordinated response. The process contemplates that civil servants independently prepare a full range of options that flow through the proper bureaucratic channels to the relevant Deputy Minister, before being presented to the political side. The Ministers, assisted by their staffs then choose amongst the range of options, and give political direction to civil service through the Deputy Minister.

Evidence of S. Hutchison, August 25, 2005, p.266, 1.23-p.270, 1.4

66. While the IMC process contemplated that political staffers would attend the committee meetings, they were to have a limited role. Their presence on the IMC facilitate their respective ministers obtaining a preview of the options as they developed, and before they were presented for decisions.

67. Ms Hutton's involvement went well beyond the proper role for a political staffer. She became the focus of the meetings, with the civil servants narrowing the development of options to respond to the apparent wishes of the Premier as she portrayed them. Ms Jai, the chair of the committee, attributed the failure of the IMC to develop and present

the various options for negotiation (consistent with IMC guidelines) directly to Ms Hutton's personal involvement:

13 Q: Thank you. We've -- we've looked at
14 the guidelines that suggested that one of the
15 possibilities for this committee is to appoint a
16 facilitator/negotiator, right?

17 A: Right.

18 Q: And such a person then would enter
19 into the process of negotiations I gather.

20 A: Right.

21 Q: And would maybe discuss the
22 substantive issues a bit but would not be able to resolve
23 any of those. And the most that such person could do with
24 respect to substantive issues would be to help to
25 initiate a process that would lead to a resolution of
1 those issues, right?

2 A: Correct.

3 Q: But there would be very important
4 things that could be done immediately by a facilitator
5 negotiator.

6 A: Yes.

7 Q: And I want to look at what might have
8 been done in this case as we proceed. But then the
9 question I had asked you, but I'll phrase it -- try to
10 accommodate My Friends' objections is, it appears that on
11 September 5th and September 6th, the Committee never got
12 around to being able to even consider the question of a
13 facilitator/negotiator; is that fair?

14 A: I would say that there were two (2)
15 or three (3) reasons why we were not able to appoint a
16 facilitator/negotiator.

17 Q: Okay. And what are those reasons in
18 your view?

19 A: One of them was the -- the sense from
20 the impression that we got from Deb Hutton that the
21 Premier wanted very immediate action and wanted the
22 occupiers removed within a day or two (2).

23 Q: Right.

24 A: So, that was one reason that made it
25 difficult. The second reason was that we were told that
1 -- again that the Premier's office or the Government of
2 the day, did not want this viewed as an Aboriginal issue.
3 So, they didn't want to appoint for example, someone from
4 ONAS because that would bring it into sort of "land
5 claims" or all of those kinds of issues.

6 And given that the desire was to treat
7 this like any other illegal occupation as opposed to
8 treat it as an illegal occupation by Aboriginal people.

9 Q: Yes.

10 A: The decision was to have the OPP on
11 the ground be the negotiator facilitator. And then we
12 had a lot of confidence in John Carson as the OPP person
13 on the ground, so we were hopeful that he would be able

14 to fulfill this role.

15 And there was a meeting that -- that had
16 been tentatively set up, I think, for noon on September
17 the 6th that John Carson was going to attend. So, we
18 thought that that would be an opportunity to at least
19 find out from that meeting, you know, who the
20 spokespeople or person from the occupying group was and
21 what their concerns were. So, we thought that that was
22 providing an -- an entry point for dialogue in any event.

23 So, given the various pressures on the
24 Committee and the fact that John Carson already had this
25 meeting set up, we -- that seemed to be the most
1 practical way of beginning the dialogue.

2 Q: Right, given the pressures?

3 A: Yes.

4 Q: And I'd like to explore a little bit
5 more of the two (2) pressures that you mentioned.

6 With respect to the demand for immediate
7 action, twenty-four (24) to forty-eight (48) hours or
8 whatever, even the process negotiations would generally
9 take much longer than that; isn't that fair to say?

10 A: Yes. Usually, I mean, a few days.

11 Q: At least a few days for even basic
12 process negotiations to -- to resolve the immediate
13 blockade or occupation?

14 A: Usually, unless you were just
15 incredibly successful.

[OBJECTION AND SUBMISSIONS OMITTED]

15 CONTINUED BY MR. PETER ROSENTHAL:

16 Q: So, the -- the speed of twenty-four
17 (24) to forty-eight (48) hours I dealt with, but then you
18 -- the second problem that you identified as something
19 that interfered with the appointment of facilitator/
20 negotiator was the expression by -- by the Premier's
21 office, through Ms. Hutton that they did not want it
22 viewed as an Aboriginal issue.

23 A: Right.

24 Q: Of course that, in one sense, would
25 seem to be saying that your Committee shouldn't even deal
1 with it, because your Committee is a committee
2 specifically to address Aboriginal issues; isn't that
3 fair?

4 A: Yes.

5 Q: And secondly, the way your Committee
6 did work was with special knowledge of Aboriginal issues
7 and dealing with things as Aboriginal issues --

8 A: Yes.

9 Q: -- right? And in particular, if you
10 were to appoint, for example, a facilitator/negotiator,
11 you might appoint an Aboriginal person, for example?

12 A: We would probably appoint somebody
13 who we felt would have the respect and trust of the group
14 that was occupying the property.

15 Q: Yes.

16 A: Because, otherwise, without trust and

17 **respect there's no ability to reach a negotiated**
 18 **solution, even for a process solution.**
 19 Q: Yes.
 20 A: **So, that could have been an**
 21 **Aboriginal person or somebody from ONAS who had the**
 22 **respect of the Aboriginal community.**
 23 Q: Right.
 24 A: **Or some other -- it could be any**
 25 **person who had the respect and trust of both government**
 1 **and the occupying people.**
 2 Q: And -- but to appoint a person from
 3 ONAS or an Aboriginal person would be viewing it as an
 4 Aboriginal issue and therefore contrary to the
 5 instructions you were getting from the Premier's office?
 6 A: **Right, right.**
 7 Q: So, you couldn't do that?
 8 A: **We couldn't do that.**
 9 Q: Now, you indicated that, given those
 10 restrictions, you were hoping, would be a fair way to
 11 characterise it, I think --
 12 A: **Hmm hmm.**
 13 Q: -- that the meeting with Inspector
 14 Carson might play some role of a process negotiation; is
 15 that fair?
 16 A: **Yes.**
 17 Q: But, as you indicated a few moments
 18 ago, when you appointed facilitator/negotiators in
 19 general, you wanted it to be someone who had the trust of
 20 the people, right?
 21 A: **Yes.**
 22 Q: And it's not likely that an OPP
 23 officer, who's commanding OPP officers who already had
 24 some unpleasant interchanges with the occupiers, would be
 25 such a person; isn't that fair?
 1 A: **The fact of his being in that**
 2 **position would make it more difficult for him.**
 3 Q: Yes.
 4 A: **His -- his position would make it**
 5 **more difficult for him to gain the trust of the**
 6 **occupiers, regardless of whatever his personal qualities**
 7 **might be.**
 8 Q: Oh, yes. Yes, absolutely. Even if
 9 he were the most trained and excellent facilitator/
 10 negotiator --
 11 A: **Yes.**
 12 Q: -- the fact that he comes as an OPP
 13 officer --
 14 A: **Yes.**
 15 Q: -- would make it very difficult, you
 16 would think --
 17 A: **Yes.**
 18 Q: -- to establish that kind of trust;
 19 isn't that fair?
 20 A: **I agree.**

68. As a result of Ms Hutton's involvement, the debate at the IMC focused on how quickly the Attorney General's office could bring an injunction application, and whether or not notice could be avoided. The avenue of negotiation, with a view to building trust amongst the occupiers and creating a process for the peaceful resolution of the occupation, was excluded before it could be properly considered at either the Deputy Minister's level or by the Minister.

69. The impact of Ms Hutton's intervention at the IMC was exacerbated by the passive approach taken by Deputy Attorney General Taman. While there is some evidence that he mused on the morning of September 6, 1995 about whether an expedited injunction application was appropriate, his approach was that "...the Premier, for practical purposes in this type of setting is the Government." ALST submits that Mr. Taman's approach is utterly inconsistent with any notion of an independent non-partisan civil service. It also illustrates the irresolvable conflict that necessarily afflicts any Deputy Minister charged with responsibility for both the Attorney General's office and Native Affairs.

Evidence of T. McCabe, September 29, 2005, p.300, 1.9-p.301, 1.22

70. The imposition of the Premier's views through Ms Hutton in the IMC process had tragic consequences. The result was that no meaningful effort was taken to either consider or implement a process for the peaceful resolution of the occupation. This result can by no means be considered unexpected or unintended. The unavoidable inference is

that the Premier, motivated by crass, short-term partisan considerations, desired a forceful, aggressive resolution of the occupation.

IV. THE MYSTERY MEETING: THE DINING ROOM MEETING

Q: When you say that you reflected on the attendance of Premier Harris, is it fair to say what you were trying to convey to the Commissioner was that on reflection you might have reconsidered having Premier Harris attend that meeting?

A: Well that wasn't my -- my role to play having the ability to advise the Premier when or when not to attend the meeting. The meeting was called by his staff and I attended as requested. I just have felt for some time, specifically how long I can't give you a specific answer, that if -- if he hadn't been in attendance we may not have been sitting here today.

Evidence of R. Runciman, January 10, 2006, p. 169, 1.10-13.

No evidence as to who convened the meeting

71. One of the most striking aspects of the comprehensive testimony called by this Commission concerning the dining room meeting is the complete absence of evidence as to who convened it. Of the thirteen meeting participants who testified before the Inquiry, not one was able to definitively identify who called the meeting, or more particularly, on whose authority it was called.

Evidence of R. Vrancart, October 27, 2005, p.60 1.1-8

Evidence of D. Moran, November 1, 2005, p.24 1.18-20

Evidence of K. Hunt, November 2, 2005, p.69 1.5-9

Evidence of J. Bangs, November 3, 2005, p.235 1.5-17

Evidence of L. Taman, November 14, 2005, p.112 1.7-10

Evidence of E. Todres, November 30, p.52 1.6-13

Evidence of R. Runciman, January 9, 2006, p.127,1.13-23

Evidence of D. Hutton, November 22, 2005, p.83 1.1-20

Evidence of C. Hodgson, January 12, 2006, p.168 1.5-7

Evidence of M. Harris, February 15, 2006, p.244, 1.7-p.246, 1.18; February 16, 2006, p.231, 1.5-23

72. The failure of any witness to take responsibility for convening the dining room meeting, or to identify who was responsible, speaks eloquently to its impropriety. ALST

submits that the only reasonable inference from the seniority and level of responsibility of the meetings' attendees, including three senior cabinet ministers and the Premier of the Province, is that it was called by or at the behest of the Premier himself. The general lack of recollection on this issue, and in particular on the part of Mr. Harris and Ms Hutton, represents a clumsy effort to shield the former Premier from the damaging inferences that would flow from his convening of what was a wholly inappropriate meeting.

The absence of contemporaneous notes of the Dining Room Meeting

73. The complete absence of any written record of the dining room meeting also speaks volumes as to the impropriety of the meeting. In a meeting of no less than twelve attendees, the Inquiry was not provided with a single page of notes that would reflect the nature of the discussion at the meeting, or even that such a meeting occurred¹. But for the production of Julie Jai's "revised" IMC Meeting Minutes (Exhibit P-509), and her email confirmation of her conversation with Ron Fox in the afternoon (Exhibit P-537), the fact of the Premier's involvement in Ipperwash related discussions may never have come to light. The *ad hoc* character of the meeting may never have been disclosed but for the production of Ron Fox's conversation with John Carson and Chris Coles in the early afternoon of September 6, 1995.

74. The conspicuous absence of documentation generated by the meeting participants creates a strong inference that the meeting was intended to be kept secret, owing to the

¹ Larry Taman specifically disavowed that his four lines of handwritten notes (Ex. P-550) were in any way attributable to the dining meeting, but rather reflected an instruction from Mr. Harnick prior to the dining room meeting (*Evidence of C. Harnick*, November 5, 2005, pp.41-42).

obvious problem of perception that its revelation would create. Further, the paucity of contemporaneous records has permitted many of the meeting participants to profess a curious lack of recall as to crucial aspects of the meeting.

Ron Fox's status as a police officer

75. ALST submits that the weight of the evidence suggests that Ron Fox attended the dining room meeting as an OPP officer with responsibility for liaising between the Solicitor General's office and the OPP. His liaison function included reporting on information from, and communicating with, incident command at Ipperwash.

Evidence of R. Fox, July 14, 2005, p.56, l.14-p.60, l.17

Evidence of T. O'Grady, August 23, 2005, p.180, l.11-p.182, l.19

Evidence of R. Runciman, January 10, 2006, p.209, l.15-p.210, l.8

Evidence of C. Harnick, November 28, 2005, p.91, l.1-12

Evidence of L. Taman, November 16, 2005, p.45, l.22-p.46, l.23

76. ALST submits that Ron Fox's status as a police officer and his function, were well known to the principal participants at the dining room meeting. The nature of the information that Mr. Fox imparted at the meeting would have made it evident to all concerned that Mr. Fox was in communication with incident command concerning operational matters. There is no doubt that Ms Hutton, Mr. Bangs, and Mr. Moran would have been aware of Mr. Fox's status, having spent four to five hours in meetings where he was called on and did provide factual information concerning policing matters. Mr. Runciman, Ms Hunt and Ms Todres were certainly aware of Mr. Fox's status as a police officer. Mr. Hodgson's admonition to Mr. Fox that he "stay out of politics" is an implicit recognition of his status.

Propriety of the dining room meeting

77. Several witnesses have conceded in their evidence that, on reflection, they have significant concerns as to the propriety of the “dining room meeting”, considering the nature of the discussions that unfolded and identity of the meeting participants. In particular, the concerns related to the presence of Ron Fox at the meeting in the company of cabinet ministers including the Premier of the Province, and the perception of political interference that it created.

78. Robert Runciman fairly conceded in his evidence that, on reflection, it may have been inappropriate for the Premier to be in attendance at the dining room meeting. Runciman focused his concerns as to Harris’ presence on his “strong personality” and its likely impact on others at the meeting. He agreed that Harris’ personality and frankness made a strong impression on others, and might increase the potential for some to misinterpret or misunderstand his statements. Runciman further conceded that Ron Fox, whose judgment he respected, did apparently misconstrue the Premier’s statements at the meeting, and interpreted them as inappropriate criticism of an ongoing policing operation.

Evidence of R. Runciman, January 10, 2006 p.169 l.14-p.172, l.9; p.210, l.9-p.212, l.16; p.269, l.3-p.271, l.4; p.308, l.23-p.309, l.14

79. Charles Harnick testified that he was not aware of Ron Fox’s presence or capacity at the meeting. Regardless, he testified that some of the Premier’s introductory comments could fairly be characterized as expressions of disappointment and criticism of

the OPP's handling of the situation, in particular that the occupation had been allowed to happen in the first place and the difficulties associated with efforts to remove the occupiers after the fact. He conceded that such discussions should not have occurred in the presence of police officers.

Evidence of C. Harnick, November 28, 2005, p.13, 1.5-19; p.77, 1.16-p.78, 1.24

80. Elaine Todres did not hear the Premier's words regarding the conduct of the OPP, but was not in a position to deny that they were said. She too recognized that it would be inappropriate from the point of view of perception for the Premier to express an opinion about the conduct of the policing operation in the presence of an OPP officer. She does recall being concerned enough in the lead up to the dining room meeting that she felt compelled to remind the meeting about the appropriate separation between politicians and the police.

Evidence of E. Todres, November 30, 2005, p.263, 1.15-p.267, 1.16

81. Former Commissioner Tom O'Grady when confronted with Ron Fox's account of the dining room meeting (Exhibit 444(b) Tab 37) agreed that the office of OPP Commissioner was effectively by-passed through cabinet ministers having direct contact with an OPP officer concerning ongoing operational matters. He conceded that by virtue of being bypassed, he was unable to fulfill his function as a buffer against political pressure:

2 Q: And the idea is, if you work through
3 the Commissioner then the Commissioner can make that

4 judgment call about whether this is operational
5 information?
6 **A: Exactly.**
7 Q: And the idea is that you get to
8 assess, based on your experience, and accountability as
9 the leader, whether this is information these cabinet
10 ministers should have?
11 **A: I agree.**
12 Q: Now, you can't make that call if you
13 don't know the cabinet ministers are meeting with your
14 people, correct?
15 **A: That's true.**
16 Q: And that's, in essence, what happened
17 with Inspector Fox, isn't it?
18 **A: From what I know now, it seems that**
19 **is exactly what happened.**
20 Q: And it's fair to say that it is
21 essential that that chain of communication be respected
22 so you can be there with your hand on the lever to ensure
23 there isn't an improper overlap between political agendas
24 and police operations?
25 **A: I agree.**
1 Q: And having shown you all of the
2 information you now know of, would you agree with me that
3 unfortunately -- unfortunately you were bypassed?
4 **A: It would seem that way.**
5 Q: And in being bypassed, would you
6 agree with me the very danger the author refers to --
7 COMMISSIONER SIDNEY LINDEN: I'm sorry,
8 carry on.
9
10 CONTINUED BY MR. JULIAN FALCONER:
11 Q: In being bypassed, the very danger
12 the author refers to of a perception of political
13 interference has happened?
14 **A: Yes.**

Evidence of T. O'Grady, August 25, 2005, p.100 l.2-p.101, l.14

82. Commissioner Boniface had no hesitation in condemning the dining room meeting as inappropriate. She, like Commissioner O'Grady, testified that the meeting effectively breached the proper chain of command through which politicians and police may communicate. She acknowledged the unique nature of the meeting, and its tendency to create a perception of political interference with police.

13 Q: All right. Now I now want to take

14 you to some of the evidence that the Commissioner has
15 heard. There was a dining room meeting convened by who;
16 remains one of the mysteries I expect the Commissioner
17 will be asked to solve.

18 But having said that there was a dining
19 room meeting on September 6th, 1995 in which the Premier
20 attended, Deb Hutton attended, his advisor, the Attorney
21 General attended, the Solicitor General attended, the
22 Minister of Natural Resources attended; all of whom had
23 their deputies and/or other staff there. In addition,
24 Officers Fox as a liaison officer and the person
25 assisting him, Patrick, were in attendance.

1 That meeting discussed directly the
2 Ipperwash operation, issues around an injunction and what
3 the views of the Premier were at the time about the
4 occupation, all right? That is not contested.

5 COMMISSIONER SIDNEY LINDEN: If it were,
6 somebody would be on their feet.

7 MR. JULIAN FALCONER: That's right.

8

9 CONTINUED BY MR. JULIAN FALCONER:

10 Q: All right. All of that happened and
11 I'm telling you the evidence that the Commissioner has
12 heard.

13 Now, we have heard from Deputy Solicitor
14 General at the time Todres, that she didn't invite Fox
15 and Patrick there, all right?

16 She says that she didn't have anything to
17 do with them being there, right? Nevertheless they're
18 there.

19 We've -- I read to you a passage and you
20 can take my word for it or somebody would be on their
21 feet, I've read to you a passage where Commissioner
22 O'Grady didn't know about the meeting at the time and
23 views himself as having been bypassed in the chain, all
24 right?

25 **A: Yes.**

1 Q: Now, I'm bringing all of this to your
2 attention to ask you a simple question. Would you agree
3 with me that you would be very concerned if during your
4 tenure as Commissioner such a meeting took place without
5 your knowledge?

6 **A: Yes.**

7 Q: All right. And would you agree with
8 me the reason you would be very concerned is the very
9 dangers of perceptions of political interference that are
10 referred to by Former Commissioner O'Grady?

11 **A: Yes.**

12 Q: And would you agree with me that in
13 addition to the dangers of perceptions of political
14 interference, given the seconded police officers in the
15 room, there's actual dangers of real -- I'm not saying it
16 happened, but there are dangers of actual political
17 interference; would you agree?

