

**THE IPPERWASH INQUIRY
(LA COMMISSION D'ENQUÊTE IPPERWASH)**

**IN THE MATTER OF THE COMMISSION OF INQUIRY INTO THE
CIRCUMSTANCES AND EVENTS SURROUNDING THE DEATH OF
ANTHONY O'BRIEN (DUDLEY) GEORGE**

**WRITTEN SUBMISSIONS ON BEHALF OF
CHARLES HARNICK**

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OVERVIEW

1. The former Attorney General's evidence was unambiguous and unwavering -- nothing was done by Charles Harnick ("Harnick") that led directly or indirectly to the shooting death of Dudley George, and the Commission heard no evidence to the contrary. At all times, Harnick and the members of his Ministry acted reasonably and responsibly.

THE MANDATE OF THE COMMISSION

2. The Commission is authorized to :
- (a) inquire into and report on the events surrounding the death of Dudley George; and
 - (b) make recommendations directed to the avoidance of violence in similar circumstances.

In addition, the Commission is required to "perform its duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization."

**Order-in Council No. 1662/2003 dated November 12, 2003,
establishing the Ipperwash Inquiry under the *Public Inquiries Act*,
S.O. 2000, c.14.**

3. The evidentiary proceedings were guided by the principles of openness, thoroughness, fairness and expediency.

Commissioner's Remarks, June 28, 2006.

EVIDENCE OF HARNICK

4. Harnick was called by the Commission as a factual witness and gave his evidence on November 24, 27 and 28, 2005.

5. The former Attorney General was never on site at the Ipperwash Provincial Park (“Ipperwash” or the “Park”) or at any Ontario Provincial Police (“OPP”) command center. Further, Harnick was never in direct contact with any member of the OPP. Harnick’s involvement in the occupation was minimal, primarily beginning on the morning of September 6, 1995 and ending that same afternoon with the dining room meeting.

6. Harnick gave the following evidence regarding his and his Ministry’s involvement in the Ipperwash occupation and the days leading up to the death of Dudley George:

(a) Harnick first learned of the occupation on the evening of September 4, 1995 or the morning of September 5, 1995;

Evidence of Harnick, November 24, 2005 at p. 66.

(b) On the morning of September 5, 1995, Harnick met with his deputy minister, Larry Taman, and with the Deputy Solicitor General, Dr. Elaine Todres. The occupation of the Park was briefly discussed and the only

information available at that point was that the OPP would continue to monitor the situation;

Evidence of Harnick, November 24, 2005 at pp. 67- 69.

- (c) Harnick had no further involvement with the Ipperwash matter on September 5, 1995;

Evidence of Harnick, November 24, 2005 at pp. 69-74.

- (d) Early on the morning of September 6, 1995, Harnick was briefed in his office by a group of his political staff, including Julie Jai. Harnick reviewed the Briefing Note dated September 6, 1995 and the attached “Guidelines for responding to Aboriginal Emergencies (Blockades)” provided to him by his political staff;

Evidence of Harnick, November 24, 2005 at pp. 75-81 and 117. Briefing Note dated September 6, 1995 with attached Appendix titled “Guidelines for responding to Aboriginal Emergencies (Blockades)”, Exhibit P709.

- (e) Harnick’s political staff advised him of a sense of urgency and recommended that an injunction be sought as soon as possible. Harnick agreed with this recommendation;

Evidence of Harnick, November 24, 2005 at pp. 75-81, 86-93, 96, 98 and 117. Evidence of Harnick, November 28, 2005 at p. 9.

- (f) Harnick was not involved in any debates or discussions regarding an *ex parte* versus a with notice injunction and the decision of the type of injunction to be sought was left to the government lawyers who were

preparing the injunction materials. This was a responsible delegation of decision making;

Evidence of Harnick, November 24, 2005 at pp. 79-81, 89, 96, 98 and 117.

- (g) Harnick attended a Cabinet meeting, after his briefing by his political staff. Ipperwash was not discussed at the Cabinet meeting;

Evidence of Harnick, November 24, 2005 at pp. 92-93, 96, 99-100, 107-108.

- (h) Immediately following the Cabinet meeting, Harnick attended a meeting in the Premier's dining room;

Evidence of Harnick, November 28, 2005 at p. 9.

- (i) The attendees of the dining room meeting included the Premier, Deb Hutton, Solicitor General, Deputy Solicitor General, Kathryn Hunt, Minister of Natural Resources, Deputy Minister of Natural Resources, Larry Taman and Dave Moran;

Evidence of Harnick, November 28, 2005 at p. 12.