18 **A: I -- I think it's perceptions of, I**
19 **agree with you.**

20 Q: But -- and - and I understand how you

21 stop the perceptions because that's -- I understand that.
 22 But I'm now moving to something else I want to ask you
 23 about, which is you also agree though that while I'm not
 24 saying -- I'm not asking you to comment on whether it
 25 happened but one of the things that could happen in such
 1 a meeting is there could be actual political
 2 interference; that is someone could actually give a
 3 direction that a police officer actually followed.
 4 Isn't that fair?
 5 **A: If they actually took it some --**
 6 Q: Yes, that's right?
 7 **A: Yes.**
 8 Q: And that's a danger?
 9 **A: Yes.**
 10 Q: So the danger is not just a
 11 perception the danger is of actual political
 12 interference, in fact, correct? That's a danger?
 13 **A: Yes.**

* * * *

23 CONTINUED BY MR. JULIAN FALCONER:

24 Q: All right. Other than the dining
 25 room meeting which I take it you will have heard about
 1 since then?
 2 **A: Yes.**
 3 Q: Right. Other than that one (1)
 4 incidence have you ever heard of such a meeting during
 5 your tenure as a senior management police officer taking
 6 place to the ignorance of a police commissioner?
 7 **A: No.**

Evidence of G. Boniface, June 15, 2006, p.199, l.13-p.202, l.13; p.204, l.23-p.205, l.7

What transpired at the meeting

83. The meeting participants provided widely divergent and inconsistent accounts of what transpired at the dining room meeting before this Inquiry. For many witnesses, the absence of contemporaneous notes, frail memory, and the passage of time sharply limits the reliability of their evidence. For others, cross-examination exposed significant issues with respect to credibility. ALST's position with respect to the testimony of these

witnesses is evident from the approach taken in cross-examination, and need not be repeated here.

84. What stands apart as the most reliable account of what transpired at the dining room meeting is Ron Fox's electronically recorded discussion with John Carson and Chris Coles on September 6, 1995. These submissions will not attempt to summarize this evidence in detail, given its central role at this Inquiry; the evidence essentially speaks for itself. ALST submits that the nature of this evidence, and the circumstances surrounding its creation, contain powerful indicia of reliability:

- It represents the only detailed contemporaneous account of the dining room meeting, having been recorded, probably within one hour of the events that it describes.
- Ron Fox, while conceding that some of his language was inappropriate, adopted the account of the actual events as reflected in the recording. His evidence was vigorously challenged on cross-examination, but remained consistent and unshaken.
- Ron Fox has been described as professional, reliable, and not prone to exaggeration by every witness who had any significant degree of professional contact with him. No witness was critical of his professionalism or reputation for integrity.

Evidence of T. O'Grady, August 18, 2005, p.237, 1.14-p.238, 1.8

Evidence of E. Todres, November 29, 2005, p.294, 1.3-p.294, 1.7

Evidence of C. Coles, August 16, 2005, p.74, 1.15-25

- Commissioner Boniface testified in glowing terms concerning Inspector Fox's competence and professionalism, by virtue of having worked with him for at least fourteen years:

10 Q: I'm going to still talk to you about
 11 Mr. Fox but I'm going to skip over the questions about
 12 the transcripts.
 13 A: Okay.
 14 Q: First of all, do you personally know
 15 Ron Fox?
 16 A: I do.
 17 Q: All right. And how long have you
 18 known Ron Fox for?
 19 A: I would say fifteen (15) years --
 20 fourteen (14) years.
 21 Q: All right. And so you're -- and I --
 22 and his involvement in aboriginal policing issues would
 23 have been concurrent, to some extent, with your
 24 involvement in those issues; is that fair?
 25 A: Yes.
 1 Q: All right. And you would have known
 2 him through that manner or mechanism?
 3 A: Yes. Yeah, that's when I first met
 4 him.
 5 Q: All right. And in terms of him as a
 6 police officer, your experience with Superintendent Fox;
 7 positive, negative, can you comment on that?
 8 A: Very positive.
 9 Q: All right. A responsible individual?
 10 A: Yes.
 11 Q: Did you find that he was a man taken
 12 to flights of fancy or outrages or temper outbursts?
 13 A: No.

Evidence of G. Boniface, June 15, 2006, p.151, 1.10-p.152, 1.13

- The recollections of many of the "neutral" participants at the dining room meeting were frail such that they cannot contradict or challenge Fox's account in any meaningful way. Many witnesses, while not recalling or adopting Fox's account,

were simply not in a position to challenge his evidence based on their limited recollection.

- The gist of Fox’s description of the Premier’s criticism of the OPP’s conduct was adopted by several witnesses, including (most significantly) Mr. Harris himself. David Moran testified that “the substance of the Premier’s comments were that he was disappointed that the OPP had allowed the situation to get this far”. As submitted above, Charles Harnick recalls similar expressions of disappointment regarding the conduct of the OPP. Larry Taman recalls the Premier indicating that “he would have thought that the police would have the Aboriginals citizens out of the Park by this time”. Chris Hodgson recalls Mr. Harris referring to matters coming out in an Inquiry one day if there were mistakes made.

Evidence of D. Moran, November 1, 2005, p.27, 1.23-25

Evidence of C. Harnick, November 28, 2005, p.13, 1.5-19; p.77, 1.16-p.78, 1.24

Evidence of L. Taman, November 14, 2005, p.113, 1.2-5

Evidence of C. Hodgson, January 16, 2006, p.77, 1.12-25

85. Mr. Harris himself adopted much of the essence, though not the unflattering characterizations, contained in Mr. Fox’s description of the events. He agreed that Mr. Fox likely provided an update concerning events on the ground at Ipperwash, including some information concerning automatic and semi-automatic gunfire and the distinction between the two. While denying that he was aware that Fox was introduced, or known to him, as a police officer, Mr. Harris agreed that the meeting was provided a briefing on matters from the OPP’s perspective. He could not dispute that he may have stated that the OPP would have to account for their actions in allowing the Park to be occupied. He

admitted that he likely posed questions concerning the OPP's conduct up to that point, and whether they had taken the appropriate steps to prevent the occupation. He admitted that he may have expressed frustration that it would have been easier to prevent the occupation than to remove the occupiers after the fact.

Evidence of M. Harris, February 15, 2006, p.19-39

86. Mr. Harris also admitted that he viewed the occupation as illegal, and "not an issue of native rights". He also conceded that he felt that the government should act decisively, and that "we should be moving quickly to end the occupation..."

Evidence of M. Harris, February 15, 2006, p.41, l.3-p.44. l.11

"I want the Fucking Indians Out of the Park"

87. Charles Harnick testified as follows concerning Mr. Harris' remarks at the commencement of the dining room meeting:

18 Q: I wonder how -- if you could just go
19 ahead and tell us about that. Tell us what you remember
20 about the -- the dining room meeting.
21 A: Okay. I remember leaving the Cabinet
22 Room and as always there were a number of people milling
23 about, and I -- I walked over towards the -- the dining
24 room. I may have stopped to talk to people.
25 When I got to the dining room, the --
1 there were people there in their places around the table.
2 And as I walked into the dining room, the Premier in a
3 loud voice said, I want the fucking Indians out of the
4 Park.
5 And I was, at that point I think just
6 taking my seat. I didn't hear who had spoken previously
7 to -- to evoke that comment. But then there was a
8 complete silence in the room.
9 And after that, the Premier broke the
10 silence in a very calm voice, indicating that once the
11 occupiers were able to get into the Park, he didn't
12 believe that there was any way that they could be removed

13 from the Park.
14 And, you know, his -- his demeanor
15 changed. He became quiet.

Evidence of C. Harnick, November 28, 2005, p.9, l.18-p.10, l.15

88. Harris while denying that he uttered the expletive alleged by Mr. Harnick, admitted to expressing the sentiment that he wanted the occupiers removed from the Park as soon as possible and in a firm fashion. He agreed that the meeting was characterized by a sense of urgency about dealing with the issue as promptly as possible.

Evidence of M. Harris, February 15, 2006, p.38, l.2-p.39, l.13

89. ALST submits that Mr. Harris made the statement as reported by Mr. Harnick. The tone is consistent with the approach of his government to Aboriginals issues generally, and to the Ipperwash occupation in particular. The profane language is consistent with at least one other very public incident involving the former Premier. Most importantly, there is absolutely no evidence or suggestion that Mr. Harnick has any reason to testify untruthfully about Mr. Harris' words. In fact, given his prior false statements in the house, continuing regard and affection for Mr. Harris, and the denials by other witnesses at the Inquiry, Mr. Harnick would have had every reason to deny that the statement was made. Furthermore, the reliability of his recall was never seriously challenged through cross-examination. Mr. Harnick testified vividly, and with detail, concerning the utterance, and to his reaction to at the time. Given the strikingly inappropriate nature of the statement, there is every reason to believe that Mr. Harnick would remember it in the fashion that he described.

90. Having made this submission, ALST submits that whether the word “fucking” was used in relation to “Indians” is not as significant as the essence of what Mr. Harris admits to expressing at the meeting. In effect, Mr. Harris admits to being critical of the OPP during the course of an ongoing operation, in the presence of two OPP officers who were in communication with incident command. He advocated for the prompt removal of the occupiers from the Park (as distinct from an expedited injunction application in court), encroaching on matters that would necessarily implicate the tactics and timing of policing operations.

91. Leaving aside this thoroughly inappropriate encroachment on police operational matters, Harris’ personal intervention in the dining room, and the approach of his government in general, represented flawed public policy as it pertained to Aboriginals occupations and protests. Everything our society knew then and have learned since about dealing with such situations is that the cautious, go-slow approach espoused by OPP management and the civil service was the best way to avoid violence. Throughout their management of the occupation, and in their interactions with the civil service and the police, the political side of government consistently placed “messaging” and short-term political advantage above a concern for human life. Dudley George’s death is the direct result of this flawed and fundamentally immoral approach to Aboriginals issues.

V. THE DELIBERATE MISLEADING OF THE LEGISLATURE AND THE PEOPLE OF ONTARIO ABOUT THE DINING ROOM MEETING

THE ATTORNEY GENERAL'S DELIBERATE DECEPTIONS

92. Charles Harnick frankly admitted before this Inquiry that he did not answer truthfully in response to direct questions in the Legislature concerning allegations that the Premier had uttered the phrase "Get the [blank] Indians out of the Park":

22 Would you agree with me, Mr. Harnick, that
 23 no matter what explanation you may have today for this
 24 that you were asked front and center in a series of
 25 appearances in the House, in public, as to whether the
 1 remark, "Get the 'blank' Indians out of the Park" was
 2 made by politicians or Cabinet members in discussions
 3 about Ipperwash leading up to the shooting of Dudley
 4 George?

5 **A: Yes.**

6 Q: And it's fair to say that in essence
 7 you chose not to disclose at that time what you've
 8 disclosed to the Commissioner yesterday?

9 **A: That's so.**

10 Q: And would you agree with me that when
 11 you answered Mr. Scullion, when he asked you the question
 12 -- when you answered Mr. Scullion and said you had not
 13 been asked and that's why you did not raise it, what you
 14 left out at that time is the fact that you had been
 15 asked. And you had been asked repeatedly, perhaps five
 16 (5) different days in the House in 1996, true?

17 **A: Well, I -- I had not read these or
 18 seen these until this morning and -- and it is true and -
 19 - and certainly I approached this on the basis that we
 20 were in a political forum.**

21 **And certainly I told you how difficult
 22 this has been for me and I came here very specifically
 23 and under oath and when asked the specific question in
 24 that circumstance I've given you the answer that I've
 25 given you.**

Evidence of C. Harnick, November 29, 2005, p.28, l.22-p.29, l.25
 Exhibit P-973

93. Mr. Harnick admitted that the obligation to tell the truth in the Legislature was a very serious one. He testified that he breached his duty to tell the truth out of a sense of

loyalty and friendship with Mr. Harris. In providing untruthful answers to opposition question on five separate days in the Legislature, Mr. Harnick became part of a larger scheme of deception, designed to conceal Mr. Harris' misconduct at the dining room meeting.

1 Q: You'd agree with me that the failure
2 to disclose in 1996 on those five (5) or six (6) days in
3 Legislature was not about not being asked, it was about
4 loyalty and friendship to Premier Mike Harris?

5 **A: I -- I think there was loyalty and --**
6 **and friendship and there were political issues and this**
7 **is a politically-charged atmosphere, very different than**
8 **the atmosphere of a Commission or a Court process.**

9 Q: But you understood, as Attorney
10 General at the time, that there was a very serious
11 obligation when speaking in the House, to tell the truth?

12 **A: Yes.**

13 Q: And so the decision not to make the
14 disclosure that you made at that time, repeatedly, was at
15 least significantly in part due to the loyalty and
16 friendship you held for Mike Harris?

17 **A: I would think that's fair.**

18 Q: And you'd agree with me that --

19 **A: And -- and for the fact that you do**
20 **pay -- play a political role in a government.**

21 Q: And you'd agree with me that that
22 same loyalty and friendship is what caused you the agony
23 you described yesterday?

24 **A: Yes.**

Evidence of C. Harnick, November 29, 2005, p.30, l.1-24

PREMIER HARRIS' DELIBERATE DECEPTIONS

22 Q: No. And that, sir, is why I'm cross-
 23 examining you on that analogy, sir, with respect. Now,
 24 I'm going to suggest to you that you and Deb Hutton, sir,
 25 were never shocked by Ron Fox's status as a police

1 officer on the morning of May 29th, 1996. That's my
 2 suggestion to you, sir.

3 A: I'm sorry, I'm -- am I supposed to
 4 respond? You're saying --

5 Q: Yes.

6 A: -- I lied? I didn't lie, it's the
 7 truth.

8 Q: I am saying you lied, sir.

9 A: Well, I hear you saying that, but you
 10 saying it doesn't make it so.

11 Q: And I'm going to suggest to you that
 12 by telling this Commissioner that you wereshocked the
 13 morning of May 29th, 1996, that you forgot about the
 14 dining room meeting in the afternoon of May 29th, 1996,
 15 you've in fact shown one (1) of two (2) things.

16 Either you have an extraordinarily poor
 17 memory or that you concealed the dining room meeting
 18 meaningfully and intentionally.

19 What do you say to that, sir?

20 A: I think you're wrong, sir.

Evidence of M. Harris, February 20, 2006 at p. 288 l. 23 – p. 289 l. 20

OVERVIEW

94. ALST respectfully submits that former Premier Michael Harris (“Mr. Harris”) purposefully concealed the convening of the dining room meeting from members of the House. ALST further submits that there has been no evidence presented at the Inquiry that provides any adequate explanation for Mr. Harris’ continual concealment of the meeting for nearly five years, until December 20, 2000.

95. At the dining room meeting the government, Mr. Harris and Ms Hutton, made the “final call” to proceed with an *ex parte injunction*. This decision, however, standing on its own is quite innocuous. In fact, Mr. Harris’ evidence was that there was nothing significant that occurred in the dining room meeting:

11 But I would suggest to you that there's an
 12 implication today of a great deal of emphasis on the
 13 dining room meeting and I didn't, at the time, have any -
 14 - attach any significance to this meeting, nor do I
 15 obviously attach the same significance others do, to what
 16 they think occurred at this meeting.

Evidence of M. Harris, February 20, 2006 at p.165 l.11 - 16

96. If nothing of significance occurred at the dining room meeting then why conceal the existence of the meeting for five years? If Mr. Harris did not direct the OPP at the dining room meeting then why conceal the existence of the meeting for five years? If Mr. Harris did not directly say at the meeting “get the fucking Indians out of the park” then why conceal the existence of the meeting for five years ?

97. ALST respectfully submits that Mr. Harris intentionally hid the existence of the dining room meeting because he knew that he had made inappropriate remarks at the meeting in the presence of at least one OPP officer. He knew that his words had the effect, unintended or not, of directing the OPP and he knew that convening the meeting itself was inappropriate.

HARRIS TO BE CANDID IN HOUSE

98. Under cross-examination, Mr. Harris testified that he attempted, against his lawyers’ wishes, to answer all questions asked of him in the House as candidly as

possible. Mr. Harris was of the opinion that being as candid as possible was the only way to ensure that there was no further misconception with respect to his government's interference with the operations of the OPP. By his own admission, this effort to be candid in answering questions dated back to when Mr. Harris first had to answer questions in the House in 1996.

Evidence of M. Harris, February 20, 2006 at p.35 l.20 - p.37 l.25

HARRIS AVOIDS REVEALING THE EXISTENCE OF THE DINING ROOM MEETING

a) The First and Second Opportunity to Disclose the Dining Room Meeting

99. On May 29, 1996, the Toronto Star published an article that detailed Superintendent Fox's involvement in the September 5, 1995 IMC meeting. Mr. Harris testified that when he and Ms. Hutton reviewed the article they were both shocked and surprised to learn that Superintendent Fox was an OPP officer. Under cross-examination, Mr. Harris admitted that he was shocked that Superintendent Fox was present at both the September 5 IMC and dining room meeting.

*Evidence of M. Harris, February 20, 2006 at p.76 and 150
Exhibit P-1081, Toronto Star article "Secret Talks Held on Ipperwash", May 29/96*

100. During question period on May 29, 1996, Mr. Harris was asked a series of questions with respect to Superintendent Fox's involvement in the September 5 IMC meeting. At the time of question period, Mr. Harris knew that Superintendent Fox was present at both the IMC and dining room meeting.

Evidence of M. Harris, February 20, 2006 at p.99 l. 21- l. 25

101. In response to several questions about the September 5 IMC meeting, Mr. Harris detailed the participants of the meeting and described Superintendent Fox as an OPP liaison officer who was assigned to the IMC:

Invited from the OPP was the liaison officer who was assigned to that committee, in these circumstances.

*Evidence of M. Harris, February 20, 2006 at p.88 l. 12- l. 14
Exhibit P-973, Hansard debates – excerpts, Sep/95 - Dec/96, Tab 3*

102. In response to a question from the member of Scarborough/Agincourt, Mr. Harris explained that his government did not know of the OPP build-up and that any briefing he received would have been with respect to that meeting.

Q: “MR. HARRIS: Let me say a few things. It’s easy for you stand in your place and make silly allegations, impute motives; things that are absolutely untrue. We knew nothing of any OPP build-up. It was not our business. It is the business of the OPP to deal with it. Any briefing that I got would have been in there.”

*Evidence of M. Harris, February 20, 2006 at p.104 l. 4- l. 12
Exhibit P-973, Hansard debates – excerpts, Sep/95 - Dec/96, Tab 3*

103. During cross-examination, Mr. Harris admitted that the questions being asked of him and his responses related to the September 5 IMC meeting.

Evidence of M. Harris, February 20, 2006 at p.103 l. 1- p. 105 l. 25

104. Mr. Harris’ response to the member of Scarborough/Agincourt was untrue. ALST respectfully submits that Mr. Harris’ answer to the above noted question was the first time he concealed the dining room meeting from members of the House of Commons (“House”).

105. In cross-examination, Mr. Harris admitted that he was briefed, by Superintendent Fox, in the dining room about the situation on the ground from the OPP perspective. In answering the above noted question, Mr. Harris did not inform the House of the briefing he received at the dining room meeting about the situation on the ground. Mr. Harris passed on his first opportunity to reveal the existence of the dining room meeting.

Evidence of M. Harris, February 15, 2006 at p.21 l. 19 – p. 22 l.1
Evidence of M. Harris, February 20, 2006 at p.112 l. 2- p. 113 l. 6
Exhibit P-973, Hansard debates – excerpts, Sep/95 - Dec/96, Tab 3

106. The member of Scarborough/Agincourt continued to ask Mr. Harris about his involvement in directing the OPP during the occupation of the former Ipperwash Provincial Park. The member directly asked Mr. Harris whether he was involved in any informal meetings where any informal opinions or directions were expressed about how to handle the occupation. Mr. Harris responded rather glibly stating that he did not know what an informal meeting was:

3 The information in the press this
 4 morning indicates that the
 5 Parliamentary Assistant to the Native
 6 Affairs Minister was present at the
 7 meeting which is quite unusual.
 8 Your press secretary is quoted as
 9 saying [quote] "The Premier was never
 10 directly involved in formal meetings on
 11 Ipperwash' [Close quotes].
 12 There have been all sorts of rumours
 13 about statements made regarding getting
 14 the [blank] Indians out of the Park.
 15 Why will you not clarify your role in
 16 this affair and clear the air. Were
 17 you involved in any informal meetings
 18 where any informal opinions or
 19 directions were expressed about how
 20 this matter might be dealt with in
 21 order to ensure that the Ipperwash
 22 Provincial Park occupation did not
 23 continue?"
 24 Your answer, sir. Could you read out your
 answer you gave?

25

A: Sure.

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1 "Was I involved in informal meetings?
 2 I don't know what an informal meeting
 3 is. When I go to bed at night, is that
 4 an informal meeting?
 5 When I sit and talk with people, is
 6 this an informal meeting? I clearly
 7 understand the role of the separation
 8 between politicians and the police and
 9 at no time did I give direction to
 10 staff to give direction or did any of
 11 my staff give direction to the best of
 12 my knowledge to any member of the
 13 police, the OPP at any level of any
 14 category as to how they should carry
 15 out their jobs.
 16 It's not our role and I can assure you
 17 it did not take place

Evidence of M. Harris, February 20, 2006 at p.143 l. 2- p. 144 l. 17

Exhibit P-973, Hansard debates – excerpts, Sep/95 - Dec/96, Tab 3

107. The above noted response was the second opportunity Mr. Harris had to reveal the existence of the dining room meeting. Again, Mr. Harris concealed the existence of the meeting from members of the House. In cross-examination, Mr. Harris testified that he answered the member's question by focusing on what he believed to be the "gist" of the question – did the government give a direction to the OPP? This answer, however, does not stand up to scrutiny.

Evidence of M. Harris, February 20, 2006 at p.147 l. 2 – 1.5

108. If Mr. Harris was only responding to whether the OPP was directed by the government then there would have been no reason to engage in the glib response of "what is an informal meeting?". Superintendent Fox's attendance at the dining room meeting was clearly on Mr. Harris' mind the afternoon of May 29th, 1996. The government's collective shock related to his attendance at the dining room meeting.

Despite having this meeting on his mind, Mr. Harris did not reveal the existence of the meeting to the House.

109. ALST respectfully submits that the only reason to hide the existence of the informal dining room meeting is to ensure that the House and the public do not find out that Mr. Harris directed the OPP officers at the meeting to, “get the fucking Indians out of the park”. If nothing inappropriate occurred at the dining room meeting, then there would be absolutely no reason to hide the existence of the meeting. To the contrary, revealing the existence of the dining room meeting would have allowed Mr. Harris to clear up any misconception about the government’s involvement in the OPP’s response to the park occupation – the very reason Mr. Harris stated that he would be very candid when answering questions in the House.

b) The Third Opportunity to Disclose the Dining Room Meeting

110. Further evidence of Mr. Harris’ concealing of the dining room meeting can be found in his answers in the House on November 6, 1996. In answering more questions from the member of Scarborough/Agincourt, Mr. Harris stated that he had given all the relevant information that he was aware of:

Q: And on November 6th, 1996, is the
 2 passage that I read to you before but now we give it
 3 context. And it's on the second page of the Hansard.
 4 Mr. Phillips is speaking. It starts with:
 5 "We're at the heart of the matter."
 6 And if you flip to the previous page
 7 you'll actually see Mr. Phillips as being quoted?
 8 **A: On the first page I see Mr. Phillips.**
 9 Q: Yeah at the bottom --
 10 **A: The bottom.**
 11 Q: -- and then --
 12 **A: "Premier, in both cases...?"**
 13 Q: That's right.

14 **A: Okay.**
 15 Q: So if you go to the top --
 16 **A: Hmm hmm.**
 17 Q: -- and for my -- for the purposes of
 18 my question --
 19 **A: Right.**
 20 Q: Quote:
 21 "We're at the heart of the matter. For
 22 some reason this incident was handled
 23 very differently from other incidents
 24 with our Native community."
 25 This is November 6th, 1996, second page.

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1 "This incident happened two (2) months
 2 after you became Premier. The question
 3 is right at the heart for you. What
 4 role did you play in it? Why did you
 5 and your government decide to handle
 6 this differently? Did you tell the
 7 police to get tough? Did you instruct
 8 the police to handle it differently?
 9 The reason I'm posing this is what we
 10 have now asked you several questions on
 11 this matter and frankly I would use
 12 stronger language. Your answers have
 13 not been straightforward. Will you now
 14 agree to establish an independent
 15 public inquiry?
 16 And you answer:
 17 "Let me say in response to the Member's
 18 questions that I have given all of the
 19 information that I have been aware of
 20 every day at every instance and
 21 continue to do so going back to the
 22 events over a year ago."

Evidence of M. Harris, February 20, 2006 at p.172 l. 21 – p.173 l. 22

Exhibit P-973, Hansard debates – excerpts, Sep/95 - Dec/96, Tab 18

111. The crux of the allegations against Mr. Harris focused on his personal involvement with and his direction of the OPP. At latest, on May 29, 1996, Mr. Harris knew that an OPP officer had been in attendance at the dining room meeting and that this would have been his only interaction with an OPP officer (in relation to the park occupation) prior to Dudley George's death. As such, the dining room meeting went to

the heart of the allegations against Mr. Harris, yet he never, despite his assurance to the House, disclosed all the information he had with respect to these allegations. Again, Mr. Harris' only explanation for not disclosing the dining room meeting was that he was answering the "gist" of the question:

2 Q: -- is that between May 29th, 1996 and
3 now November 6th, 1996, six (6) months has gone by and
4 even though you did know who Ron Fox was --
5 A: **Yes.**
6 Q: -- and even though you had directed
7 your mind to the dining room meeting --
8 A: **Yes.**
9 Q: -- you never disclosed its existence,
10 correct?
11 A: **No, I didn't disclose the existence**
12 **of any meetings, nor was that the question. You've got**
13 **the gist of the questions and I responded to the**
14 **question.**

Evidence of M. Harris, February 20, 2006 at p.182 l.2 - l.14

112. ALST respectfully submits that in the absence of an adequate explanation for concealing the existence of the dining room meeting, it is a reasonable inference that Mr. Harris knew that the meeting itself and the discussions that took place in the meeting were inappropriate.

113. On November 6, 1996, Mr. Harris was given his third opportunity to disclose the existence of the dining room meeting. As with the other two opportunities, Mr. Harris continued to conceal the meeting's existence.

c) The Fourth Opportunity to Disclose the Dining Room Meeting

114. The fourth opportunity for Mr. Harris to disclose the dining room meeting is found in his answer to questions on August 26, 1997. When asked about Cabinet's

involvement in the decision to bring an injunction, Mr. Harris explained that Cabinet accepted the recommendation to bring an injunction on September 6, 1995:

2 "The recollection of Ms. Hutton is that
3 she had relayed information to me by
4 phone and I think everything else is a
5 matter of public record. Any results
6 from any of the meetings that took
7 place were in Cabinet on Wednesday,
8 where, as you know, the Attorney
9 General suggested and Cabinet accepted
10 the advice and the recommendation that
11 we seek an injunction."

Evidence of M. Harris, February 20, 2006 at p.243 1.2 - 1.11

115. There is no question that Cabinet did not accept the injunction recommendation on September 6, 1995. In cross-examination, Mr. Harris admitted that this was an "unintentional error" and that the decision was ratified by Cabinet at a separate meeting. The most telling point with respect to this "unintentional error" is that Mr. Harris, unlike previous instances, did not attempt to correct the error he made in the House. It is respectfully submitted that he did not correct this "unintentional error" because in order to do so he would have been forced to reveal the existence of the dining room meeting.

Evidence of M. Harris, February 20, 2006 at p.252 1.2 - 1.23

Evidence of M. Harris, February 20, 2006 at p.252 1.2 - 1.23

116. On two occasions, Mr. Harris passes on opportunities to explain that the "final call" on the *ex parte* injunction occurred in the dining room meeting. On December 20, 2000, Mr. Harris comments that the OPP requested an injunction and the government responded to their request and sought an *ex parte* injunction. It is respectfully submitted that on December 20, 2000, Mr. Harris could have corrected the record and informed the house that the "final call" to seek an injunction was not made by Cabinet, but was a decision made at the dining room meeting.

117. Again, on June 26, 2001, Mr. Harris passes on an opportunity to correct the record. On June 26, 2001 Mr. Harris defers a question from Mr. Hampton dealing with a note from the September 6 IMC meeting to the Attorney General, David Young. Mr. Young, in responding to the question notes that the document referred to by Mr. Hampton indicated that the government applied for an injunction. Yet again the decision to seek an injunction is referred to in the House and Mr. Harris passes on the opportunity to correct the record and inform the House that the “final call” to seek the *ex parte* injunction was made during the dining room meeting.

MR. HARRIS RECASTS SUPERINTENDENT FOX AND MR. PATRICK

118. Mr. Harris’ knowledge that the attendance of OPP officers at the dining room meeting was inappropriate can be inferred from his recasting of the roles Superintendent Fox and Mr. Patrick played at the dining room meeting. On May 29, 1996, he described Superintendent Fox as the OPP liaison officer; however, in his cross examination, Mr. Harris stated that Superintendent Fox was not part of the OPP at the time of the dining room meeting, but that he was seconded to the Ministry of the Solicitor General. Clearly attempting to downplay Superintendent Fox’s involvement and the significance of his attendance at the dining room meeting.

Evidence of M. Harris, February 20, 2006 at p.175 1.3 - 1.10

Evidence of M. Harris, February 20, 2006 at p.230 1.4 - 1.9

119. Furthermore, once the dining room meeting was made public, Mr. Harris stated in the House that he was not aware that Mr. Patrick was at the dining room meeting and that

he was not there in a police capacity, did not identify himself as a police officer, and took no action as a police officer. As with Superintendent Fox, Mr. Harris' recasting of Mr. Patrick's role is an attempt to downplay the significance of this attendance at the dining room meeting.

Evidence of M. Harris, February 20, 2006 at p.282 1.1 - 1.10

HARRIS WAS NOT SHOCKED

120. ALST respectfully submits that Mr. Harris and Ms. Hutton were not shocked by the revelation that Superintendent Fox was in attendance at the IMC and dining room meeting. Rather, it was at this time that the government, Mr. Harris and Ms. Hutton, took steps to actively hide the existence of the dining room meeting. If Mr. Harris was genuinely shocked by the knowledge of Superintendent Fox's position and attendance then why would he hide the existence of the dining room meeting from the House and the public? During Mr. Harris' cross-examination he was unable to reconcile his attempts to hide the dining room meeting and his apparent "shock" over the revelation that Superintendent Fox was an OPP officer.

121. ALST respectfully submits that several inferences can be drawn from Mr. Harris' four attempts at hiding the existence of the dining room meeting:

- i) Mr. Harris knew that Superintendent Fox was an OPP officer;
- ii) Mr. Harris made the comment, "get the fucking Indians out of the park"; and
- iii) Mr. Harris knew that his comments and attitude at the meeting would have the effect of directing the OPP in their response to the Aboriginal occupiers.

VI. CONDUCT OF THE O.P.P. IN THE AFTERMATH OF THE SEPTEMBER 4, 1995 OCCUPATION OF IPPERWASH PROVINCIAL PARK

A. LOSING THE PARK – the “Chief is probably going to ask” (Parkin) – “Their day will fucking come” (Korosec)

122. ALST respectfully submits that the reason Inspectors Carson, Linton, acting Staff Sergeant Wright and Sergeant Korosec wanted to “take back the park” was because they were embarrassed that they were not able to keep containment of the park on September 4, 1995. As early as September 5, 1995, Inspector Carson was told by Superintendent Parkin that he was disappointed that the OPP could not maintain containment of the park:

24 Q: Yeah. Now, one (1) of the other
25 things that you found -- and I'm going to use the word,

1 'unfortunate,' I'm going to suggest to you unfortunate,
2 you found at the time -- when you were talking to John
3 Carson you found that it was unfortunate that the OPP
4 couldn't maintain the Park, correct?

5 A: Correct.

6 Q: That was your view?

7 A: Correct.

8 Q: And you had no choice but to be
9 honest with your subordinate and let him know that,
10 correct?

11 A: I discussed it with him. I asked him
12 why we lost containment.

13 Q: And you were of the view that it was
14 unfortunate that you lost containment?

15 A: Yes, I was.

16 Q: And lost containment, for the rest of
17 the world who are listening to us or -- lost containment
18 means, basically, it was unfortunate that you lost
19 control of Ipperwash Provincial Park in the sense that
20 the occupiers were allowed to get in and establish a
21 position such that they controlled the area, correct?

22 A: Correct.

Evidence of A. Parkin, February 8, 2006, at p. 98 l. 24 – p. 99 l. 22

123. Furthermore, Superintendent Parkin let Inspector Carson know that this information, that the park had been lost, would have to be relayed to Chief Superintendent Coles and that the OPP would be subject to criticism for loosing the park:

9 Q: Fair enough. And so you say the
10 Chief is going to want to know and -- and Carson answers
11 you. And then you repeat -- and this is the passage that
12 I took you to already so I'll do it very quickly. At
13 page 42 then you repeat to him -- at page 42:
14 "Yeah, I'm just -- I guess it's
15 unfortunate we couldn't maintain the
16 Park."
17 Do you see that? Right?
18 **A: Yes, sir.**
19 Q: So remember we talked about your view
20 that it was unfortunate? You actually say to him it's
21 unfortunate, right?
22 **A: Yes.**
23 Q: Right. And then -- and then you go
24 into what they're going to say. You say halfway down the
25 page:

1 "PARKIN: They're going to say we got
2 caught by surprise, is that accurate?"
3 **A: Yes, sir.**
4 Q: He says:
5 "Well, not."
6 Then you go:
7 "They're going to say that we knew this
8 was going to happen."
9 Right? You're canvassing all the
10 different criticisms that are going to be levelled,
11 frankly, at Carson and at you, correct?
12 **A: No, sir.**
13 Q: Oh, all right.
14 "They're going to say we knew this was
15 going to happen," is not meant to address the issue of
16 criticism against the OPP?
17 **A: Yes, it would be criticism against**
18 **the OPP but I wasn't criticizing John Carson.**

Evidence of A. Parkin, February 8, 2006, at p. 114 l. 9 – p. 115 l. 18

124. The criticism of the OPP's failures to keep the park would have been exacerbated by the feelings of frustration at the perceived lack of policing that was shared by the members of the local community and local MPP Marcel Beaubien:

16 Q: All right. I'm also going to suggest
17 to you that the meeting of August 11th, 1995 with Marcel
18 Beaubien, one of the things -- and this is, we're now a
19 month earlier, all right? And I'm not -- we don't need
20 paper for this.

21 A month earlier there was a meeting in
22 which basically Beaubien passes on the -- a sense of
23 personal frustration, right, yes?

24 A: Yes, sir.

25 Q: He passes on a sense, also, of

1 frustration on behalf of his constituency, right?

2 A: Yes, sir.

3 Q: You got the sense of both things,
4 right?

5 A: Yes, sir.

6 Q: This wasn't the man simply neutrally
7 showing up in a robotic way, saying there's some
8 constituents that contacted me.

9 He was personally frustrated with the
10 situation, correct?

11 A: Correct.

12 Q: All right. And I'm going to suggest
13 to you in mid-August 1995, at a meeting that John Carson
14 was at, it was made clear that the non-native community
15 in the area felt there was a lack of policing going on,
16 correct?

17 A: Correct.

18 Q: All right. And so, weeks later,
19 September 5th, 1995, one of the first things you say to
20 John Carson, I'm sorry, I misstated it, one of the things
21 you say to John Carson when you first talk is they're
22 going to say that we didn't police enough; isn't that
23 right?

24 A: Correct.

25 Q: Okay. So the theme -- the theme

1 that's attending the mindsets of those incident
2 commanders is an under-policing as alleged by the non-
3 native community; correct?

4 A: Possibly.

Evidence of A. Parkin, February 8, 2006, at p. 122 l. 16 – p. 124 l. 4

125. With the embarrassment of losing the park the senior command staff decided it necessary to retake the park and atone for their mistake. Such was the attitude of acting Staff Sergeant Mark Wright and Sergeant Korosec. Korosec revealed their desire to get back at the Aboriginal occupiers in a taped conversation he had with P.C. Wayde Jacklin:

SK: Okay. Well, did the guys go down there for something?

WJ: Well, yeah. There was some stuff they put, you know, on the road I guess. And there was a fire down there.

SK: Yeah.

WJ: So they went down to check it out and got pelted.

SK: Yeah. They were baited.

WJ: Yup.

SK: Well, live and learn, live and learn. This - their day will fucking come.

WJ: Yeah.

SK: I was talking to Mark Wright tonight.

WJ: Hm-mmm.

SK: We want to amass a fucking army.

WJ: Hm-mmm.

SK: A real fucking army and do this - do these fuckers big time. But I don't want to talk about it because I'll get all hyped up.

*Exhibit P-1154, Transcript of Korosec - Jacklin, Track 1, OPP logger tape # 2
Disc 1 of 3, Region 2, Mobile Command Unit, September 05, 1995. 23:32 hrs.
[emphasis added]*

B. THE PLAN TO TAKE BACK THE PARK – “we want a piece of paper” (Wright) – “amass a fuckin army” (Korosec)– “don’t you say we go get those fucking guys” (Wright) – “daylight’s a wasting” (Wright)

126. From the period of September 4, 1995, until the moments before the C.M.U. and T.R.U. team marched on the sandy parking lot, both Korosec and Wright made several comments that reflect their intention to take back the former Ipperwash Provincial Park. Their intention – to take back the park – is entirely incongruent with the stated goal of Project Maple: “To Contain and Negotiate a Peaceful Resolution”.

Exhibit P-424, Project Maple Notes, September 1995

127. From the onset of the occupation Wright wanted to take back the park from the Aboriginal occupiers. He did not view the OPP as a neutral party in the conflict; rather, he viewed the OPP as an agent for the Ministry of Natural Resources. As evidenced in his conversation with Ed Robertson, Wright saw the injunction as a piece of paper that would allow him to take back the park from the Aboriginal occupiers:

MW: [continues]...MNR - of **course we're acting on behalf of MNR. They're the landlords.** We tried to serve them with notice last night that they were trespassing pursuant to the Trespass to Property Act. They refused Notice but as far as we're concerned they've been notified.

ER: Is that the lease deal - the thing?

MW: No, no no! This is the Provincial Park owned and there's no - there's no...

ER: Its not like Serpent Mound?

MW: No! No, no. There's no doubt that we've had this researched, that Park belongs to -ahh - the Province of Ontario.

ER: Okay.

MW: Okay. Absolutely no doubt whatsoever about that. So ah - at eleven o'clock this morning, the MNR, and all their ministry levels are meeting and they're going to **go get us an injunction, 'cause that's what we want. We want a piece of paper...**

ER: Mmhmm.

MW: **...and our intention is to go back in and take that Park.** Now we just got Intelligence now. We had two Intelligence guys go into the Park, like I told you we're going to do, and they're cutting down trees and startin' to barricade the front of the Park and that's like fresh right off the wire. Nobody - we - John Carson, me and you know right now (laughs). 'Bout that. Better than...we haven't even got it out yet to anybody.

Exhibit P-1098, Transcript Of Mobile Command Unit Logger Tape #1 -Track 1, Disc 1 of 3; M. Wright and Inspector E. Robertson, 10:42 Hrs. Sept 05/95 [emphasis added]

128. Further evidence of Wright and Korosec's approach to taking back the park is found in Korosec's conversation with Wayde Jacklin:

SK: We want to amass a fucking army.