- (j) Other persons were present at the dining room, however, Harnick was not aware of who they were or what positions they held. It was not for Harnick to restrict the attendance at a meeting chaired by the Premier;

Evidence of Harnick, November 28, 2005 at p. 13.

- (k) Following discussion, the Premier agreed that an injunction should be sought as soon as possible; and

Evidence of Harnick, November 28, 2005 at p. 11.

- (1) Larry Taman instructed the lawyers preparing the injunction materials.
Evidence of Harnick, November 28, 2005 at p. 21.

7. What is remarkable about Harnick's evidence is his candor. In particular, Harnick recalled that the former Premier Michael Harris stated "I want the f---ing Indians out of the Park" at the beginning of the dining room meeting. Mr. Harris does not admit making this statement. Mr. Harris' words were intemperate and inappropriate. But they are wholly irrelevant to the determination of the ultimate decision that was made -- to seek an injunction as soon as possible.

Evidence of Harnick, November 28, 2005 at pp. 10-11 and 15-19.

8. If the Commissioner considers it necessary to resolve the inconsistency between Mr. Harnick and Mr. Harris, Mr. Harnick's version of this statement should be preferred.

CONCLUSION

9. The Commission has heard no evidence of any direct or indirect instruction from the former Attorney General or his Ministry to the OPP. The former Attorney General and his officials clearly acted reasonably, within their legal mandate

and followed the course of action suggested by the Guidelines for Responding to Aboriginal Emergencies (Blockades).

Briefing Note dated September 6, 1995 with attached Appendix titled "Guidelines for responding to Aboriginal Emergencies (Blockades)", Exhibit P709.

10. The former Attorney General and his Ministry took one active step -- they made the decision to seek an injunction as soon as possible. Ultimately, injunction materials were prepared and an injunction was obtained on September 7, 1995. Significantly, no motion was made to set aside the injunction.

**Order of Justice Daudlin, September 7, 1995, Exhibit P442
Transcript of Proceedings before Justice Daudlin, Exhibit P467
and P787**

11. The OPP took no issue with Harnick or his decision to seek an injunction and, in fact, supported the position advocated by former Deputy Minister Taman at the dining room meeting.

**Evidence of Ron Fox, July 12, 2005 at pp. 69-71, 106-110
and 136-137
Evidence of Ron Fox, July 13, 2005 at pp. 113-114.
Handwritten Notes of Julie Jai dated September 6, 1995,
Exhibit P515.
Order of Justice Daudlin, September 7, 1995, Exhibit P442**

12. No evidence was presented to the Commission that the ultimate decision by the government lawyers to seek an *ex parte* injunction, rather than an injunction with notice, in any way influenced the O.P.P. to act in any manner. It is clear from the reaction of Inspector Ron Fox following the meeting in the dining room, that the OPP completely rejected the *hawkish* approach as alleged to have been advocated by some

members of the former government. Inspector Fox, in fact, accepted and agreed with the recommendations and approach advocated by the former Attorney General and former Deputy Minister Taman at the dining room meeting.

Evidence of Ron Fox, July 12, 2005 at pp. 69-71, 106-110 and 136-137.

Evidence of Ron Fox, July 13, 2005 at pp. 113-114.

Transcript of Telephone conversation between Ron Fox and John Carson, September 6, 1995 at Exhibit P444, Tab 37.

RECOMMENDATIONS

13. Harnick recommends that a representative of the Chiefs of Ontario should be involved on any government Blockade Committees that may meet in the future under similar circumstances. This would aid in developing a level of trust between the occupiers and the government.

Evidence of Harnick, November 28, 2005 at pp. 46-47.

14. One aspect that comes through stunningly following a review of the evidence before the Commission is that when a meeting is held involving one or more Cabinet members and, in particular involving the Premier, as a matter of practice a record or a roll call of all who are present at such meeting should be kept along with a note of their function or position. This should be standard practice at all government meetings.

15. Such a practice would ensure that privilege is not lost by the presence of a stranger. The dining room meeting was obviously a meeting where legal advice was

being given and legal instructions were being sought. In the future, these types of meetings should be treated as any other solicitor-client meeting to ensure that solicitor-client privilege is preserved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: July 28, 2006

HARVEY T. STROSBURG, Q.C.

JACQUELINE A. HORVAT