WJ: Hm-mmm.

SK: A real fucking army and do this - do these fuckers big time. But I don't want to talk about it because I'll get all hyped up.

Exhibit P-1154, Transcript of Korosec - Jacklin, Track 1, OPP logger tape # 2 Disc 1 of 3, Region 2, Mobile Command Unit, September 05, 1995. 23:32 hrs. [emphasis added]

129. Wright's more aggressive approach and desire to get back into the park was noted by other officers, including the head of the T.R.U. team, Kent Skinner:

KS: And we'll get him to pick them up too so before he goes back, make sure he gets in touch with me first. Uh, other than that, I think the automatic weapons fire changes things around here - probably.

KD: No doubt.

KS: Uh, there's other people here who are wanting to do things but I don't think that will happen.

KD: Uh, Mark Wright?

KS: That'd be one of them.

KD: How about Carson?

KS: He's a little more steady.

KD: Okay. Good. You talk to him or what?

KS: No. I haven't spoken to him much.

Exhibit P-1342, Transcript of Region 2, Kent Skinner & Cantel Paging Recording Sept 6/95, 07:16 hrs; Mobile Command Unit Logger Tape #2 Track 2 Disc 1 of 3

130. Further evidence of Wright's preference for a confrontation or a show of force against the Aboriginal occupiers is illustrated in his conversation with Inspector Carson:

WRIGHT: **And I got the whole day shift here with Canine.**

CARSON: Okay so what's Dale want to do then?

WRIGHT: **Oh fuck I don't know, waffle, we'll be here till fucking daylight figuring it out and daylight's a wasting.**

CARSON: Okay well you let me know if you want me to come back.

WRIGHT: Well don't you want to be briefed about the citizens?

CARSON: Well I do but ah...

WRIGHT: Let him run it.

CARSON: We got, to get, we got to get together and Talk about your meeting tomorrow morning.

WRIGHT: Yeah okay well where are you?

CARSON: Well I'm having dinner right now.

WRIGHT: Where at ah...

CARSON: I'm in town here.

WRIGHT: For at Forest

CARSON: Yeah at ah at a residence.

WRIGHT: Okay well...what if he asked me what did you say what do you want me to tell him?

CARSON: Well it's it's not my (I/A)

WRIGHT: **Don't you say we go get those fucking guys?**

CARSON: Well we got to deal with them we can't let them out in that area with that stuff.

WRIGHT: No.

CARSON: So if he wants I'll come back...but he's got to make that call for me to come back.

WRIGHT: Okay.

Exhibit 444B, Carson-Wright 20:05, tab 49, at pg. 309-312

131. In the above noted conversation, Wright openly questions Inspector Linton's "waffling" and inaction. In his examination in-chief, Wright's evidence was that the occupiers needed to be dealt with immediately and Inspector Linton was not acting with the same sense of immediacy. Wright was looking for Inspector Carson to take the action that he felt Inspector Linton would not take.

Evidence of M. Wright, February 23, 2006 at p.104 l.14 – p. 106 l.1

132. In addition to detailing the aggressive approach desired by Wright, the above noted conversation indicates that prior to 20:05, a mere 30-40 minutes after Inspector Carson's departure, Wright had kept the E.R.T. day shift without instructions from Inspectors Linton or Carson.

133. Finally, just a few hours before the C.M.U. marched toward the sandy parking lot area, Wright had a conversation with senior Crown Attorney, Tim McCabe, where it is clear that Wright anticipated sending the C.M.U. down to the sandy parking lot area and shunned the idea of any further notice or diplomacy:

MCCABE: Hello.

WRIGHT: Hello Tim.

MCCABE: Yes.

WRIGHT: Hi, it's ah Detective Mark WRIGHT.

MCCABE: Oh, thank you ah

WRIGHT: At ah the Land of Oz here.

MCCABE: (Chuckles) that's how it's starting to feel eh?

WRIGHT: Well it's really the shit's coming down right now.
 MCCABE: It is eh?
 WRIGHT: Yeah.
 MCCABE: what's what's going on there?
 WRIGHT: Well we got major trouble right now.
 MCCABE: Really?
 WRIGHT: Yeah.
 MCCABE: What's what's the problem?
 WRIGHT: **Well they're moving ah they're coming out for a fight down to the road so were taken all the marines down now.**

 MCCABE: Oh my goodness. Ah alright well as so ah that that doesn't affect our
 MCCABE: Okay and then the last thing when I was talking to Inspector ah LINTON.
 WRIGHT: CARSON?
 MCCABE: Ah well LINTON.
 WRIGHT: LINTON yeah.
 MCCABE: A little while ago CARSON ah isn't wasn't there but ah LINTON ah he agreed that if we were to fax our Notice of Motion ah you know I mentioned it was getting dark...
 WRIGHT: Hmm hmm.
 MCCABE: Ah you fellows may not want to...
 WRIGHT: **No no I know what he said no way not now.**
 MCCABE: Ah well...
 WRIGHT: **We're going to we're going to war now, we're not going to be send anybody.**
 MCCABE: okay well... alright well he at that time he said yes but I guess ah events overtook the ah...

Exhibit P-463, Pages 1-29, command post logger synopsis Sep. 6/95 and transcript.

134. The conversation between Wright and McCabe began at 20:25 and lasted approximately eighteen minutes. Under cross-examination, Wright admitted that marines, as referenced in the above noted conversation, meant the C.M.U. (*Evidence of M. Wright*, March 21, 2006, p. 220 l. 4 – 1.20). When Wright explains to McCabe that “they are taking all the marines now” he does so before the decision to deploy the C.M.U. was made (20:46) (*Evidence of M. Wright*, March 6, 2006, p. 182 l. 19 – 1.25) and at a time where Inspector Linton is still contemplating sending in the T.R.U. team to arrest the Aboriginal occupiers. In addition, Wright has the C.M.U. marching to “war” well before Inspector Carson arrives back at the command post (20:29) (*Exhibit P-426, Scribe notes (OPP) from Sep. 4/95 to Sep. 9/95 pages 1 to 58 (typed), at p .74*; and *Evidence of Inspector J. Carson*, May 19, 2005 at p.164 l.15 - 1.23).

135. It is also interesting to note that Wright, in the above noted conversation with McCabe, appears to be contradicting a decision made by Inspector Linton with respect to serving the occupiers with notice.

136. The significance of Wright and Korosec’s aggressive approach to the occupation, and their disregard for Inspector Linton’s command, is highly significant given the nature of their position within the Incident Command. Both individuals had the ability and the power to make critical decisions that could have and most certainly did affect the OPP’s response to the park occupation.

C. CARSON GOES TO DINNER – “*When the Dove’s Away, the Hawks will Play*” –
The Wright/Korosec Agenda

13 Q: Yeah. And as you were looking down
14 towards the end of your shift, to be honest, I haven't
15 seen in any of the anticipated evidence or your evidence,
16 any preparation on your part for major incidents that
17 evening; is that fair?

18 A: **That's very accurate.**

19 Q: Yeah. So you weren't anticipating,
20 as you were getting ready to leave, that there would be
21 anything substantial happening that night; is that fair?

22 A: **I was certainly hoping there would**
23 **not be.**

24 Q: Right. You were hoping and it was
25 also -- it appears your --

1 A: **We -- we --**

2 Q: -- expectation or assumption?

3 A: **I was -- I was optimistic, status quo**
4 **for the night and injunction application tomorrow morning**
5 **and -- and see what flows from that.**

6 Q: And when I review, for example, the
7 notes of the briefing session you held before you
8 departed that day, I believe there were some plans -- and
9 I'm just going from memory here, there was talk of
10 putting concrete blocks in the -- in the sandy parking
11 lot, that kind of thing; is that -- is that right, have I
12 got that right?

13 A: **That's fair, yes.**

14 Q: Yeah. Now that also was, it seemed
15 to me, not an urgent matter, it was just maintaining the
16 status quo?

17 A: **Correct.**

18 Q: Okay. And so you left work, the
19 shift, at about 7:00 or 7:30, not -- expecting to have a
20 little bit of restful sleep; right?

21 A: **Yes. I was expecting to leave and**
22 **then meet with Mark Wright, as I think I indicated at a**
23 **quarter to 9:00 that evening to discuss his appearance at**
24 **the hearing the next morning.**

Evidence of Inspector J. Carson, June 6, 2005 at p. 199 l.13 - p. 200 l.24

137 On the night of September 6, 1995, Inspector Carson left the command post at approximately 19:30. At the time of his departure he did not anticipate "anything substantial happening". To that end, Inspector Carson did not make any preparations for a major incident, nor did he give any command to prepare for a major incidence. After

his departure, however, acting Staff Sergeant Mark Wright (as he then was) (“Wright”) and Staff Sergeant Stan Korosec (“Korosec”) took the opportunity to mobilize a massive Crowd Management Unit (“C.M.U.”) without instructions from either Inspector Carson or Inspector Linton.

138. While Inspectors Carson and Linton discussed the efficacy of using the Tactical Rescue Unit (“T.R.U.”) as an arresting force, Wright and Korosec had already made the following orders without instructions from Inspectors Carson and Linton:

- (i) hold back the day shift Emergency Response Team (“E.R.T.”);
- (ii) mobilized E.R.T. teams in “hard tac”; and
- (iii) call in Wade Lacroix for the sole purpose of leading a C.M.U. march to the sandy parking lot.

139. In the context of both Wright’s and Korosec’s stated intentions, ALST respectfully submits that Wright and Korosec deliberately exaggerated minor incidents and intelligence with the hope of manufacturing the justification necessary to legitimize the decision to send the C.M.U. into the sandy parking lot. Not only did they manufacture the reasons for sending the C.M.U. but they also mobilized the C.M.U. team without the instruction of either Inspector Carson or Linton. Wright and Korosec viewed the incidents of September 6, 1995 as their opportunity to “take back the park”. When Inspector Carson arrived back at the Command Post the decision to deploy the C.M.U. had already been made. Only an extreme act on the part of Carson could have reversed Wright and Korosec’s plan.

D. WRIGHT AS SECOND IN COMMAND

140. The Wright/Korosec agenda was capable of implementation because of the extraordinary authority enjoyed by these officers and, in particular, Detective Sergeant Wright.

141. Both Wright and Korosec were senior members of the Ipperwash Command Team. During the occupation of the park, Korosec was in command of the E.R.T. teams and was responsible for, amongst other things, preparing an operational plan for dealing with the occupation of the park. In Korosec's testimony he stated that an operational plan was never created.

Exhibit P-424, Project maple notes, September 1995 at pg. 3.
Exhibit P-421, Sep 1/95 09:00 a.m. OPP meeting, Nov. 2 DHQ London, at pg. 2.
Evidence of S. Korosec, April 5, 2006 at p. 304 l. 7 – p. 307.

142. Wright was the assistant to Inspector Carson and was assuming the role of second in command. While Wright may not have been officially commissioned as Inspector Carson's second in command ("2IC"), it is without a doubt that he assumed the role as Inspector Carson's 2IC and was viewed by other senior officers as the 2IC:

3 Q: And in early -- sometime in 1995,
 4 Mark Wright was appointed your second in command; is that
 5 correct?
 6 A: Well, Mark Wright had been working
 7 very closely with me actually since 1993. He was
 8 involved back during the period when the helicopter
 9 shooting occurred and he had stayed involved or -- well,
 10 he had stayed involved, particularly -- his role at that
 11 time, just to clarify, he was the Detective Sergeant for
 12 Lambton County responsible for the supervision of what we
 13 referred to as benchmark crime.
 14 So any occurrence that meets a certain
 15 level of seriousness, he would be responsible to

16 supervise and ensure the quality of those investigations.
 17 So it was a natural issue that he would become involved
 18 in, in any major incident.

19 Q: And he was, as I think you said, he
 20 was involved in the helicopter incident?

21 A: Yes.

22 Q: And so during the period of time
 23 starting in May 1993, he assisted you. Was there a
 24 period in time or a point in time when he officially
 25 became your second in command or did he simply carry on

1 assisting you?

2 A: He continued on assisting. And I'm
 3 not sure I would call it second in command, but any of
 4 these incidents, for the most part, involved some
 5 potential criminality so it was just a natural part.

6 And as July or as the summer of '95 wore
 7 on, it seemed that he was working almost as a 2/IC, I
 8 guess, if you want to call it that. He was the other
 9 person who probably had the most continual involvement in
 10 this ongoing incident.

11 Q: Okay. And clearly when we come to the
 12 events of September 4 to September 6, 1995, he was your
 13 right-hand person?

14 A: Yes.

Evidence of Inspector J. Carson, May 12, 2005 at p. 27 1.3- p. 28 1.14

5 Q: One (1) of the -- and -- and I'm not
 6 leaving that, just so you know, Mr. Commissioner, because
 7 I want to ask you a few more questions and get your
 8 assistance on that. But one (1) of the -- the probably
 9 most -- the tightest, or sort of tightest statement about
 10 the expectation of CMU that night, comes from a passage
 11 from Mark Wright.

12 And you may not agree with it, and you'll
 13 just tell me you don't agree with it and then we'll put
 14 it away, or you might, I don't know. But I -- I want to
 15 put it to you and ask you if you agree or disagree with
 16 it.

17 It's Mr. Wright testifying at the
 18 examination for discovery about what he thought the CMU
 19 would accomplish that night. And you recall Mark Wright
 20 as the second in command?

21 A: Yes. He was in charge of the, you
 22 know, the criminal -- the criminal - criminal
 23 intelligence, and also the prosecution --

Evidence of W. Lacroix, May 9, 2006 at p. 348 1.5 - p. 349 1.23

143. Furthermore, when questioned on his role in the Incident Command structure, Wright agreed that he was Inspector Carson's 2IC and that this was known to other officers:

17 Q: Okay. And so as of September 4th,
 18 1995, you in a managerial capacity, second, right? Mr.
 19 Carson called you -- the Incident Commander called you
 20 his right hand man. That's a very flattering term.
 21 That's what he called you.
 22 A: **Okay.**
 23 Q: You saw in the evidence.
 24 A: **Hmm hmm, yes.**

Evidence of M. Wright, March 21, 2006 at p. 249 l.17 – l.24.

6 Q: And you'd agree with me that, as
 7 senior officers went on Ipperwash Provincial Park on the
 8 night of September 5th, 1995, you were a right-hand man
 9 to the incident commander, right?
 10 A: **Right.**
 11 Q: Everyone knew that?
 12 A: **Sure.**

Evidence of M. Wright, March 21, 2006 at p. 335 l.6-12.

9 Q: Amassing a fucking army, Do these
 10 guys, Going to war, The Marines are coming down --
 11 A: **Yeah.**
 12 Q: -- and the Marines are CMU. All of
 13 those things are statements made by either Korosec, head
 14 of ERT or Mark Wright, second in command at Ipperwash,
 15 true?
 16 A: **True.**

Evidence of M. Wright, March 21, 2006 at p. 370 l. 12- l.16

144. It is without a doubt that Wright and Korosec had significant positions in the Incident Command. Both Wright and Korosec used their positions to influence the chain of events that occurred after Inspector Carson's departure from the command post.

E. REASONS FOR MARCHING

145. In reviewing the evidence of Inspector Carson it is apparent that there was no legitimate reason for the C.M.U. to march on the occupiers. In his examination in chief, Inspector Carson provided several factors that influenced his decision to deploy the C.M.U. Through cross-examination, it became readily apparent that none of these factors were a legitimate concern. These factors, as outlined in Inspector Carson's examination, were as follows:

- i) Fires being set in the sandy parking lot – under-cross examination Inspector Carson admitted that there was no fire in the sandy parking lot and that there was nothing in the sandy parking lot that could have been used to start a fire. (*Evidence of Superintendent J. Carson*, June 27, 2005 at p.140 l.6 - l. 19);
- ii) Sniper in the kiosk – under cross-examination Inspector Carson admitted that he ruled on a sniper having a line of sight from the kiosk prior to deploying the C.M.U. (*Evidence of Superintendent J. Carson*, June 27, 2005 at p.117 l.11 - p.141 l. 1 – l.17);
- iii) Movement of vehicles in the park – under cross-examination Inspector Carson admitted that he made no investigations as to the cause of the vehicle movement in the park. (*Evidence of Superintendent J. Carson*, June 27, 2005 at p.142 l. 1- l. 18);
- iv) Cottagers attacking the occupiers – under cross-examination Inspector Carson admitted that Wright had earlier calmed the cottagers down and that he did not have any further intelligence suggesting that the cottagers were going to attack the occupiers. (*Evidence of Superintendent J. Carson*, June 27, 2005 at p.144 l.12 – p. 145 l. 6);
- v) Baseball bats in the sandy parking lot – under cross-examination Inspector Carson admitted that he did not believe that the occupiers were going to attack the checkpoints or the T.O.C. (*Evidence of Superintendent J. Carson*, June 27, 2005 at p.144 l.19 – 146 l. 8); and
- vi) The Gerald George incident.

146. In addition to Inspector Carson's admission that the information provided to justify the C.M.U. march was faulty, Inspector Parkin, under cross-examination

suggested that given the state of affairs at 21:42, he did not believe the OPP should deploy the C.M.U. unless something further happened.

147. On September 6, 1995 at approximately 21:42, Inspector Linton called Superintendent Parkin at his home to give him an update on the situation on the ground.

Inspector Linton advised Superintendent Parkin of the following information:

- (i) That there was a local meeting of townspeople complaining of the lack of activity;
- (ii) That a person from the meeting had their vehicle damaged by the sandy parking lot occupiers;
- (iii) That there was a fire in the sandy parking lot;
- (iv) That there is someone in the kiosk and that they have lowered the blinds;
- (v) That there was a dump truck and bus moving around in the park;
- (vi) That women and children were being evacuated; and
- (vii) That there was reports of automatic gunfire and weapons

148. Under cross-examination, Superintendent Parkin testified that to his knowledge the above noted concerns turned out to be untrue or unverified.

Evidence of A. Parkin, February 8, 2006, at p. 273 l.12 – 274 l. 19

149. Furthermore, Superintendent Parkin testified that Inspector Linton's concerns, as noted above, were not sufficient enough to intervene, preferring the approach to lock down the area and let things settle:

19 your lap and you discussed that to some extent with Ms.
 20 Twohig, but moving onto page 53 which for our purposes
 21 does raise some facts that -- that are raised by Mr.
 22 Linton and I wanted to make sure that there isn't
 23 something here that you -- should have been drawn to your
 24 attention.

25 So you indicate at the top of 53:

1 "But I guess what we'd rather have
 2 happen is if we can lock that place
 3 down so that you know the general
 4 public isn't put in any danger.
 5 Yeah.
 6 And you know if they want to burn
 7 picnic tables, if they want to act like
 8 yahoos back in there fine. If they
 9 come out into your turf and you can
 10 safely make arrests well then that's
 11 fine too.

12 LINTON: Yeah, well.

13 PARKIN: So..."

14 And then there's a discussion by Linton
 15 about evacuating but just stopping there.

16 Am I safe to assume from what you say
 17 here, like if you can -- if you can basically contain the
 18 place for the night and they want to have fires in the
 19 Park obviously it's not that you support that but your --
 20 your point is is that there would be little reason to
 21 intervene, right?

22 **A: Correct.**

23 Q: Based on what you knew as of page 53?

24 **A: Correct.**

25 Q: And -- and the whole idea is it's

1 night-time and it's not a time to be going in and making
 2 arrests, correct?

3 **A: Not unless again the Incident**
 4 **Commander had valid reason to warrant it. But as a**
 5 **general rule, no.**

6 Q: And you have talked to the Incident
 7 Commander since page 38 about his concerns, yes?

8 **A: Yes.**

9 Q: In other words, thirty-eight (38) to
 10 fifty-three (53), fifteen (15) pages of discussions we
 11 listed the inventory of concerns. Your preference at
 12 this stage is to lock the place down and -- and let
 13 things settle, right?

14 **A: Correct.**

150. At approximately 18:30 on September 6, 1995, Gerald George drove his vehicle to checkpoint Charlie, located at Army Camp Road near Matheson Drive. Upon arriving at checkpoint Charlie, Gerald George informed Constable Sam Poole that his vehicle had been damaged by the occupiers. Constable Mark Zacher then relayed this information back to the Command Post. At approximately 19:51, Mark Wright requested that Constable Poole take a statement from Gerald George.

Exhibit 1114, Transcript of M. Wright & unknown OPP Officer (Radio call) Region 10 Chatham Communication Centre Logger Tape #0146 Track 12 Disc 12 of 20, 19:51, Sept 06/95.

151. In conducting the interview, Constable Poole collected the following information:

- (iv) the damage to the vehicle was not substantial;
- (v) the vehicle belonged to Gerald George's sister;
- (vi) the vehicle was damaged by a rock; and
- (vii) the rock was thrown by Stewart George.

Evidence of S. Poole, May 19, 2006, p. 67 .7 – p. 69 l. 17

152. This information was recorded by Constable Poole in his interview report marked as Exhibit P-123 in this Inquiry. Constable Poole then notified the command post that the victim had identified a suspect and that the suspect was one of the sandy parking lot occupiers.

Evidence of S. Poole, May 19, 2006, p. 67 .7 – p. 69 l. 17

153. Throughout the night of September 6, 1995, the above noted incident was grossly exaggerated by Wright to various individuals. The exaggerations continued even after the night of September 6, 2005.

WRIGHT: And ah ah I told the two checkpoints and ah I didn't get I got ah the one at the top year twenty-one.

CARSON: Yeah.

WRIGHT: And and Zack comes back and he says we just got a vehicle it's been pelted with mischief... oh hang on a sec, what?

Exhibit 444B, Carson-Wright 20:05, tab 49, at p. 315-316

MCCABE: Yeah. Uhm okay now you're you're you were going to tell me what's going on now.

WRIGHT: Well fuck right now they've got about eight guys down at the bottom end of the park where ah the roads turn and I know you don't know the area but I'll draw it for you so you'll see it.

MCCABE: Right.

WRIGHT: They've got about eight guys on the edge of the road with bats in their hand...

MCCABE: Baseball bats?

WRIGHT: Yeah and that's public that's ah county road access so that's mischief you can't use that road and **they've trashed a car** that went by so we've got willful damage, we've got possession of a weapon dangerous and we got four BRT Teams and a TRU Team and two canine units going down there to do battle... right now.

Exhibit P-463, p. 1-29, command post logger synopsis Sep 6/95 Transcript.

LINTON: Yeah we're heating up big time, I just though I would let you know we ah, we've got about eight guys on the road right down at the end of Army Camp Road, same place where the fire was and the car come around there and they apparently damaged it, we're getting the statement now and they wouldn't let it through I guess and ...

CARSON: What a private vehicle?

LINTON: Yeah.

LINTON: Yeah and ah **so we just got a statement now she says that they were hassling her.** Mark WRIGHT come through and ah they told him they didn't know he was a cop or else get the hell out of there and now they've got the school bus down in that corner,

they're bringing a dump truck in...they're in the kiosk with the windows down so they're they're waiting for us to do something, so I just they called the T.R.U. Team in and ah what we're gonna ...well I'll wait till I get the statement, we're probably going to go down and arrest that group of ah of eight or so people blocking the roadway and there's no doubt that ah you know they're they're waiting for something so it's it's a little bit vulnerable so I'll suit the T.R.U. up heavy and ah...put them in, so they're on route here now, so...

Exhibit 444B, Carson-Wright 20:05, tab 51, at p. 324- 326.

Detective Sergeant Wright advised that a few minutes ago **a woman was driving her car on Parkway Drive at the intersection with Army Camp Road. She was stopped by a group of 8-10 male Aboriginals people, several of them whom – several of whom had objects in their hands similar to baseball bats or axe handles. The woman's car was struck, resulting in damage prior to her being able to drive away.** Provincial Constable Poole was assigned to take a damage statement and investigate the damage complaint and blocking the driveway. **Detective Sergeant Wright advised that the lady had just come from the public meeting at our Technical Operations Centre....**Detective Sergeant Wright and most of the other personnel present were suggesting we should immediately deploy the ERT unit to arrest the individuals for having offensive weapons, mischief for blocking the highway, unlawful assembly, breach of the peace, or mischief for the vehicle damage.

Exhibit P-470, Statement of Inspector D. Linton, Sep 9/95, 10:00 hrs. at p. 106 - 1065.

154. ALST respectfully submits that Wright purposefully exaggerated the Gerald George incident in the hopes of justifying a decision to deploy the C.M.U. The hope was to portray the situation as a serious escalation of violence against a cottager or someone entirely unrelated to the occupation. Wright knew that depicting the occupiers as a safety threat would allow the OPP to mobilize an immediate response – arrest the occupiers and take back the park.

155. It is important to note that prior to September 6, 1995 Inspector Carson did not even contemplate going into C.M.U. mode. September 5, 1995, Wade Lacroix (“Lacroix”) and Inspector Carson discussed whether a C.M.U. was to be mobilized. In that conversation, Carson explained to Lacroix that he did not, “intend to go into that mode”:

LACROIX: Ah, we'll address -- we're going for an injunction?

CARSON: Yes. Natural resources are addressing that as we speak.

LACROIX: Okay. Who's the ERT --who's the ERT guy? Who's the ERT commander?

CARSON: Well, we've got 1, 2, 3 and 6 here. And 3 and 6 are on the ground now. 1 and 2 are just coming back from debriefing after the night's over.

LACROIX: **The only reason I'm asking is, if it's a large formation I was -- I'm one of the ones, I'm just wondering who you're going -- got doing that.**

CARSON: I'm sorry?

LACROIX: **For a large formation of ERT, there's supposed to be a staff sergeant. I'm just wondering if --**

CARSON: Well at this point --

LACROIX: We'll get -- well, get them on standby.

CARSON: No, they are here.

LACROIX: No, I mean -- and I mean, what are you going to do with that. I mean, the only reason I'm asking is I'm -- I just wanted to know.

CARSON: **You mean a crowd control operation?**

LACROIX: **Yeah.**

CARSON: **Well, we don't intend to go into that mode.**

156. Prior to his departure from the command post on September 6, 1995, Inspector Carson did not anticipate a major occurrence. To the contrary, Inspector Carson believed that he was leaving for the night with everything “status quo”.

Evidence of Inspector J. Carson, June 6, 2005 at p. 199 1.13 - p. 200 1.24

157. With the more “steady” Carson gone for the night, Wright and Korosec began following through on their plan to confront the occupiers with a significant use of force. The pretext to their plan to confront the occupiers was the gathering of Aboriginal people by the sandy parking lot. The desire to move into the park that night was caused, in part, by the pressure exerted by frustrated cottagers.

159. The pressure exerted by members of the community began in early May, 1994 and continued up until the day Dudley George was shot. The effect of this pressure was that the OPP had to figure out a way to settle the fears of the community that the police were still under policing the park and the cottagers.

160. On September 6, 1995 at approximately 18:20 acting Staff Sergeant Wright met with Mayor Fred Thomas and other members of the community at the MNR parking lot beside the T.O.C. At this time, the cottagers expressed their frustration with the perceived lack of policing by the OPP:

20 Q: Right. And now, in referring to the
 21 views of the cottagers that they would receive little or
 22 not action by police in respect of Natives, quote,
 23 "harassing them," you're actually reflecting a view you
 24 subsequently received on September 6th, 1995, in and
 25 around 6:00 p.m., when you met with the cottage community

1 around the sandy parking lot; isn't that right?
 2 You got a similar view then?
 3 **A: Yeah, okay, sure.**

Evidence of M. Wright, March 21, 2006, at p. 229 l. 20 – p. 230 l. 3

5 Q: I'm going to suggest something to
 6 you, that you met with some very upset people who told
 7 you that, as you put it, there wasn't any policing going
 8 on, the same concern expressed and reflected May 31st,
 9 '94 in your memo.
 10 Do you remember saying that?
 11 **A: My recollection of what they had to**
 12 **say, sir, was that they were upset with what was taking**
 13 **place and they were going to march to the Park.**
 14 **So, sure, I would have taken -- I would**
 15 **have jumped to that conclusion what you're suggesting,**
 16 **sure.**

Evidence of M. Wright, March 21, 2006, at p. 374 l.5 -16

161. The meeting at the MNR parking lot lasted until approximately 19:25. Just moments after the cottagers were complaining of lack of policing, acting Staff Sergeant Wright stumbled upon the 8 to 10 “Natives” with bats and axe handles in their hands aggressively gesturing for him to leave the sandy parking lot area. ALST respectfully submits that this was no coincidence, Mark Wright purposely exaggerated his meeting with the sandy parking lot occupiers in an attempt to create the situation necessary for the OPP to take back the park , thereby atoning for the embarrassment of losing the park.

F. CHRONOLOGY OF THE IMPLEMENTATION OF THE WRIGHT/KOROSEC AGENDA

162. The following is a chronology of events that occurred after 19:00 on the night of September 6, 2006. The chronology clearly indicated that extent to which the decision to deploy the C.M.U. was made prior to Carson's arrival at the command post.

- Approx. 19:10 - 19:30 - Inspector Carson leaves for dinner – everything is status quo with no anticipation of a major event occurring.

*Evidence of Inspector J. Carson, June 6, 2005 at p.199 l.13 - p.200 l.24;
Exhibit P-426, Scribe notes (OPP) from Sep 4/95 to Sep 9/95 pages 1 to 58 (typed), at pg.72;*

- Approx. 19:25 – Mark Wright meets Aboriginal occupiers in the sandy parking lot. He then proceeds to the various checkpoints. At checkpoint Charlie he is advised of a confrontation between occupiers and a driver of a vehicle that passed the sandy parking lot.

Evidence of M. Wright, February 23, 2006, at p. 18 l. 18

- Approx. 19:40 – 3rd District E.R.T. team is debriefed at Forest Command Post. During debriefing, the E.R.T. teams are told to suit up in “hard tac” C.M.U. gear. Constable Kevin York testified that the C.M.U. units were deployed twice. The first time they were deployed to the Tactical Operation Centre (T.O.C.) site they received an order to return back to the Forest Command Post.

Evidence of K. York, May 18, 2006, at pg. 27 l. 5; Evidence of K. York, May 18, 2006, at pg. 30 l. 20-22;

- Approx. 20:00 – Lacroix is called by Korosec to attend at the Forest Command Post.

Evidence of W. Lacroix, May 8, 2006, at p.. 25 l. 24.

- Approx. 20:00 - 20:02 – Mark Wright arrives back at the Command Post and advises Korosec to hold back the day shift E.R.T. teams to allow Inspector Carson to use them as necessary:

20 A: Well, because I was -- I was
21 cognizant that we had a potential problem down there. I
22 was very concerned about what was going on and I was

23 harkening back to exactly what in my mind what had taken
 24 place around seven o'clock that very same day when we had
 25 the people with the picnic tables out on the road.

1 And Inspector Carson held back the -- the
 2 night shift ERT team so that we would have those
 3 individuals available in order to deal with that
 4 immediately. And that was what, I thought, was the best
 5 thing to do is hold them back so that they would be handy
 6 for the Incident Commander to do with whatever he felt
 7 necessary in order to deal with that situation down at
 8 the sandy parking lot as quickly as possible.

Evidence of M. Wright, February 23, 2006, at p. 57 l. 20 – p.59 l.8.

- Approx. 20:05 – Wright calls Carson to inform him that there are 8-10 “Natives” with bats and axe handles occupying the sandy parking lot. During the conversation, Wright advises that he has held back the day shift E.R.T team and that Linton is calling out the T.R.U team. Carson tells Wright to advise Linton that Carson should be notified before the T.R.U. is called to Forest. Wright testifies during cross-examination that at the time of this conversation, deploying the C.M.U, “**wasn't on the table**”.

Evidence of M. Wright, February 23, 2006, at p. 394 l. 9.

- Approx. 20:08 – Linton makes the decision to call out T.R.U. stationed at Pinery Park

Exhibit P-426, Scribe notes (OPP) from Sep 4/95 to Sep 9/95 pages 1 to 58 (typed), at p.73.

- Approx. 20:10 – Sergeant George Hebblethwaite departs from Forest Command Post to Grand Bend to obtain his “hard tac” kit. At the time of his departure from the Command Post, Hebblethwaite knew that the C.M.U. maybe mobilized and the order to call out the C.M.U. was given by Korosec.

12 Q: At 20:10 when you left Forest Command
 13 Post you knew a couple of things, I -- I just want to
 14 clarify this with you, you knew for example that CMU
 15 maybe mobilized and that you may need your hard TAC,
 16 correct?

17 **A: I knew I needed my hard TAC and that**
 18 **CMU may be mobilized.**

Evidence of Sergeant G. Hebblethwaite, May 15, 2006, at p. 59 l. 12 – p. 1-18.

11 Q: All right. And so it's fair to say

12 that before 20:10 it is your recollection that Stan
 13 Korosec would have said, Get prepared, We may need to use
 14 CMU, or words to that effect, Get your hard TAC?
 15 **A: That would be the essence, yes.**

Evidence of Sergeant G. Hebblethwaite, May 15, 2006, at p. 60 l. 11 – p. 1-15.

7 Q: Who was the designated team leader or
 8 Incident Commander for that -- for the CMU that night?
 9 **A: That night it was Acting -- or sorry,**
 10 **Staff Sergeant Wade Lacroix.**
 11 Q: And who called out the CMU that
 12 night?
 13 **A: Well Sergeant Korosec asked us to**
 14 **prepare for that.**
 15 Q: On behalf of...?
 16 **A: I believe it was Inspector Carson. I**
 17 **-- I'm not totally sure.**

Evidence of Sergeant G. Hebblethwaite, May 11, 2006, at p. 124 l.7 – l.17.

- Approx. 20:19 – Korosec sends out radio transmission advising 3rd and 6th District Teams to return to Forest Command Post. Hebblethwaite testified under cross-examination that at this time most if not all of the 3rd and 6th District teams were already at the Command Post.

Exhibit P-1321, Transcript of Region 20, S. Korosec, Sept 6/95, 20:19 hrs. Chatham Communications Centre; From OPP Logger Tape #0146, Track 12, Disc 12 of 20;

Evidence of G. Hebblethwaite, May 15, 2006, at p.267 l. 6 – p.268 l.5

- Approx. 20:20 – Carson calls Linton. Linton advises Carson that he is going to suit up T.R.U. to arrest occupiers. Carson tells Linton that he will call him back.

Exhibit 444B, Carson-Wright 20:05, tab 51, at pg. 324- 326.

- Approx. 20:21 – Korosec advises Linton and Wright that he has called Lacroix to attend.

Exhibit P-426, Scribe notes (OPP) from Sep 4/95 to Sep 9/95 pages 1 to 58 (typed), at p.74.

- Approx. 20:22 – Carson calls back Linton. Carson advises Linton that T.R.U. should not be used to make arrests.

Exhibit 444B, Carson-Wright 20:05, tab 52, at p. 324- 326.

- Approx. 20:25 – Korosec makes a phone call where he states that, “Lacroix is on his way up to do these guys”.

Exhibit P-1155, Transcript of S. Korosec, September 06,1995, 20:25 hrs. Mobile Command Unit, OPP, Logger Tape # 04, Track 3, Disc 2of 3, Region 21.

- Approx. 20:25 – Wright and McCabe discuss injunction hearing and Wright advises McCabe that the “marines” are going down to the sandy parking lot area. Wright advises McCabe that a car has been “totally trashed” by the occupiers and that the OPP have, “four ERT teams and a TRU team and two (2) K-9 units going down there [sandy parking lot] to do battle right now.”

Exhibit P-463, Pages 1-29, command post logger synopsis Sep 6/95 and transcript.

- Approx. 20:29 - Carson arrives back at the Command Post.

Exhibit P-426, Scribe notes (OPP) from Sep 4/95 to Sep 9/95 pages 1 to 58 (typed), at pg.74)

Evidence of Inspector J. Carson, May 19, 2005 at p. 164 1.15 - 1.23.

- Approx. 20:29 - 20:46 – Decision to deploy C.M.U. is made.

Evidence of Inspector J. Carson, June 27, 2005 at p. 140 1.6 - 1. 19.

Evidence of M. Wright, March 6, 2006, p. 182 1. 19 – 1.25.

- Approx. 21:10- Lacroix arrives at the Forest Command Post.

163. The above detailed chronology clearly establishes the following:

- (i) Lacroix was called in by Korosec as early as 20:00 hours and as late as 20:21 to lead the C.M.U. Lacroix’s sole purpose on the night of September 6, 1995 was to command the C.M.U. team;
- (ii) The day shift E.R.T. teams were being held back as late as 20:02 so as to mobilize a C.M.U. team. The decision to hold back the E.R.T. team

was made by Wright, without consultation with Inspector Carson or Linton;

- (iii) At 20:05 Wright does not believe that using a C.M.U. is on the table;
- (iv) The day shift E.R.T. teams are told to go dress in "hard tac" for possible C.M.U. deployment at the latest by 20:10; and
- (v) The E.R.T. teams dressed in their "hard tac" C.M.U. uniforms were originally deployed to the T.O.C. no later than 20:19.

164. All of the facts detailed above occur while Inspector Linton is contemplating the use of the T.R.U. as an arrest team. Inspector Linton calls out the T.R.U. team at 20:08 and Inspector Carson only convinces Inspector Linton not to use the T.R.U. team, at earliest, by 20:22. Prior to 20:25, neither Inspector Carson nor Inspector Linton is contemplating the use of C.M.U. Despite this fact, the C.M.U. team has already been formed and their unit commander has been called in to "do these guys". Oddly enough, the orders to hold back the E.R.T. team and the individual complaining about the "waffling" of Inspector Linton was not even expected to be on duty at this time:

3 Q: So it must have been some comfort to
4 you when on September 6th, 1995, you went to dinner, that
5 Mark Wright was -- was minding the shop.
6 **A: He wasn't minding the shop.**
7 Q: He wasn't?
8 **A: No.**
9 Q: Okay. It must have been some comfort
10 to you that Mark Wright was on duty?
11 **A: No. There was no -- he was finishing**
12 **up some work, but he wasn't expected to stay there.**
13 Q: But he did stay there?
14 **A: Well he was obviously involved in --**
15 **in some work that kept him there.**

Evidence of Inspector J. Carson, June 28, 2005 at p.218 1.3 - 1.15

165. ALST respectfully submits that Wright and Korosec already had the C.M.U. team prepared and ready to march on the occupiers before the decision not to use T.R.U. was made and before Inspector Carson arrived back at the command post.

166. Wright's evidence is that he held back the E.R.T. teams to allow Carson to use them as he saw fit; however, the evidence suggests that Wright and Korosec had already ordered the E.R.T. teams to change into their "hard tac" gear before Inspector Carson even arrived at the command post. When Inspector Carson arrived at the command post the decision to deploy the C.M.U. was already made and Inspector Carson was simply rubber stamping a decision made by Wright and Korosec. Inspector Carson admitted as much when he gave evidence that he was not sure if he would have deployed C.M.U.

knowing what he knew at the time of the Inquiry:

16 Q: Deputy Carson, with that correction
 17 that I appreciate, thirty (30) to forty (40) police
 18 officers marching on these people with shields, riot
 19 regalia plus six (6) to eight (8) snipers. That's a very
 20 serious decision to make, isn't it?
 21 A: Yes.
 22 Q: You'd want to know ten (10) years
 23 later that you could be confident that you would do it
 24 again, right?
 25 A: Sure.

1 Q: But based on the evidence you've just
 2 given us, you aren't confident are you?
 3 A: I don't know if I would or not.

Evidence of Inspector J. Carson, June 28, 2005 at p. 310 1.16 – 311 1.3

167. There was no evidence submitted at the Inquiry that Inspector Carson or Linton advised the E.R.T. teams to dress in "hard tac". To the contrary, by the time Carson arrives at the command post, the C.M.U. team has already been mobilized with their

command leader on route. As such, the E.R.T. teams were not held back for Inspector Carson to direct; rather, they were held back because Wright and Korosec wanted to deploy the C.M.U. Such a response was not originally contemplated by Inspector Carson on September 5, 1995, it was not contemplated at the time of his departure from the command post on the night of September 6, 1996, and by Wright's own admission it was not a response that was even on the table as of 20:05. Despite this fact, the E.R.T. teams were told to dress in "hard tac" at latest at 20:10.

168. In light of the comments and stated intentions of Wright and Korosec, it is respectfully submitted that there is sufficient evidence to suggest that Wright and Korosec engineered a situation whereby they could take back the park from the occupiers. Wright, Korosec, and Carson were all embarrassed by their inability to keep the park on September 4, 1995. The embarrassment came from two fronts – (1) Superintendent Parkin and Chief Superintendent Coles were disappointed in the loss of the park; and (2) the community and Marcel Beaubien were insisting that the OPP was mismanaging and under policing the occupation.

169. In attempting to relieve the pressure and embarrassment detailed above, Wright and Korosec decided that they needed to show a significant use of force and take back the park. As such, they unilaterally mobilized the C.M.U. and exaggerated the seriousness of unfolding events so as to see their stated intentions come to fruition. When Inspector Carson arrived back at the command post he was confronted with the faulty intelligence gathered by Korosec and Wright and a C.M.U. ready to be deployed. Neither Inspectors Carson nor Linton decided to verify the intelligence presented to them. As such, when

Inspector Carson arrived back at the Command Post all that was left for him to do was to confirm Wright and Korosec's plan – to “amass a fucking army” and “take back the park.”

VII. THE RELATIONSHIP BETWEEN THE O.P.P. AND M.N.R.

170. ALST submits that information flowed inappropriately from the OPP command post at Ipperwash through the Ministry of Natural Resources bureaucracy, to the political side of government. The uncontrolled flow of police operational information regarding the alleged presence of automatic firearms from the command post to politicians, through the conduit of MNR officials, played a significant role in intensifying the political pressure on the OPP.

171. The evidence suggests that the police and the MNR developed an intimate relationship in their collective response to the occupation. The relationship was sufficiently intertwined that MNR staff, including Les Kobayashi, were received police training on the anticipated OPP response to the occupation. It appears that no thought was given to the impact that this close relationship would have on police independence from politics, considering the cultural differences between the two organizations as far as the flow of operational information was concerned.

Evidence of M. Wright, March 21, 2005, p.453, 1.6-25; p.454, 1.1-5, 15-23; p.457, 1.1025, p.458, 1.1-8

Evidence of C. Coles, August 18, 2005, at p.79, 1.17-25, p.80, 1.1-8

172. There were no efforts on the part of the OPP to restrict access by MNR staff to police operational information, nor to put limits on how MNR staff could disseminate any such information they received. As a result, sensitive information concerning the alleged presence of automatic weapons was transmitted from the command post, and through ordinary MNR channels, directly to MNR political staff (and ultimately to the Minister).

For their part, the MNR did not impose any internal controls over the flow of police operational information that they received.

Evidence of P. Sturdy, October 20, 2005, p.167, 1.24-p.182, 1.9

173. Any effort by the police to preserve their independence from the political arm of government through the control of operational information will be frustrated to the extent that non-police officials are given unrestricted access to such information. There is no evidence before this Inquiry that this flaw has been remedied by either the OPP or the MNR.

Evidence of P. Sturdy, October 20, 2005, p.181, 1.9-25; p.182, 1.1-9; p.224, 1.14-25, p.225, 1.1-5

VIII. THE MARCH

174. The march toward the former Ipperwash Provincial Park on the evening of September 6, 1995 was performed by two incompatible police formations, both heavily armed, operating on contradictory intelligence, with divergent missions, in the dark, and over unfamiliar terrain. Given these ingredients, the only surprising aspect of the tragedy that unfolded was that the loss of life was not greater.

175. This is not a case where the combination of ordinary human failings and unfortunate circumstances conspired to propel the events toward an unavoidable tragedy: the loss of human life was both predictable and preventable.

How did it happen?

CMU and TRU are incompatible

176. It is not a coincidence that the TRU and CMU teams did not engage in joint training prior to September 6, 1995: it is difficult to conceive of the respective missions of TRU and CMU as anything other than mutually exclusive.

Evidence of W. Lacroix, May 9, 2006, p.310, ll.1-7; p.344, l.7-p.345, l.20

177. TRU, by virtue of its tactics, equipment and training, is a resource that is called upon to respond to high risk occurrences, generally involving firearms and threats to life. TRU members are armed with, among other things, sniper rifles with scopes, and trained in invisible deployment. They are capable of avoiding detection by individuals carrying

firearms, and of using lethal force to eliminate the firearms threat when absolutely necessary.

Evidence of K. Skinner, April 19, 2006, p.17, 1.2-25

178. By contrast, CMU is intended to represent a very visible application of force, and is equipped to absorb and withstand assaults by an explosive crowd employing rocks and other similar projectiles. Its tactics are designed to take advantage of the psychology of the crowd, to effect its control and dispersal. By virtue of its tactics, equipment and training, the CMU is wholly unsuitable for situations involving firearms. A CMU formation represents thirty or more “sitting ducks” for anyone armed with firearms and inclined to use them.

Evidence of W. Lacroix, May 8, 2006, p.101, 1.20-p.110, 1.9; May 9, 2006, p.319, 1.5-14 and p.333, 1.24-p.334, 1.13

179. The simultaneous deployment of the CMU and TRU would necessarily create impossible burdens on the police officers involved, in particular the TRU snipers responsible for addressing any firearms threats and protecting the CMU formation. Typically, TRU would deploy invisibly in the face of a firearms threat, and members would be responsible for the safety of a small number of fellow officers in the face of that threat. Their deployment on September 6, 1995 created a completely different scenario: one in which TRU snipers were responsible for the safety of approximately thirty officers, in the open, and completely vulnerable to what was perceived to be a probable firearms threat. Wade Lacroix’s evidence, testifying from the unique vantage point of

someone who has led both TRU and CMU teams, provides insight into the dilemma facing Ken Deane:

25 Q: All right. And would you agree with
 1 me that if there was a reasonable belief, as we've heard
 2 evidence of, they had a belief, right? It doesn't matter
 3 that it's not true, they had a belief that there could be
 4 snipers with AK47's or imitation AK47's behind trees,
 5 fair?
 6 A: Yes.
 7 Q: That makes the officers marching down
 8 the road somewhat sitting ducks, fair?
 9 A: If you truly believe that those
 10 weapons are there, they would be marching into an ambush.
 11 Q: And the persons responsible for
 12 protecting those officers, the sitting ducks, would be
 13 the TRU team members?
 14 A: That's their role; that's what they
 15 were there for.
 16 Q: And you'd agree with me that's a very
 17 heavy responsibility in terms of compared to being
 18 invisibly deployed on your own as TRU team?
 19 A: That would be probably the most
 20 difficult assignment that a TRU team member could face.
 21 Q: It might cause you to be twice as
 22 careful as to what people are holding as those officers,
 23 as sitting ducks, march down the road, true? Correct?
 24 You might be --
 25 A: I would think you're cautious at all
 1 times, but I -- I mean you would feel the burden, let's
 2 say, of command.

* * * *

1 Q: Would be with that heavy burden
 2 seeing every occupier with a stick who might have a gun,
 3 right?
 4 A: If some of the men were thinking
 5 there was guns out there, it could make you jumpy.

Evidence of W. Lacroix, May 10, 2006 p.97, l.25-p.99, l.2; p.101, ll.1-5

180. The available evidence does suggest that Ken Deane was impacted by what amounted to an impossible situation. At least at one point during the march prior to the shooting, Mr. Deane communicates a mistaken sighting of a long gun in the hands of one

of the occupiers. It is likely, in light of all of the evidence, that he made a similar, but this time fatal, misjudgment concerning the presence of a firearm in Dudley George's possession. Given the inevitable "jumpiness" that would afflict any officer in that situation, it is entirely understandable that such a mistake would be made, with predictably tragic results.

Exhibit P-438, Transcript of Chatham Logger Tape 0146 Track 12 "TAC" Channel for 06 Sep 1995 10:27 p.m. – 11:10 p.m.

181. The true responsibility for this tragedy lays with those who were responsible for the deployment of the CMU and TRU teams: the command team, and principally John Carson. CMU and TRU had never been employed in concert previously, nor have they since. Even assuming some form of policing response on the evening of September 6, 1995 was at all necessary, TRU and CMU should never have been deployed together in this instance. That the joint deployment occurred is utterly consistent with the confused and shambolic manner in which the decision to march was undertaken. As submitted above, Mark Wright and Stan Korosec set the series of events that culminated in the march in motion; it was John Carson's responsibility to make the necessary inquiries to determine whether the deployment was really necessary, and to stop it if it was not. He did neither.

The failure to engage in "pre-planning"

182. The deployment of the TRU and CMU teams was preceded by an almost total lack of advanced planning and reconnaissance.

183. The CMU leader, Wade Lacroix, readily conceded that he did none of the reconnaissance and planning that would normally be associated with a CMU deployment. His explanation for this failure was entirely reasonable based on a briefing by John Carson that CMU deployment was not being seriously contemplated. He was, in effect, directed by John Carson not to engage in planning for a CMU deployment.

Evidence of W. Lacroix, May 9, 2006, p.294, l.18-p.297, l.10

184. The absence of advanced planning and reconnaissance became significant in the events that precipitated the shootings. Mr. Lacroix conceded that he led his formation through what amounted to a bottleneck, and into a position in which a page wire fence seriously restricted any avenue for retreat by CMU officers. He directed the CMU into this position of vulnerability as a result of a total lack of understanding of the terrain he was operating in, that could only have been compounded by the surrounding darkness.

Evidence of W. Lacroix, May 9, 2006, p.297, l.11-p.301, l.15

185. Lacroix impressed as an officer who gave a tremendous amount of thought to issues of police tactics and formations, as well as someone who has concern for the welfare of his fellow officers. It is likely that he would have had misgivings as to deploying in the fashion that he did, and would have expressed such concerns to the command team, had he been aware of the tactical constraints posed by the “sandy parking lot” area. It would have been well within his responsibilities to make such concerns known, well within John Carson’s prerogative to defer to them (especially given the latter’s lack of training and expertise in CMU).

186. Kent Skinner also failed to engage in any meaningful planning for a TRU team deployment. Instead, one of the most highly trained and experienced tactical officers in the Province was employed in a rather quixotic effort to obtain “O.P.P.” decals for the soon to be arriving light armoured vehicles. Meanwhile, his men worked out at the Pinery. Within hours they would deploy “in the blind”, carrying the responsibility for the safety of over thirty fellow officers and the lives of the occupiers, including women and children.²

Evidence of K. Skinner, April 19, 2005, p.367, 1.9-p.375, 1.24

Contradictory intelligence

187. TRU and CMU operated on the evening of September 6, 1995 based on diametrically opposed intelligence concerning the presence of firearms in the hands of the occupiers.

188. Kent Skinner was apparently briefed by Inspector Linton concerning the potential for firearms in the hands of the occupiers of the Park. As a result of this briefing, Skinner believed that there was “a fairly good probability”, or that it was likely that the occupiers possessed firearms, including imitation AK-47’s and Mini Ruger 14’s. At 21:02, in accordance with standard operating procedure, he conveyed this information to officer Richard Zupancic, then en route to the TOC, along with instructions to relay it to other members of the team.

Evidence of K. Skinner, April 19, 2006, p.164, 1.18-p.167, 1.1

² Mr. Skinner readily conceded that the failure to “get an eye” was in part attributable to the tactical error of deploying in large white SUV’s within 300 metres of the park.

Exhibit P-1351, Transcript of Logger Tape Command Centre, 21:02 hrs. Sept 06/95, K. Skinner & R. Zupancic
Evidence of W. Lacroix, May 9, 2006, p.317, ll.18-21

189. Wade Laroix, meanwhile, operated on a completely different set of facts and assumptions concerning the issue of firearms. Not only was Lacroix never apprised of the “intelligence” regarding assault weaponry imparted to Skinner (and in the possession of the relief Incident Commander), he operated on the belief that the park occupiers did not possess, and were unlikely to use, any such weapons. In fact, the absence of firearms was a threshold issue for the deployment of CMU. He testified that had he been apprised of the intelligence available to Skinner (i.e. that it was probable that the occupiers possessed assault rifles) it would have been his responsibility to stand down CMU.

Evidence of W. Lacroix, May 9, 2006, p.317, l.18-p.326, l.19; p.341, l.14-p.342, l.7

190. To complicate matters further, Wayde Jacklin, the leader of the CMU’s arrest team, operated on the understanding that the occupiers presented “a likelihood or a very viable threat of firearms”. He received this information outside of a formal briefing. He described the experience of marching in the dark, while being lit up by spotlights, in the face of “a very viable threat of firearms” as “very unnerving”.

Evidence of W. Jacklin, April 25, 2006, p.247, l.18p.250 l.16; p.327, l.15

191. The responsibility for the inconsistencies between the intelligence regarding firearms imparted to TRU and CMU lays squarely at the foot of the incident commander. Significantly, both Skinner and Lacroix were never challenged on their respective

evidence that they were briefed (apparently separately) immediately prior to the operation by John Carson. In addition, Skinner was in the immediate company of Carson throughout the actual march, conveying the incident commander's instructions by radio to Lacroix. It is inconceivable that he would deploy these two formations without taking minimal steps to ensure that they were "on the same page" in respect of something as critical as the presence of firearms.

Evidence of W. Lacroix, May 10, 2006, p.101, 1.6-102, 1.23

TRU and CMU pursued divergent missions

191. That the respective leadership of TRU and CMU evidently pursued contradictory and uncoordinated missions compounded the problems associated with the teams' basic incompatibility and the inconsistencies in their intelligence.

192. Kent Skinner testified unequivocally that he perceived TRU's mission on the evening of September 6, 1995 as one of "getting an eye" on the situation in the park, with the primary aim of determining whether the occupiers had firearms in their possession. He testified that TRU encountered difficulties in "getting an eye", because the team members were detected by the occupiers. He understood CMU's role as one of providing a distraction, to permit the TRU members to deploy invisibly and "get the eye". He denied the suggestion that TRU's role was to support CMU's attendance at the sandy parking lot, in advance of TRU "getting and eye". In fact, as far as Skinner was concerned, the plan did not involve CMU advancing beyond the "phase line" until such

time as TRU had “an eye”. Crucially, he was never challenged on his evidence that he derived his understanding of TRU’s mission from his briefing by Carson.

Evidence of K. Skinner, p. 255, 1.9 – p. 256, 1.2

193. CMU leader Wade Lacroix saw the CMU mission in relation to that of TRU very differently. His task as he understood it from his briefing by Carson was for CMU to effect the removal of the occupiers from the sandy parking lot. He viewed TRU’s role as purely supportive, to provide cover in the unlikely event that firearms were produced by the occupiers.

Evidence of W. Lacroix, May 9, 2006, p.325, 1.5-10; p.301, 1.16-p.311, 1.15

194. The discrepancy between the missions as they were understood by the respective leaders of TRU and CMU is of more than academic interest. The failure of TRU to “get an eye” in advance of CMU making contact with the occupiers meant that the absence of firearms was never confirmed by the police. It meant that the TRU members proceeded toward the park in an effort to cover CMU, whilst operating on the erroneous assumption that the occupiers were probably carrying firearms and presented a significant threat to the lives of CMU members. It meant that CMU’s advance on the sandy parking lot to engage the occupiers (the critical step that precipitated the shooting) was unplanned and unanticipated as far as TRU was concerned.

Evidence of K. Skinner, April 19, 2006, p.294, 1.1-p.300, 1.13; p.312, 1.23-p.321, 1.11

Evidence of W. Lacroix, May 9, 2006, p.308, 1.22-p.309, 1.11

195. The confusion as to the respective missions on September 6, 1995 accentuated the dangers associated with CMU and TRU's basic incompatibility, and virtually ensured that the interaction between the CMU and the occupiers in the sandy parking lot would result in the use of lethal force by TRU. It is difficult to conceive of any other result.

196. The responsibility for this lack of coordination between TRU and CMU lays with the incident commander. The unequivocal evidence of the TRU and CMU leaders is that they were apprised of their contradictory missions through briefings by John Carson. It was ultimately his responsibility to ensure that his command team were "on the same page" concerning the operation on the evening of September 6, 1995.

The CMU tactics were unsuitable for a Aboriginal occupation

197. Leaving aside the issue of whether the CMU ought to have marched on the evening of September 6, 1995, the evidence is clear that CMU tactics were wholly unsuited to the cultural realities affecting Aboriginals people in the context of an occupation or protest.

198. CMU tactics are premised on the experience of responding to a diffuse, incoherent gathering of unrelated individuals, such as a crowd at a sporting event. Confronted by the overwhelming show of force represented by a full CMU in "hard TAC" performing a "punch out" maneuver, such a crowd will typically disperse; this is particular the case when leaders amongst the crowd are singled out for arrest.

199. The events of September 6, 1995 amply demonstrate that CMU tactics are likely to provoke a paradoxical response from Aboriginals people involved in a dispute over land. First, a group of Aboriginals people engaged in an occupation or protest will typically enjoy close bonds of family, community and identity. Second, the Aboriginals people will often have a profound connection to the land that they are occupying, and a shared experience of oppression. Any effort to single out individuals for arrest, or to intimidate the group through a show of force, far from causing the group to disperse, is likely to elicit a response of resistance and cohesion.

200. In hindsight, it is evident that the cultural implications of deploying the CMU was neither considered, discussed nor accounted for by members of the command team. Wade Lacroix had received no training that would have alerted him to this issue; the haste in which he was called out to head the CMU formation would likely have forestalled any proper consideration of these matters. There is no evidence that John Carson, for all of his stated background and knowledge of Aboriginals issues, was at all alive to this issue.

Evidence of W. Lacroix, May 9, 2006, p. 346, 1.6-p.358, 1.12

IX. INTELLIGENCE FAILURES

201. It is not seriously in dispute before this Inquiry that the OPP failed to institute any form of competent system of intelligence gathering, collation, analysis and reporting during the occupation. That intelligence was treated as little more than an afterthought in Project Maple is very much a reflection of Inspector Carson's lack of appreciation for the role of intelligence in responding to a Aboriginals occupation.

202. Officers who were responsible for intelligence gathering were not trained or briefed as to their role within the intelligence cycle. Inspector Carson failed to appoint an intelligence officer as a clearing house for the collation, analysis and reporting of intelligence. As a result, unprocessed and unreliable information (in particular concerning the presence of firearms), was disseminated within the command team. To make matters worse, various members of the command team received and relied upon different, and indeed contradictory, intelligence.

Evidence of D. Bell, June 8, 2006, p.21, 1.6-p.22, 1.8; p.24, 1.18-p.32, 1.9; p.35, 1.16-p.38, 1.6

203. The explanation offered for this shortcoming was that Inspector Carson, by virtue of his personal familiarity with the community, was able to ascertain the reliability of information that he received. This explanation fails to recognize that the intelligence cycle properly implemented does more than simply ensure that the incident commander receives accurate and reliable information; a rigorous system of intelligence also ensures

that unreliable information does not flow freely amongst officers lower down in the chain of command.

Evidence of D. Bell, June 8, 2006, p.38, 1.7-p.39, 1.24

204. How the failure to institute a proper intelligence program impacted on the events of September 6, 1995 will be discussed later in ALST's submissions.

X. NEGOTIATIONS FAILINGS

205. The conduct of the command team both before and during the occupation did not demonstrate a strong and consistent commitment to the negotiation of a peaceful resolution.

206. Prior to the occupation, Sgt. Marg Eve was designated as a lead negotiator and was expected to develop a relationship of trust with people that she had previously surveilled as an undercover camper at the Park. While face-to face contact is typically avoided in crisis negotiation, no steps were taken or contemplated to facilitate a means of telephone communication within the Park in anticipation of the occupation.

Evidence of B. Seltzer, June 13, 2006, p.338, 1.2-p.342, 1.15; p.354, 1.11-p.359, 1.20

207. After to occupation commenced, offers of assistance in facilitating negotiation by at least one Aboriginals person (Cindy Elder) went unanswered by the command team. On the evening of September 6, 1995, as events were said to be escalating, Sgt. Seltzer was never contacted with a view to canvassing potential avenues of de-escalation. While hours previously, Sgt. Seltzer had been attempting to develop some potentially useful lines of communication with the occupiers, these efforts were disconnected from the priorities of the command team.

Evidence of B. Seltzer, June 13, 2006, p.342, 1.25-p.352, 1.18

XI. SIU – RELATED MISCONDUCT

208. The evidence disclosed a disturbing pattern of misconduct concerning the statutorily mandated Special Investigations Unit investigation of Dudley George's death, both on the part of individual officers and at the institutional level. This course of conduct weighs heavily against the credibility of the individual officers involved, and the integrity of the OPP as a whole.

209. The telephone conversation between Brian Deevey and Wade Lacroix on September 7, 1995 is the most striking example of misconduct in the face of the SIU investigation. At the time of the conversation, Wade Lacroix believed that he was "very possibly" a subject officer (having discharged his firearm against one of the occupiers) and was in earshot of "Tex and the boys" (a reference to Ken Deane and other TRU members). The call was made prior to his or Ken Deane's statements to S.I.U. investigators. The recipient of the call was Staff Sergeant (now Inspector) Brian Deevey, who was in command of the Barrie District TRU team.

Evidence of W. Lacroix, May 9, 2006, p.192, 1.11-p.238, 1.17

210. In the call Mr. Lacroix makes detailed inquiries as to: "what the injuries are from the autopsy". What follows is an entirely inappropriate discussion between two senior officers concerning the location and nature of the injuries to the "targets" and the number of rounds fired. The call terminates with Mr. Deevey apparently recognizing that their improper conversation had been captured on tape.

Exhibit P-1361, Transcript of Region 4, W. Lacroix – B. Deevy, Sept. 07/95 18:45 hrs. Mobile Command Unit Logger Tape #7, Track 1, Disc 3 of 3.

211. Mr. Lacroix, while conceding that the conversation was inappropriate “because of the way it appears now...”, denied that it was unprofessional because he did not learn anything from the call that would taint the investigation. Kent Skinner was apprised of the conversation during cross-examination; he characterized the call as inappropriate and unprofessional. There is no evidence that any officer was ever disciplined as a result of this misconduct.

Evidence of W. Lacroix, May 9, 2006, p.217, 1.4-5; p.221, 1.2-11
Evidence of K. Skinner, April 19, 2006, p.351, 1.4-p.354, 1.4

212. The evidence further discloses that no meaningful steps were taken to segregate the involved TRU officers prior to their SIU interviews. The officers were permitted to congregate together in a room to await their respective private meeting with the officers’ joint counsel. The gathered officers were not directed to refrain from discussing the events related to the shooting. In fact, Mr. Skinner commenced making his notes relating to the shooting in the presence of the other officers, a day after the incident. He completed his notes after meeting with his lawyer.

Evidence of K. Skinner, April 19, 2006, p.357, 1.11-p.367, 1.4

213. John Carson’s response to the impending SIU investigation in the hours after the shooting was to prepare a hasty press release to disseminate the OPP’s version of events before “SIU puts the gloves on”. Mr. Carson took advantage of the “window of

opportunity” to distribute the press release, having turned his mind to the imminent prohibition of any such releases triggered by SIU’s anticipated involvement. In cross-examination, he conceded that the press release had the potential to conjure up fears of Aboriginals people randomly attacking private citizens amongst the wider community.

Evidence of J. Carson, May 30, 2005, p.194, l.9-p.196, l.9; May 31, 2005, p.11, l.20-p.12, l.5; June 29, 2005, p.92, l.17-22

Exhibit P-444(b), Tab 62

Exhibit P-440: News Release from OPP September 7/’95 re September 06/’95 Shooting of Aboriginals Persons by OPP.

214. Evidence also emerged before this Inquiry of OPP resources being officially allocated to assist Ken Deane in his private criminal defence. On duty OPP officers did everything from interviewing and preparing defence witnesses, to participating in a forensic muzzle-flash demonstration, all on behalf of Mr. Deane’s criminal defence. The assistance continued following Mr. Deane’s criminal conviction, through the appeal phase of his criminal proceedings.

Exhibit P-1363: Statement and handwritten notes: December 10, 1995 to February 20, 1996 of Robert J. Goodall, OPP Detective Inspector

Evidence of K. Skinner, April 20, 2006, p.117, l.19-p.132, l.9

Evidence of Mark Dew, April 4, 2006, p.239, l.7-p.244, l.8; p.262, l.25-p.264, l.1

XII. RACISM IN THE OPP

215. ALST respectfully submits that during the time in question, the OPP was internally plagued with racist attitudes. The racist attitudes of the OPP officers were reflected in the production of racist memorabilia, the racist comments made by various officers, and even in the racial profiling used by members of the OPP policing the Ipperwash Beach and Camp Ipperwash area.

216. Furthermore, the internal racism exhibited by the OPP was exacerbated by an entirely inadequate investigation into the production of the racist memorabilia and the informal punishment used to discipline officers who had clearly exhibited racist tendencies. As such, ALST respectfully submits that any recommendations this Commission makes with respect to the OPP should include a focus on ensuring that incidents of racism are investigated in a competent, open and fair manner.

A. RACIST MEMORABILIA AND CONDUCT OF OPP OFFICERS

217. The following list details the racist memorabilia and post shooting conduct of the officers that reflects the racist attitudes prevalent in the OPP during the time in question:

- i) Exhibit 458 – OPP t-shirt with E.R.T. and T.R.U. crests and a fallen feather (“fallen arrow t-shirt”);
- ii) Exhibit 458 – OPP mug created post September 6, 1995;
- iii) Exhibit 1497 – OPP t-shirt depicting anvil and sword breaking an arrow (“broken arrow t-shirt”);
- iv) Police cruiser with a bulls eye and arrow applied to its door;
- v) A beer can with a hole through it, some sand in it, a feather stuck in it, and OPP caution tape around it at the Pinery Park;
- vi) Racist cartoon posted at the Pinery Park; and
- vii) Racist comments caught on logger tapes.

218. The offensive nature of the t-shirts and mugs was acknowledged by Inspector Carson, former Commissioner of the OPP, Thomas O'Grady, Deputy Commissioner John Carson, as well as the current Commissioner of the OPP, Gwen Boniface.

219. In discussing the fallen arrow t-shirt, Commissioner Boniface testified that the depiction of a fallen arrow was clearly offensive on two fronts: (1) a memento of an event

that lead to a death is offensive in and of itself; and (2) the feather on its side was insulting because it represented the defeat or death of an Aboriginal:

8 Q: Seeing them. And what was your
9 reaction to seeing this T-shirt, the logo on this T-
10 shirt?
11 A: I found it offensive.
12 Q: And why was that, Commissioner?
13 A: Well, the memento itself -- the
14 mementos of the death of somebody is, I think, highly
15 inappropriate. Second, with the feather on its side, to
16 me was insulting.
17 Q: And why was it insulting to you?
18 A: Because it signalled to me -- my
19 normal way of seeing the feather would be standing
20 upright, so it signalled to me the death.
21 Q: Pardon me?
22 A: It signalled to me defeat or the
23 death.

Evidence of Commissioner G. Boniface, June 14, 2006 at p. 141 l.8 - l.23

220. Former Commissioner O'Grady found the fallen feather t-shirt offensive because of the inappropriate use of the eagle feather and because the t-shirt commemorated a very tragic set of circumstances:

15 Q: And up on the screen is a copy of
16 Exhibit P-458 which is the -- a copy of the -- a T-shirt.
17 And is this the T-shirt that you saw back in 1996?
18 A: I believe it is. My recollection was
19 that the word 'Ipperwash' was there, that there was a
20 feather on the bottom and that there was an indication of
21 two (2) OPP units and the year, '95.
22 Q: And what was your reaction when you
23 saw this -- the logo on this T-shirt, sir?
24 A: Well, I thought it was extremely
25 inappropriate given that it related to a very tragic set

1 of circumstances and a death, and I felt it was most
2 inappropriate and I was aware that an investigation was
3 ongoing.

4 Q: And did -- what did the feather, that
5 appears on the logo, lying on its side mean to you, if
6 anything, sir?

7 **A: I -- I -- basically I had no idea of**
 8 **the significance of a feather on its side. I did, and I**
 9 **was very aware that Aboriginals have great reverence**
 10 **for the Eagle feather, and so any misuse or**
 11 **misrepresentation of what might be construed as an Eagle**
 12 **feather would be seen as very inappropriate.**

Evidence of Former Commissioner T. O'Grady, June 15, 2006 at p. 315 1.16 - 316 1.12

221. While originally finding the fallen feather t-shirt innocuous, Deputy Commissioner Carson, on further consideration, found the fallen feather t-shirt to be inappropriate:

8 **Q: Now you had told the investigator**
 9 **earlier that you saw nothing wrong with the T-shirt that**
 10 **we just looked at a photograph of, right?**

11 **A: At -- at the time I hadn't really**
 12 **turned my mind to it, quite frankly.**

13 **Q: Yes. In the course of your**
 14 **discussion with Deputy Commissioner Boose, was there a**
 15 **discussion as to whether there was something wrong with**
 16 **that T-shirt?**

17 **A: Well there's -- there's no doubt**
 18 **about it. By the -- by the time that discussion had**
 19 **taken place, I certainly understood where the**
 20 **sensitivities were and certainly had changed my view on**
 21 **that.**

22 **Q: I see. And you came to the view that**
 23 **there was something wrong with that T-shirt?**

24 **A: There's -- there's certainly no -- no**
 25 **doubt about it that there is from the perspective that**

1 **clearly it could be perceived in a negative fashion and**
 2 **be deemed insensitive by others, despite, you know, the**
 3 **intent of the officers involved to not create that kind**
 4 **of an environment.**

5 **Q: Well, how -- how do you know that**
 6 **there was an intent by the officers involved to not**
 7 **create that?**

8 **A: It was in the report.**

9 **Q: I see. And so just from the report**
 10 **is -- you're concluding that from the report?**

11 **A: Yes.**

12 **Q: I see. But you recognize that it was**
 13 **very inappropriate and might be regarded as extremely**
 14 **offensive by Aboriginals people?**

15 **A: I can appreciate that, yes.**

16 **Q: And was there discussion in the**
 17 **course of your meeting with the Deputy Commissioner at**

18 the time of how inappropriate it was?
 19 **A: I can assure you that he -- he**
 20 **understood, I think very clearly, that I got the message.**

Evidence of Inspector J. Carson, June 16, 2006 at p. 119 1.8 - 120 1.20

222. Oddly enough, the t-shirt depicting the broken arrow was seen by some officers as non-offensive. To the contrary, some officers believed that the broken arrow t-shirt depicted the co-operation of the T.R.U. and E.R.T. team and the collective hardship they endured on the night of September 6, 1995:

12 **A: Well, primarily, right off the bat,**
 13 **it was the TRU Team and ERT, and TRU and ERT working**
 14 **together, and I see the arrow as a symbol of a weapon or**
 15 **violence and that we're dealing with the violence or**
 16 **breaking the arrow.**

17 Q: And so that the arrow, to you,
 18 represented violence and -- and --

19 **A: A weapon or violence, yeah.**

20 Q: And the -- would you not agree with
 21 me that it would appear from this logo that TRU is
 22 breaking the protestors against the anvil of ERT?

23 **A: The arrow representing the**
 24 **protestors?**

25 Q: Yes.

1 **A: The violence or the -- the weaponry,**
 2 **I guess, yes, the protestors, the violent protestors,**
 3 **yes.**
 4

Evidence of J. Irvine, May 25, 2006 at p. 115 1.12 – 116 1.4

A: In self defence. Obviously, force
 22 **was used to protect ourselves.**

23 Q: And that is symbolised by the
 24 breaking of the arrow?

25 **A: Yes.**

1 Q: Thank you. So when your current
 2 Commissioner says she's, quote, "shocked and appalled by
 3 the existence of this logo and this T-shirt", I take it
 4 you're not shocked and appalled by the existence of this
 5 logo or this T-shirt?

6 **A: I'm not. This represents to me that**
 7 **we survived something.**
 8 Q: Right. So you're not shocked and
 9 appalled?
 10 **A: No, I'm not. Why would I be?**

Evidence of J. Irvine, May 26, 2006 at p. 58 l.21 – p. 59 l. 10

16 Q: Okay. And it works in conjunction
 17 with the TRU symbol in that the TRU symbol is banging
 18 something against an anvil, right?
 19 **A: It can be interpreted that way, yes.**
 20 Q: Well, how did you interpret it, sir?
 21 **A: I interpret it as I've expressed**
 22 **previously, sir, that it was the cooperative effort**
 23 **between the two (2). And I've explained that it was a**
 24 **poor choice of symbols.**
 25 Q: Does an anvil -- anvil represent

1 cooperation and collegiality to you?
 2 **A: I can't specifically state that?**
 3 Q: No. Was -- that perhaps could
 4 represent the opposite of collegiality and cooperation,
 5 right?
 6 **A: I don't know where you're going**
 7 **with --**
 8 Q: Okay. An anvil is something hard
 9 that you pound something else against, right? That's the
 10 only thing it could symbolize, right?
 11 **A: Perhaps.**
 12 Q: It is. It's more than perhaps, isn't
 13 it?
 14 **A: I've described, you know, at great**
 15 **length as to what I -- what I intended by it, sir.**
 16 Q: I have your answer. Now, you said
 17 the arrow represented the occupiers; is that right?
 18 **A: That's correct.**
 19 Q: Did you see any of the occupiers with
 20 arrows?
 21 **A: No, I did not.**
 22 Q: So how could an arrow represent the
 23 occupiers then?
 24 **A: As I expressed earlier, sir, it was a**
 25 **-- a poor choice of symbols.**

1 Q: Okay. But you approved that choice,
 2 and I want to know from you how on earth, if the
 3 occupiers didn't have arrows, how on earth could an arrow
 4 represent the occupiers?
 5 **A: The arrow represented the occupiers**
 6 **that clashed with us violently. The arrow was a weapon**

7 and it was, you know, used to symbolize those people that
 8 struggled with -- with us that evening.
 9 Q: And "those people" are Aboriginals
 10 people, right?
 11 A: That's correct.
 12 Q: That's what the arrow represented,
 13 right?
 14 A: In retrospect, that is what it was
 15 taken --
 16 Q: Not in retrospect, sir, with respect.
 17 At the time the arrow represented Aboriginals people?
 18 A: That can be one (1) interpretation,
 19 sir.
 20 Q: And that was your interpretation at
 21 the time?
 22 A: No, it was not, sir.

Evidence of W. Klym, June 6, 2006 at p. 199 l.16 – p. 202 l. 22

15 Q: Do you have any information as to who
 16 was involved in designing or procuring this T-shirt?
 17 A: No, I do not.
 18 Q: Or the image?
 19 A: No.
 20
 21 (BRIEF PAUSE)
 22
 23 Q: In retrospect, do you consider
 24 whether or not -- have you considered whether or not this
 25 image is an appropriate one for a member of the Ontario

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1 Provincial Police to be in possession of?
 2 A: Well I can certainly appreciate how -
 3 - how this could be seen to be offensive. It -- it was
 4 never meant to be offensive in my -- in myself having
 5 possession of it.
 6 It was again a -- a symbol to me of -- of
 7 -- of an evening that was quite traumatic, and a
 8 difficult time in my life.
 9 And I had it in my possession. I -- I
 10 forgot about it. And when I realized I had it, I knew it
 11 was an issue and I maintained -- maintained possession of
 12 it and -- in case it was asked for here.

Evidence of G. Hebblethwaite, May 11, 2006 at p. 283 l.15 – p. 284 l. 12

223. Although Sergeant Hebblethwaite denied that the t-shirt was meant to be offensive he did admit on cross-examination that the literal interpretation of the broken arrow t-shirt was that the T.R.U. team with the assistance of E.R.T. was breaking an arrow:

20 Q: Now, you'd agree with me that that
 21 logo depicts the TRU symbol breaking an arrow, correct?
 22 A: Yes.
 23 Q: That logo depicts the sharp end of
 24 the TRU symbol breaking the arrow in half, yes?
 25 A: Yes.

1 Q: In addition to it depicting the TRU
 2 symbol breaking the arrow in half, the base upon which
 3 the arrow is broken in half, is an anvil; yes?
 4 A: Yes.
 5 Q: And the anvil has the ERT letters on
 6 it.
 7 A: Yes, it does.
 8 Q: Would you agree with me that a
 9 reasonable interpretation of this is that TRU is breaking
 10 an arrow with the assistance of ERT?
 11 A: That could be an interpretation, yes.
 12 Q: Well, all right. This is why you're
 13 here, this is your t-shirt?
 14 A: Yes.
 15 Q: Help me. Give me another
 16 interpretation other than this depicting a TRU symbol
 17 breaking an arrow with the assistance of ERT.
 18 What other inference should I draw from
 19 this symbol?
 20 A: That's the literal inference.
 21 Q: All right.
 22 A: I -- I can't deny that.
 23 Q: Okay. So that is the literal
 24 inference?
 25 A: Yes, sir.

Evidence of G. Hebblethwaite, May 15, 2006 at p. 128 l.20 – p. 129 l. 25

224. Despite the attempts to cloak the offensive nature of the t-shirts in a spirit of co-operation, it has been acknowledged by senior officers that the broken arrow t-shirt was highly inappropriate:

15 Q: ...the T-shirt that's been -- this a
16 logo for a T-shirt that's been marked Exhibit P-1494.
17 And that T-shirt was disclosed in April and -- or excuse
18 me, in May. And when did you learn about the existence
19 of a T-shirt with this logo on it?

20 A: I learned about it from my counsel as
21 it became evident here.

22 Q: And when -- what was your reaction
23 when you saw this logo?

24 A: I find it highly inappropriate.

25 Q: And why do you find it highly

1 inappropriate, Commissioner.

2 A: I think it reflects the 'we' against
3 'them,' Again, the broken arrow I find offensive. I
4 just find it very difficult.

Evidence of Commissioner G. Boniface, June 14, 2006 at p. 141 l.8 - 1.23

225. Former Commissioner O'Grady gave evidence that the broken arrow t-shirt was not only inappropriate but it was more offensive than the fallen feather t-shirt. Contrary to the opinion of Sergeant Hebblethwaite, Commissioner O'Grady testified that on viewing the broken arrow depicted in the t-shirt, the conclusion as to what it represents is "inescapable" – a broken Aboriginal people:

5 Q: And when did you first become aware
6 that there was a T-shirt with this logo on it?

7 A: I think when I got some briefing
8 documents to attend here a few days ago.

9 Q: And so that -- prior to that, you had
10 no knowledge?

11 A: No, I did not.

12 Q: And what is your reaction, sir, as
13 having been the Commissioner at the time, in 1995, to
14 this -- to this logo?

15 A: Well, it's probably worse than all
16 the others that precede it.

17 Q: And why do you say that, sir?

18 A: Well, you have a broken arrow and you
19 have an anvil and it's certainly indicates a
20 confrontational approach between that particular unit of
21 the OPP and Aboriginals.

22 That's -- that's what I would derive if I
23 was looking at it and I'm certain that Aboriginals
24 would see it that way, also.

25 Q: And the symbol at the top, do you

1 under -- recognize that as the TRU team symbol?

2 **A: Yes, I do.**

3 Q: And the broken arrow, what does it
4 signify to you?

5 **A: Well, I think it indicates something**
6 **has been broken and if the -- if the arrow is supposed to**
7 **represent Aboriginals then the conclusion is**
8 **inescapable.**

*Evidence of Former Commissioner T. O'Grady, June 15, 2006 at p. 335 l. 5 -
336 l.8*

226. ALST respectfully submits that there is no room for debate – all the memorabilia detailed above is offensive because it commemorates an event that caused the death of an individual and because the depictions and use of an arrow and feather on the t-shirts and mugs are degrading and offensive to all Aboriginal people. The fact that some officers continue to suggest that no offense was intended in the preparation of the t-shirts and mugs runs contrary to the suggestion of their superiors – that the t-shirts and mugs are quite obviously offensive.

B. THE LOGGER TAPES

227. It is without question that there are several racist comments that are caught on tape that detail the systemic racist attitudes the OPP had toward Aboriginal people during the relevant periods. Some of the racist comments made by Rob Huntley were filed as Exhibits in this Inquiry.

Exhibit P-1434, Transcript of Region 01, Inspector Gordon, Rob Huntley, Sept. 05/95 11:00 hrs. Mobile Command Unit, Logger Tape #1 Track 1 Disc 1 of 3

Exhibit 1157, Transcript of Region 01, Inspector Gordon, Rob Huntley, Sept. 05/95 11:00 hrs. Mobile Command Unit, Logger Tape #1 Track 1 Disc 1 of 3

228. The Commissioner has indicated that he will consider all documents in the Commission's database, irrespective of whether the document was filed as an Exhibit. As such, ALST submits that those transcripts that reveal the racist tendencies of OPP officers ought to be considered by this Commission irrespective of whether they were filed as Exhibits. Attached as Schedule "A" to these submissions is the full transcript of the logger tape recordings detailed below:

Region 09

**London Comm. Centre Logger Tape 085 Track 2
September 5, 1995 03:18 hrs.**

[BC= Bob Cousinseu]

[JW = Joe Wells]

JW: Canada's answer to the TRU Team, (Inaudible) I'm Lucan's Black Donnely.
Turn me loose.

BC: The mad dog in front of the Comm Centre.

JW: That's right I'd have the damn park back in 15 minutes.

BC: There ya go. Well I'll mention that to John Carson for ya.

JW: Well John already knows that's why I'm in London

BC: You know what? They must be keeping you as an ace in the hole or somethin'.

JW: He's keeping me in London because he's afraid of the consequences if I get up there.

(Laughter)

BC: Okay.

JW: Just shows ya that everybody's not as bad as I am. The guys got a level head so he's saying "keep this bastard back and away from me."

BC: (laughing) Okay, thanks a lot. Bye.

JW: Bye.

Region 06
Chatham Comm. Centre Logger Tape #0146
September 6, 1995 17:30 hrs

[C=Chuck LNU (Last Name Unknown)]

[W=Wayne Snable (phonetic)]

W: Well this kid that went a little nuts there. What happened, bumped into three Indian kids and they started exchanging racial slurs and so the principal grabbed this guy and took him into the office. I don't know where they got this drug overdose shit. But anyway. Bottom line, is he's been expelled from school and...

C: (inaudible) I don't know about this drug overdose thing here. I don't know (inaudible)

W: But he was talking about purifying the Indian race and everything. This guy like he's really sick.

C: What's wrong with him?

W: I don't know he just doesn't like Indians.

C: Well no, but I mean what's wrong with that?

Region 10
London Comm. Centre Logger Tape 085 Track 6
September 5, 1995 09:42 hrs.

[CC= London Comm Centre, Al last name unknown]
[R= Ray (last name unknown)]

R: Whenever I need something

CC: Yeah

R: I'm going to hire an Indian.

CC: Well go right ahead.

R: Seriously, they are going to get it for me.

CC: If you are looking at buying a house don't buy it, just have the Indians come over and take it over for you.

CC: We're taking (*inaudible*)

R: Ya, over here come take that over for me will ya.

CC: (*inaudible*) morning

R: (*inaudible*) Come take our house tomorrow

CC: I'm glad I don't live in a disputed area.

R: Oh I know Real estate values drops drastically when the Indians come in Strauss (*phonetic*) from here does.

Region 08
Chatham Comm. Centre
September 7, 1995 01:10 hrs Logger Tape #0147 Track 7

[CC= Chatham Comm. Centre]
[TM= Terry McIntosh]

TM: Yeah.

CC: I have no idea who was involved but it sounds like the people on the park opened fire and who knows what happened after that with all the people up there. Nobody was hurt though thank goodness.

TM: Yeah

CC: From our side.

TM: Yeah, I don't give a shit about the stupid fucking Indians.

CC: I don't know the status with the natives.

*Full Transcripts of the above recorded conversations can be found in Schedule
"A" to ALST Submissions*

C. THE FAILED INVESTIGATION

229. ALST respectfully submits that the investigation, as detailed in Exhibits P-1051 and P-1052 were woefully inadequate. Firstly in terms of the actual scope of the investigation it is clear that many officers who purchased the offending t-shirts were not interviewed. The following officers purchased a t-shirt and were not interviewed: (1) Officer Dougan, (2) Officer Korosec, (3) Officer Graham, (4) Officer Zupancic, (5) Officer Jacklin, (6) Officer Huntley, (7) Officer Hebblethwaite, (8) Officer Poole, (9) Officer Root, (10) Officer Bittner, (11) Officer York, (12) Officer Klym, (13) Officer Beauchesne, (14) Officer Irvine, (15) Officer Klym, (16) Officer Lorch; (17) Officer Seltzer.

230. Further evidence of the investigations ineptitude can be found in the fact that the investigation failed to fully canvass and query the creation of the broken arrow t-shirt. Rather, the existence of the broken arrow t-shirt only came to light as a result of this Inquiry. ALST respectfully submits that an truly independent and exhaustive investigation into the t-shirt and mugs would have revealed the existence of the broken arrow t-shirt.

231. In addition, the investigators, the names of which have been redacted from Exhibits P-1051 and P-1052, seem to make excuses for the behaviour exhibited by the offending officers. For example, when investigating the racist comments of Officers Whitehead and Dyke the investigators make a point of stating the "comments were not made in the public realm and were intended to be private communications between members of this force". Furthermore, the investigators provide excuses for the officers

comments in stating that the "hostile and uneasy atmosphere which existed at the time of the recordings may have contributed to the inappropriate phrases used and comments made".

Exhibit P- 1051, OPP Discipline files Privileged Documents, Volume I, Tab 1, p. 3.

232. ALST respectfully submits that the disciplinary action taken against Officer Whitehead was not only inadequate, but the private nature of the discipline action does not assist in deterring other officers from engaging in similar acts of misconduct. ALST respectfully submits that in order for discipline to have a deterrent effect, the investigation and results of the investigation must be made public.

233. ALST further submits that the internal investigation detailed in Exhibits P- 1051 and P-1052 was flawed in its analysis of racist and offensive conduct. Investigators would constantly use the comments of Aboriginal officers to mitigate the racist conduct or memorabilia. For example, when investigating the "beer can" at the Pinery Park, the investigator notes that an aboriginal officer viewed the beer can and was not offended by the item in anyway. This analysis is echoed in the investigators report on the t-shirts and mugs.

Exhibit P- 1051, OPP Discipline files Privileged Documents, Volume I, Tab 17, p.11

Exhibit P- 1051, OPP Discipline files Privileged Documents, Volume I, Tab1, p.13

Exhibit P- 1051, OPP Discipline files Privileged Documents, Volume I, Tab1, p.17

234. The fact that a racial minority or an Aboriginal person does not deem the above noted items as offensive is irrelevant to any adequate investigation into whether the items are offensive. This analysis was firmly rejected as irrelevant by Commissioner Boniface:

13 And beside this paragraph the line:
 14 "[blank] indicated he was very
 15 sensitive to Aboriginals issues,
 16 having been transferred from Northern
 17 Ontario."
 18 There's a note:
 19 "So what?"
 20 And is that your note?
 21 **A: That is.**
 22 Q: And the next line:
 23 "In the case of Constable [blank], he's
 24 an ethnic minority himself, understands
 25 the sensitivity and indicates there was

1 no intention of causing anyone
 2 unnecessary grief."
 3 And there's a note:
 4 "Sensitivity lacking."
 5 And was that your note?
 6 **A: That was.**
 7 Q: And what do -- what were you
 8 indicating when you made those notes?
 9 **A: Just I think exactly what they say,**
 10 **is my -- I concluded that sensitivity was lacking and**
 11 **that the fact that on the previous lines that he was**
 12 **sensitive to Aboriginal issues, having transferred from**
 13 **Northern Ontario**
 14 **I just didn't make the connection.**

Evidence of Commissioner G. Boniface, June 14, 2006 at p. 135 l.13 - p.13 l. 14

D. INADEQUATE DISCIPLINE

235. ALST respectfully submits that the informal discipline that the unnamed officers received as a result of the investigations detailed in Exhibits P-1051 and P-1052 and the informal punishment that officers listed in Exhibit P-1727 received is insufficient. ALST respectfully submits that issues of police racism strike at the core of how any person, and in particular, how an Aboriginal person views policing. The integrity of that relationship must be protected. As such, ALST submits that an officer found guilty of racist or culturally insensitive misconduct should be formally disciplined pursuant to the *Police Services Act*.

Exhibit P-1727, Summary of Audio Clips that are part of the evidence

The internal investigation/staunch defence of Cossitt

236. ALST submits that the OPP's internal investigation into allegations that Cossitt fabricated his testimony in Ken Deane's trial was woefully inadequate. Commissioner Boniface admitted that the report was inadequate, having regard to the failure of the investigator to interview the Crown Attorney who made the allegation in court, and the failure to formally notify Cossitt of the existence of a disciplinary complaint against him.

6 Q: Now, where I'm going with this and
7 what I want to truly ask, is this: If a lawyer, or
8 Inspector, or anybody develops a report that is quite
9 deficient in how it addresses a serious investigative
10 issue, such as someone has been alleged to have
11 fabricated their evidence, first of all, when they're
12 called upon to do that, would you expect that that person
13 would consider interviewing the Crown Attorney that
14 elicited the evidence and put to the witness that they
15 were lying?

16 A: I think that's fair.

17 Q: Right. Would you also expect that

18 this kind of complaint would actually be formally served
 19 on the officer?
 20 **A: The officer would be notified, I**
 21 **would expect.**
 22 Q: You'd expect it to be formally
 23 served; wouldn't you? Your evidence is he was informally
 24 notified by telephone.
 25 **A: His evidence is?**
 1 Q: Yes.
 2 **A: Okay.**
 3 Q: That's it.
 4 **A: Well, that would be -- he was -- I'm**
 5 **sorry, because I'm not aware of what his evidence was.**
 6 Q: Okay. He was informally notified by
 7 telephone. Is there not a process for serving complaints
 8 on officers?
 9 **A: Yes. They would -- I -- I would**
 10 **think they would normally get a copy of this intake or**
 11 **something that would officially notify them.**
 12 Q: That's right. And you'd expect that
 13 to happen?
 14 **A: Yeah.**
 15 Q: Would you agree with me that this
 16 report is actually an advocacy piece defending Cossitt
 17 and explaining why his version of events is actually
 18 corroborated; that this is an advocacy piece?
 19 **A: I think the report could have been**
 20 **more fulsome.**

* * * *

1 CONTINUED BY MR. JULIAN FALCONER:
 2 Q: You're in Orillia, you hear -- you --
 3 you find out about the judgment. You go, Are we on this?
 4 Are we looking into this? Somebody's been alleged, very
 5 publicly, to have fabricated evidence.
 6 Would this document make its way to you,
 7 this -- this report of October 20th, 1997?
 8 **A: It may.**
 9 Q: And if it did, this less than fulsome
 10 report, as you described it, what would you do in
 11 response to this kind of report?
 12 **A: It would likely be sent back down.**
 13 Q: For what?
 14 **A: For some further report.**
 15 Q: It's inadequate, isn't it?
 16 **A: Yes.**

237. The Cossitt investigation was consistent with the pattern of OPP conduct in the aftermath of the Ipperwash incident. There was an abject failure to engage in an honest exploration of the conduct of OPP officers and the institution as a whole.

XIII CONCLUSION

Findings Sought

238. In addition to the recommendations set out below, ALST is respectfully seeking a number of specific findings by this Honourable Commission. Subject to ALST's right of reply and oral submissions (which may seek additional findings), it is the position of ALST that the overwhelming weight of evidence clearly and convincingly establishes the following:

1. The newly formed Conservative Government under the leadership of Premier Michael Harris had neither the experience nor the judgment to competently and effectively discharge the government's responsibility in relation to the occupation of the Ipperwash Provincial Park;
2. High ranking members of the Conservative Government, including Premier Harris personally, inappropriately permitted their personal views on Aboriginal rights generally and the Ipperwash Park occupation specifically, to be communicated to civil service and police personnel;
3. The all important line of demarcation between politicians and police operations was blurred and at times inappropriately crossed in the days and hours between September 4 and September 7, 1995;
4. The line of demarcation between politicians and civil servants was blurred and at times inappropriately crossed in the days and hours between September 4 and September 7, 1995;
5. The dining room meeting: circumstantial evidence gives rise to the inescapable inference that the dining room meeting was convened at the direction of or under the authority of Premier Harris and Deb Hutton;
6. The existence and circumstances of the dining room meeting were deliberately concealed from the People of Ontario by both Attorney General Harnick and Premier Harris despite direct questions on the floor of the Legislature that should have prompted references to the meeting;

7. The actions of high ranking officials within the Conservative government and local politicians were such as to give rise to a reasonable perception of political interference in police operations at Ipperwash Provincial Park;
8. The action of Harris government officials and local politicians were such as to confirm the existence of actual political interference in police operations at Ipperwash Provincial Park;
9. The incident commander at Ipperwash Provincial Park inappropriately included, as part of his briefings of his command team, the political views of high ranking officials within the Conservative government;
10. There is no way to precisely or meaningfully measure the degree to which members of the command team were inappropriately influenced by the government messages with respect to the Ipperwash Park occupation;
11. Both the second in command, Detective Sergeant Mark Wright, and the officer in charge of the Emergency Response Team, Sergeant Stan Korosec, displayed, through their words and actions, a sense of urgency and aggressiveness out of proportion to the objective facts relating to the actions of the occupiers at Ipperwash Provincial Park;
12. A regrettable vacuum of leadership existed at Incident Command in the hours between 7:30pm and 9:30pm on September 6, 1995, that represents a significant contributing factor to the deficiencies in the Ipperwash police operations in the hours leading up to the death of Dudley George;
13. Poor intelligence planning and intelligence gathering by the incident commander and his command team represents a significant contributing factor to the circumstances leading up to the shooting death of Dudley George on September 6, 1995;
14. Poor negotiation planning and execution by the incident commander and his command team was a significant contributing factor in the circumstances leading to the death of Dudley George on September 6, 1995;
15. The March on the Occupiers: the deployment of the crowd management unit along with the deployment of the T.R.U. team in the circumstances of September 6, 1995, represented an ill-advised unnecessary exercise of force that led to the death of Dudley George on September 6, 1995;
16. An excessively defensive posture on the part of members of the command team following the death of Dudley George led to errors of judgment including the issuance of press releases and inappropriate communications amongst potential subject and witness officers;

17. The production of racist memorabilia by members of the Ontario Provincial Police represented offensive conduct which the Ontario Provincial Police improperly investigated and inappropriately disciplined;
18. The Ontario Provincial Police inappropriately permitted its officers to become co-opted in the ongoing defence of Acting Sergeant Kenneth Deane, including inappropriate fundraising for Mr. Deane's appeal;
19. Overall, the internal investigations and alleged internal discipline (informal or otherwise) of officers in their actions following the shooting death of Dudley George, were wholly inadequate and would have the affect of fostering cynicism about the ability of the police to investigate themselves.

239. When it comes to fact findings and/or credibility findings, Commissions of Inquiry reports are appropriately tempered by Judicial restraint. A Commissioner ought to be cautious to make those findings that are necessary to the discharge of his/her mandate. ALST respectfully submits that it is essential to the discharge of this Commission's mandate that key findings of credibility be made in respect of Premier Harris. At the heart of the controversy that surrounded the occupation of Ipperwash Provincial Park and the tragic death of Dudley George was the question of whether Premier Michael Harris misled the people of Ontario concerning the government's role at Ipperwash. More specifically, ALST respectfully seeks a finding by this Commission that then Premier Michael Harris knowingly and deliberately concealed the existence of the dining room meeting from the people of Ontario, despite repeated questions on this very issue. ALST respectfully submits that the concealment of this meeting, by far the most significant meeting that Michael Harris attended in respect of Ipperwash leading up to the death of Dudley George, represents a key failing on the Premier's part in respect of his duty of candour to the public.

XIV. RECOMMENDATIONS – Movement To The North To Realize The Vision

240. Aboriginal Legal Services of Toronto submits the following recommendations to the Ipperwash Inquiry for consideration. The proposed recommendations are organized to correspond to the headings (where applicable) in the body of ALST's submissions. Further recommendations will be submitted by ALST in its Part 2 submissions.

The Land

1. The Government of Canada shall take immediate steps to resolve the land claim issues concerning the former Camp Ipperwash.
2. The Government of Ontario shall relinquish all claims it may have of the property known as Ipperwash Provincial Park and take immediate steps to resolve the outstanding land claim issues.
3. The Governments of Canada and Ontario shall establish a new process to resolve land claims and disputes relating to Aboriginal and treaty rights. This new process must be created in partnership with the Aboriginal community and be premised on the understanding that Aboriginal rights are inherent rights and that resolution of Aboriginal disputes must be approached on a nation-to-nation basis.
4. The Governments of Canada and Ontario, after consulting with the Aboriginal community, shall enact legislation to protect Aboriginal sacred, ceremonial, and burial sites.
5. The Governments of Canada and Ontario shall establish a fund to enable Aboriginal peoples to assert and enforce their inherent rights.

6. The Government of Ontario shall revise, in partnership with the Aboriginal community, the curriculums for the primary and secondary education systems to include an accurate history of Ontario's Aboriginal peoples, lands, and treaty rights.

The Voices of the Premier: The Harris Government's Messaging to Police Officers and Civil Servants

7. The Government of Ontario shall develop a "Political Interference Protocol" that establishes a mandatory procedure that shall be invoked when allegations of political interference with police are made.

8. The Government of Ontario shall create a new Ministry for Aboriginal Relations. The new Ministry shall be headed by a Minister that does not carry any other portfolio within government.

9. The Minister for Aboriginal Relations shall have a permanent seat on the Priorities and Planning Board of the Province of Ontario.

10. The Government of Ontario mandate that all matters which may impact Aboriginal peoples be reviewed and subject to approval by the Ministry for Aboriginal Relations.

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.

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.

The Deliberate Misleading of the Legislature and the People of Ontario about the Dining Room Meeting

13. The Government of Ontario create a disciplinary code prohibiting members of provincial parliament from lying in the legislature, and establish penalties for breaching such rules.

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.

Conduct of the O.P.P. in the Aftermath of the Sept 4, 1995 Occupation of Ipperwash Provincial Park:

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

16. The O.P.P. shall ensure that a properly trained intelligence officer be appointed for all significant incidents.

17. All O.P.P. officers shall receive training concerning their potential role within the intelligence cycle.

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

The O.P.P. March on the Occupiers

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 O.P.P. 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.

Events Following the Shooting Death of Dudley George

a. Racist Memorabilia

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.

b The Sham Investigation

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.

d. The Deane defence Team

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.

e. The staunch defence of Cossitt

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.

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.

f. The role of the media

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.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 28, 2006

Julian N. Falconer

Kimberly Murray

Julian Roy

Brian Eyolfson

Sunil Mathai

Mandy Eason

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